

# BRIEFING PAPER ON GE INITIATIVE

## Background

The investigations on genetic engineering/ genetic modification (GE/GM) undertaken by local authorities in North Auckland/Northland were prompted, in the first instance, by widespread community concerns over the potential release of genetically modified organisms (GMOs) to the environment. These concerns have not abated and genetic engineering remains an issue that engenders much comment from the community, ongoing lobbying by community groups, and large numbers of submissions on council strategies and policy documents.

For example, submissions on GE were the highest for any single issue during consultation on the Whangarei District Council's (WDC) 2004 Long Term Council Community Plan (LTCCP). This has led to the WDC adopting the following stance towards GE in its LTCCP: *Council will adopt a precautionary approach to the management of biotechnology in general and to GMO land uses in particular. It will continue to investigate ways to maintain the district's environment free of GMOs until outstanding issues such as liability, economic costs and benefits, environmental risks, and cultural effects are resolved.*

This is in line with the position adopted by the Northland Regional Council (NRC) in its LTCCP, which stated: *The Regional Council is a member of a Northland inter-council working group to discuss a common approach to the management of GMOs in Northland. Until this group has completed its work, the Council has decided to support a precautionary approach. This means that there should be no further development and field-testing of transgenic organisms envisaged for agriculture, horticulture, and forestry in Northland until the risk potential has been adequately identified and evaluated and a strict liability regime put in place.*

Similarly, the Kaipara District Council (KDC) adopted in June 2003 the following policy : *That Council adopt the direction of a precautionary approach and limit the release of genetically engineered organisms by District Plan Change, bylaw, requiring notification or a combination of these.* Its LTCCP reaffirmed support for a precautionary approach as one of the 'Community Outcomes' identified in the schedules of the Plan. A precautionary approach to GM was also identified in the LTCCP as a method for delivering the vision of the future for the district.

Rodney District Council (RDC) to date has not adopted policies specific to GMO activities although it noted in its summary of submissions on the LTCCP that: *During the next two years the Council will formulate policy and plans on:.... Environmental health, such as genetic engineering, biosecurity and contaminated sites.* RDC has, however, a GM related provision in its draft Trade Waste Bylaw 2004 which prohibits discharges involving GM material from facilities engaging in genetic modification. RDC also promotes its district as 'organic friendly'.

The Far North District Council (FNDC) received a large number of submissions on the District Plan concerning GE, most of them requesting that the district become a GM Free zone. Genetic modification also featured strongly in submissions received on the LTCCP. Most requested that no GMOs be released to the environment, that the district become a GE Free zone, and/or that the FNDC be part of a wider regional exclusion zone. The 2005/2006 FNDC Annual Plan includes the following statement: *FNDC remains committed to exploring the options for controlling GE/GMOs at a local level in collaboration with the local authorities north of Auckland.*

In 2001, Waitakere City Council (WCC) passed a resolution declaring the district 'GE Free in food and field'. The Council further resolved *to identify the most effective ways*

*of advancing Council's aspirations for Waitakere City to be 'GE Free', without compromising medical research or currently permitted activities but discouraging in every way possible any form of field trials.* The resolutions followed a range of petitions and presentations to the Council requesting that the district remain GM Free.

### **Early Initiatives**

Following on-going community concern over the issue of GE, as evidenced by numerous submissions to the annual plan process over the period 2000 – 2005, the LTCCP in 2004, and a 7,000 plus signature petition presented to Council in 2001/2002, the WDC organised a Workshop on Genetic Engineering at council premises on 31 October 2003. The workshop was attended by elected representatives and staff from all local authorities in Northland along with RDC, a Member of Parliament, representatives from tangata whenua, the Northland Conservation Board, farming groups, business groups, together with members of the public. A report by the Sustainability Council of New Zealand (*Local Government and GMOs: Issues for WDC*) was presented and discussed at the workshop. The findings of the report included the following:

1. Under the existing legislation, the release of GMOs to the environment may create financial exposure for local government, including the WDC, and the costs involved could be substantial.
2. The economic benefits to the district and region from the commercial release of GMOs appear to be small, whilst the risks could be extremely large.
3. There is considerable uncertainty over the role of local authorities under the Hazardous Substances and New Organisms (HSNO) Act 1996, the Resource Management Act 1991 (RMA) and the Local Government Act 2002 (LGA).

Following the workshop, discussions took place at the WDC Environmental Services Committee meeting on 20 November 2003 and a decision was reached to commission a report from Simon Terry Associates and Dr Royden Somerville QC to explore two broad policy initiatives to address those issues that were continuing to cause anxiety to both the Northland community and their elected representatives. These were:

1. Did local authorities have jurisdiction under the RMA and/or LGA to regulate local GMO land uses over and above regulation imposed at a national level by the Environmental Risk Management Authority (ERMA) under the HSNO Act. If so, what form could this regulation take.
2. Could changes be made to the HSNO Act to allow local authorities to protect their interests, and the interests of their communities, regarding the release of GMOs into the environment.

This report was to be commissioned and financed if possible on a collaborative basis involving all Northland local authorities along with RDC and Local Government New Zealand (LGNZ). Approaches were made to all organisations concerned and all agreed to jointly commission and fund the report and legal opinion. The report and legal opinion cost \$25,000 with the WDC, FNDC, KDC, and RDC paying \$5,000 each and the NRC and LGNZ paying \$2,500 each.

### **First GE Report and Legal Opinion**

The report, based upon the Dr Somerville QC legal opinion, found that the HSNO Act does not preclude management of activities involving GMOs in the environment by local authorities under the RMA or the LGA. In other words, local authorities do have jurisdiction to manage land uses involving GMOs in the environment under the RMA and LGA over and above the regulation prescribed nationally under the HSNO Act.

This view on jurisdiction is implicitly accepted by the Crown Law Office in opinions sought by the Ministry for the Environment (MfE) and has not been challenged in statements by the Minister for the Environment on behalf of Central Government. All recognise that as the law stands local authorities do have jurisdiction under the RMA and LGA to address community concerns about GMO land uses. There are differing views, however, on whether local and/or regional regulation under the RMA could be successfully supported by a section 32 analysis.

The Report also argued that provisions in the District Plan would be the most appropriate mechanism to regulate activities involving GMOs in the environment at a local or regional level. There are a range of approaches to regulating such land uses, including total prohibition, selective prohibition, spatial management areas, or case specific regulation through scrutiny of discretionary or non-complying activities. To successfully impose such regulation a local authority would need to show through a RMA section 32 (cost/benefit) analysis why this regulation was necessary over and above that prescribed nationally under the HSNO Act. The report outlined a number of reasons local authorities could use as the basis for local or regional regulation. These include:

- The desire to set in place a liability regime that would require those releasing GMOs to the environment to pay compensation or provide a bond in case of future harm caused by an ERMA approved release together with proof of financial fitness to pay such compensation;
- Local economic effects, particularly effects on existing land users and marketing advantages in the district or region;
- Ethical-cultural effects on local Maori and other groups or individuals in the district or regional community.

In regard to the LGA, the report found that the LTCCP formulated under the LGA could be legitimately used to set a policy direction and a precautionary approach to managing activities involving GMOs in the environment. However, the use of bylaws under the LGA regulating such land uses could have difficulty surviving legal challenge.

The report also found that amendment of the HSNO Act to allow territorial and regional authorities to set local and/or regional controls over and above those set nationally by ERMA would provide a more direct means to achieving the desired outcomes sought by a community in regard to GMO land uses in its district or region. Such amendments could provide for:

- The ability of local authorities to issue policy statements on GMO land uses under an amended HSNO Act such that ERMA would be required to accommodate those policy statements in its decisions.
- The option to examine individual applications in tandem with ERMA assessments and, if required, to set stricter controls to apply within the local authority boundaries.

However, it is unlikely that the present government will initiate such amendments to the HSNO Act. During submissions on the New Organisms and Other Matters (NOOM) Bill, LGNZ and a large number of local authorities lobbied for such amendments or, at the least, an amendment of the HSNO Act to clarify local government's role in the management of GMO activities in the environment. Central government chose to ignore those requests.

In addition, the FNDC asked the MfE in conjunction with the Crown Law Office to clarify the legal position on liability to both councils and constituents from an ERMA approved release, including damage to individual trading activities, damage to the environment and damage to human health. MfE chose only to ask the Crown Law Office about damage to the environment

(not economic loss nor damage to human health) and they chose not to address harm to constituents - only councils. They also looked only at legal liability and not financial liability. All these other aspects remain unresolved and are on-going concerns for local government.

The Report concluded with a number of recommendations foremost of which was for the WDC to liaise with other local authorities north of Auckland to discuss the possibility of a common approach to managing activities involving GMOs in the environment at a local and/or regional level under the RMA and LGA. Setting up a regional working party on genetic engineering was suggested as a useful way forward.

The rationale for the collaborative approach was two-fold. Firstly, to lower costs, both for further research and for future District Plan changes if that was the course of action agreed to. Secondly, to ensure regulation by local authorities under the RMA and LGA was most effective it would be best coordinated and implemented on a regional basis. Individual district or city councils could regulate unilaterally on aspects dealing with liability, such as compensation requirements, posting bonds for GMO releases, etc., but would have difficulty enforcing GMO exclusion zones, for example.

On a regional basis, however, there is a realistic possibility of setting in place a comprehensive system of management under the RMA and LGA if that system is agreed to by all (or most) local authorities in the region. For example, because of its unique geography, Northland is especially well placed to undertake such a regional approach. Should all (or most) territorial authorities north of the Auckland urban centre agree upon a common regulatory system (including exclusion zones) it is possible that this could be successfully implemented, administered and enforced.

The report (*Community Management of GMOs: Issues, Options and Partnership with Government*) was presented to the WDC meeting on 5 May 2004 and, following robust debate, Council passed a resolution "That the WDC liaise with other Northland councils to discuss a common approach to future action (if any) on the management of land uses involving GMOs in the environment and that this liaison be carried out either by staff members or through a working group consisting of staff and councillor(s)".

Other councils in the Northland/North Auckland region, including FNDC, KDC, RDC, WCC and NRC passed similar resolutions committing to investigating a common regional approach to any future management of GMO land uses.

### **Inter-Council Working Party on GE**

Subsequently, on 25 June 2004, a meeting of staff representatives from WDC, KDC, RDC, FNDC, WCC, and NRC convened to discuss ways of progressing this issue (at this stage not all councils had elected representatives nominated for participation in the working group). At the meeting a process was agreed upon to advance the project, along with timeframes and costings.

The first stage was the production of a Risk Evaluation and Options Report, which would progress the project to the point where individual councils could select a particular option for addressing community concerns over release of GMOs into the environment. A rough costing for this stage was estimated to be \$50,000 to be shared by all participating councils (i.e. approximately \$10,000 each).

The focus of the study was to examine in greater depth the risks to local government and their communities in Northland posed by GMO releases to the environment. In brief, the report was to identify specific sources of risk for local government, including environmental risks from releasing GMOs into the environment such as horizontal gene transfer, soil contamination, contamination of indigenous flora and fauna, interference with ecological processes and life supporting functions of ecosystems; economic risks to

existing businesses through contamination by GMOs and loss of markets due to such contamination (or perception of) and loss of clean green image generally; ethical-cultural risks to Maori and other groups/individuals who have ethical-cultural objections to genetic engineering; and financial risks in the form of liability and compensation for damage caused by GMOs in the environment such as GM contamination of non-GM produce, GM soil contamination, environmental damage generally including possible unforeseen 'catastrophic' damage.

Following the analysis of risks, options to address those risks would be examined. These would include all the various mechanisms available under the RMA, ranging from doing nothing to total prohibition and those in between such as scrutiny of individual GMO land uses through the consenting process. The intent was to advance research to the point where decision makers in council could select, in principle, a favoured response option to the risks arising from the outdoor use of GMOs.

The next stage (if it were to proceed) would tend to involve agreement by all or most councils on a common approach. (There are options that could be attractive for individual councils to pursue in the absence of a common approach, but the Working Group is strongly targeting a common approach in the first instance.) If an agreed option was decided upon that involved regulation under the RMA, further work would be required to draw up the necessary District Plan change and complete the supporting section 32 analysis. This stage would also most likely cost in the vicinity of \$50,000 (a further \$10,000 each council or an amount determined under a United Nations funding approach).

At the end of this second stage, each territorial authority would have a complete plan change and a section 32 report supporting such a plan change. On the other hand, if agreement was not reached by the participating councils at the end of stage 1, or the councils agreed not proceed on the issue, the second stage of the project would not be necessary and no costs would be incurred. In effect, the joint initiative would come to an end.

Specialist expertise was expected to be required with respect to research into: legal issues, planning issues, liability issues, economic issues and regulatory arrangements governing GMOs. There was a consensus that in the absence of objections to the work of Simon Terry Associates (STA) as evidenced in the previous report and any of its content, i.e. evidence of inaccuracies, bias, etc. it was prudent at this stage, given its earlier involvement, to obtain input from STA as to developing the brief for future work.

A proposal was formulated and, along with a process for advancing the project, was included in participating council's agenda items during August and September 2004. An agenda item was presented to the 4 August 2004 WDC meeting. The following resolution was passed:

1. *That the WDC agrees to the approach for advancing investigations into the management of GMOs in the environment as outlined in attachment 1 of this agenda item.*
2. *That the WDC agrees to contribute \$10,000 to jointly fund (along with FNDC, KDC, RDC, WCC, and NRC) a Risk Evaluation and Options Report as outlined in attachment 2 of the agenda.*
3. *That the WDC acts as the coordinating agency in commissioning the above report. That is, the WDC will coordinate the commissioning of the report, collect contributions from participating councils and ensure payment to the authors of the report.*
4. *That the WDC nominates one councillor (Cr Lieffering) to sit on the Joint Steering Group and take part in discussions of the Joint Working Party on GMO Management.*

All participating councils, except for the NRC, passed similar resolutions to jointly fund the Risk Evaluation and Options Report. Whilst the NRC supported the commissioning of the Report, it did not contribute financially because at that time the council was attempting to arrange a similar initiative amongst regional authorities. This initiative has since come to a halt.

### **Second GE Report and Legal Opinion**

A consortium, consisting of Mitchell Partnerships and Simon Terry Associates, together with Dr Royden Somerville QC, were provided with a brief and were commissioned to produce the Risks Evaluation and Options Report and accompanying legal analysis. On 8 April 2005 a draft of the Risks and Options Report was presented and discussed at a meeting of the staff representatives on the Joint Working Party on GE. The content of the Report was reviewed and comments and recommended changes noted. Discussions also took place on the need for an independent review of the Report. It was agreed that an independent review would be sought.

Subsequently, changes were made to the Risks and Options Report and the independent review was commissioned and completed. The finalised Report, legal opinion and independent review were then distributed to the members of the Working Party along with a briefing paper. A date was then arranged for a meeting of the full Inter-Council Working Party on GE, including elected representatives. Because of the complexity of the issues covered in the Risks and Options Report, Simon Terry of STA (one of the authors of the Report) was invited to the meeting of the Working Party to give a presentation on the findings of the Report and to answer any questions and clarify any uncertainties that may arise.

As the title suggests, the Risks and Options Report examines in detail the risks posed to northern councils and their communities by the release of GMOs to the environment. It then outlines and evaluates a number of response options to address those risks. The risks can be grouped under three headings: environmental, economic, and socio-cultural. Liability issues relating to those risks are also discussed.

Environmental risks include:

- Adverse effects on other species, including indigenous flora and fauna, from horizontal gene transfer;
- Unintended and/or unforeseen traits or effects from genetic alteration on both target and non-target species;
- Adverse effects on ecology and ecosystems from GMOs, both invasive and non-invasive, including possible reduction in biodiversity;
- Development of herbicide or pesticide resistance in weeds or pests, i.e. emergence of 'superweeds' and 'superpests';
- Dangers of developing sterile traits in plants, to both target and non-target species;
- Unpredictable and irreversible nature of some ecological and environmental effects.

Economic risks include:

- Loss of income through contamination (or even perceived contamination) of non-GE crops or products triggering market rejection of produce (this has already occurred in New Zealand due to the importation of contaminated seed);
- Associated opportunity costs arising from GMO food production, i.e. foreclosure of future options for conventional and organic farming. Long term co-existence of GE and non-GE farming has not yet been successfully demonstrated;

- Negative effects on marketing and branding opportunities, e.g. loss of 'clean green' image and 'Naturally Northland' brand. This represents a loss to both individual producers and to district/regional organisations;
- Negative effects on tourism related to loss of 'clean green'/'Naturally Northland' imagery and branding;
- Costs associated with environmental damage, such as cleanup costs for invasive weeds and pests in reserves, parks, and open space;
- Economic loss to the district and region through loss of agricultural income, reduced tourism and loss of marketing and branding opportunities.

Socio-cultural risks include:

- Effects on Maori cultural beliefs (the concepts of whakapapa, mauri, tikanga, and kaitiakitanga, for example);
- Effects on religious beliefs, i.e. science playing God, interfering with the 'natural' order of things, altering God's work, etc.;
- Other ethical concerns, such as mixing different species' genotypes, e.g. inserting frog genes into tomatoes, or non-human genes into humans;
- Effects on human health from GE food, pharmaceutical crops, industrial crops, contamination of food, etc.

Liability issues revolve around the question of who pays for financial losses and/or cleanup costs should a GMO release result in any of the adverse economic or environmental effects listed above. For example, who suffers the cost if a conventional or organic farmer is unable to sell his or her produce because of contamination from GE crops? Also, who pays for environmental damage, such as the cleanup costs associated with invasive weeds or pests infesting council reserves, parks or open space?

At present, under the HSNO Act, there is no liability to the party releasing GMOs to the environment for damage resulting from a release carried out in accordance with an ERMA approval. There is also no requirement on applicants to prove financial fitness in case of damage and no requirement for posting bonds to recover costs should damage occur. The parties who cause the damage are not held financially accountable. Therefore, costs will tend to fall on affected parties (neighbouring farmers, existing tourist operators, etc.) and on local government, both regional and territorial. Thus, local government, and their communities, will be left to carry the costs should any adverse effects occur from a GE release, yet local authorities and their communities at present have no authority over decisions to allow GMO land uses in their districts or regions.

The Report then proceeds to outline and evaluate various options that are available under the RMA to address the above risks. All options (apart from the do-nothing option) involve inserting provisions in territorial authority District Plans to address in differing ways the potential risks arising from GMO land uses.

Firstly, the liability issues could be addressed by way of performance standards in District Plans or conditions attached to resource consents that require financial accountability for environmental damage and avoidance of economic loss. Consent conditions may be able to be used to recover financial losses. The use of bonds to cover potential damage is also available under the RMA and could be made mandatory in District Plans.

Secondly, the risks posed by different classes of GMOs could be addressed by designating different GMO land uses as either discretionary or prohibited activities in District Plans. The Report outlines four options including making all GMO land uses discretionary activities, prohibiting all GMO land uses, along with two different combinations of discretionary and prohibited activities.

These various options are next evaluated for the degree of precaution provided to address perceived risks, the effectiveness of financial accountability measures, the costs of administering new provisions along with the potential costs of challenge through the courts, and the extent to which future opportunities would be foreclosed.

In general, the degree of precaution provided increases from discretionary to prohibited status, the effectiveness of financial accountability increases likewise, while the costs of administering and monitoring District Plan provisions decreases from discretionary to prohibited status. The potential costs arising from court challenge to a plan change remains similar for all four options. However, discretionary activities are open to challenge through the courts each time a decision is released on a consent application whilst prohibited activities are not. Lastly, flexibility as to future options is maximised under the prohibited activity status as are marketing advantages and branding opportunities.

The Report emphasises that decisions to prohibit GMO land uses are reversible. That is, if particular GMO land uses were shown in the future to be advantageous to the district whilst not imposing substantial costs or risks those land uses could be removed from the prohibited status and deemed to be permitted or discretionary activities. On the other hand, decisions to allow GMO land uses are by and large irreversible. Once, released to the environment GMOs are most likely there for ever, irrespective of the consequences. In addition, once GMOs are released commercially, the district's/region's GE Free status is permanently lost, along with any marketing and branding advantages that GE Free status afforded.

The 'do-nothing' option was also evaluated in the Report but non-intervention was not considered a useful option to further investigate given the availability of relatively low cost options that do address the substantial risks identified. A policy of non-intervention would not address any of the risks outlined above, nor would it clarify the liability issues associated with those risks. In particular, cleanup costs for environmental damage and financial loss from GE contamination would still fall on councils and their communities.

Whilst the timing of possible GMO releases is difficult to predict it is certain that applications will arise in the future. A choice between two paths was outlined: either wait and react to applications as they occur (potentially at large cost to communities and councils), or be proactive, do the work now in consultation with the community, and share the costs with other councils. If the first path is followed and an application for a release is made to ERMA, it will almost certainly be too late to instigate a plan change in time to affect that release.

Finally, the Report recommends a joint community consultation programme as the next stage in the GE initiative. Because communities, along with councils, are the ultimate risk bearers of GMO land uses it is argued that it is a reasonable expectation to consult with them on the level of risk they are prepared to carry. In this way, councils and their communities can arrive at an acceptable level of risk they are prepared to carry, along with an appropriate management system to lower risks from GMO land uses to that agreed level.

During the preparation of the Risks and Options Report, the authors consulted closely with Dr Royden Somerville QC on legal aspects of the Report. Upon completion of the Report, Dr Somerville made the following comments in his written opinion:

*"I am of the opinion the report contains sufficient information for the district council to undertake the above process[establishing provisions in the district plan to regulate GMO land uses]. It identifies risk management options available pursuant to the RMA,*

*and the consequences of potential adverse environmental effects (including on economic conditions) from using land in the district for GMO-related activities. It also highlights the ability to include financial instruments in a district plan as an efficient and effective risk management method.*

*In my opinion, subject to a comprehensive consultation programme with the community, from a legal perspective the report provides a sufficient foundation for the preparation of a specific chapter in a proposed district plan with an objective of managing risks associated with GMO-related land uses, and policies and methods to implement that objective in order to promote sustainable management of the land resources of the district pursuant to the RMA...*

*I am satisfied that there is sufficient information in the report to undertake a section 32 analysis if the district council were to proceed to consult with the community and develop objectives and policies for inclusion into its district plan to manage the level of environmental risk the community is prepared to accept in order to promote the sustainable management of the district."*

The Risks and Options Report was then independently reviewed by Karen Cronin, senior lecturer at the School of Earth Sciences at Victoria University and independent consultant on science policy and communication. Ms Cronin's professional career has been in resource management, environmental impact assessment, environmental policy, corporate communications and marketing. She worked for the Environmental Risk Management Authority (ERMA) from its establishment in 1997 to 2001. She has also held senior management positions in local government, Ministry for the Environment, and the World Wide Fund for Nature.

The reviewer produced a comprehensive and detailed review of the Risks and Options Report, and concluded the review by stating: "*The authors have responded comprehensively to the brief they were set by the Councils and have produced a valuable resource document.*" Whilst commenting on detailed aspects of the Report and suggesting ways to improve it or to clarify issues, the reviewer did not find any fundamental inadequacies or inaccuracies in the Report nor any evidence of bias in its analyses. Many of the reviewer's suggestions for further work will be acted upon should the project proceed to the stage where a section 32 report is required (i.e. at the point of drawing up a plan change). A number of the reviewer's suggested changes and points of clarification have already been incorporated into the final Report.

### **Where to From Here?**

The meeting of the full Inter-Council Working Party on GE took place at Forum North, Whangarei District Council on 9 September 2005. Attendees included: Cr Richard Alspach (KDC), Cr Sheryl Mai (WDC), Cr Grahame Powell (RDC), Cr Sue Sheppard (FNDC), Cr Ian Walker (NRC), Kerry Grundy (Team Leader Monitoring, WDC), Glen Mortimer (Policy and Planning Manager, NRC), Brendon Neal (Policy and Planning Manager, KDC), Alison Newell (Environmental Policy Manager, FNDC), Max Smitheram (Senior Policy Advisor, RDC), and Simon Terry (Simon Terry Associates). Kerry Grundy chaired the Meeting.

The following resolutions were adopted at the meeting:

1. That the Working Party on GE receives the report *Community Management of GMOs II: Risks and Response Options*; the legal opinion of Dr Royden Somerville QC; and the independent review of the Risks and Options Report by Karen Cronin.
2. That the Working Party on GE receives Simon Terry's presentation.

3. That the Working Party on GE thanks the WDC for its coordination and administration of the Inter-Council Working Party on GE and the commissioning of the Report, legal opinion and independent review.
4. That the outcomes of this meeting be jointly reported to the participating councils at their November 2005 meetings.
5. That a consistent covering brief be presented to each council (or committee thereof) along with the Risks and Options Report, legal opinion and independent review. That this brief forms the basis of agenda items that can be added to by staff of individual councils if deemed necessary.
6. That this covering brief (and accompanying agenda items) ask the respective councils participating in the Working Party on GE to make a number of determinations, these being:
  - (i) Whether the council wishes to take a proactive stance and continue with the initiative on GE. In effect, does council consider the risks outlined in the Risks and Options Report sufficient to warrant further action on this issue.
  - (ii) If so, whether the council wishes to continue on a collaborative basis, i.e. involving all or most of the local authorities on the Northland peninsula, or unilaterally. (Councils may wish to continue only on a collaborative basis and any further action could be made subject to this qualification).
  - (iii) If a joint approach is agreed upon, whether the council should follow the recommendations in the Risks and Options Report and initiate a consultation programme with its community to determine what level of support exists for the various options in the Report. That this consultation programme, if initiated, be coordinated by the Working Party on GE and be consistent across the Northland peninsula.
  - (iv) Whether the council needs to make a budgetary commitment to the consultation programme (subject to an agreed upon consultation process).

Staff were directed to provide an outline of a possible consultation programme along with costings. The following outline is only preliminary and the costings indicative. Should there be agreement among councils on the Working Party on GE to proceed with community consultation, a more detailed programme would need to be formulated together with more robust costings. However, the outline below should enable councils to make a decision in principle on whether to proceed in this direction.

### **Consultation Programme**

The aim of the consultation programme would be to gauge the level of community support for the management of GMO land uses by local authorities at a local or regional level. This regulation would be given effect through provisions in the District Plan and would be complementary to regulation by ERMA under the HSNO Act at a national level. Additionally, if the survey showed community support for local and/or regional management of GMO land uses through provisions in the District Plan, what form should that management take? In other words, which of the options put forward in the Risks and Options Report is favoured to be instigated through a District Plan change?

The community consultation programme could consist of two approaches. Firstly, a regional telephone survey could be conducted, the results of which would be analysed

at a regional level and also disaggregated enabling analysis at a district/city level. In this way the Working Party on GE would be able to gauge the level of support for local government management of GMO land uses over the whole of the Northland peninsula and also within each of the individual district or city council boundaries.

This would require a sample size of between 300-400 people for each district/city council, and thus a total sample size for all the Northland peninsula of between 1,500 – 2,000. This would enable statistically valid analyses of the resulting data and meaningful conclusions to be made on the level of community support that existed for the various proposals. Such a poll carried out by a reputable market research company (e.g. DigiPoll or Colmar Brunton) would cost in the vicinity of \$25,000 to \$30,000 in total. Thus, the cost would be around \$5,000 to \$6,000 per council if all five territorial authorities in the Working Party on GE agreed to fund it. This cost would lower slightly if the NRC contributed funds to the initiative.

Secondly, a public notification/submission consultative programme could be undertaken by each district/city council. This could be structured to permit analyses at both regional and district/city levels. The aim of this procedure would be to allow interested parties, both major stakeholders (such as farmer groups, GE Free Northland, business interests, DoC, and other environmental and community groups) and members of the public, together with tangata whenua groups, to present their particular viewpoints on the proposals.

This approach would require publicising the project in local papers and at council offices, libraries, and other community locations and having available for distribution to interested parties documentation on the GE initiative as a whole, and the Risks and Options Report in particular. Submissions would be called for and these submissions analysed to gain the views of different groups within the community. It is envisaged that this consultative procedure could be conducted in-house, by the individual participating councils in the Working Party. The cost of this process is estimated to be in the region of \$5,000 per council excluding staff costs.

The two approaches would thus compliment each other. The telephone poll would gauge the level of support in the general community for local/regional management of GMO land uses. It would not favour, or be subject to capture by, any particular interest group but rather would garner response from the overall community or general public (i.e. the 'silent majority'). Telephone polling is structured to obtain a random sample of respondents and thus responses representative of the general public or the community at large.

The notification/submission process, on the other hand, would specifically allow for interest groups (pro-GE, anti-GE and neutral) to express their particular views on the proposals. These groups, representing farmer lobby groups (both conventional and organic), the biotechnology industry, business groups, GE Free Northland and other environmental and community groups, DoC, and Maori groups, can be argued to have an interest in the issue perhaps greater than the general public and thus warrant specific targeting for comment. This, of course, would not exclude individual members of the public making submissions, nor having those submissions included in subsequent analyses.

This two-pronged approach, it is felt, would result in a robust and defensible programme of public consultation that would be valuable for both gauging community support for local/regional management of GMO land uses and for supporting any subsequent plan change should one occur as a result of the community consultation. Also, at a total cost of around \$10,000 per council it would be a cost effective project and represent good value for money given that the consultation programme would produce results for the whole of the Northland peninsula whilst at the same time be

able to be disaggregated at a district/city level. Also, should a District Plan change eventuate, the results of the consultation programme would make a substantial contribution to the required section 32 analysis.

## **Conclusions**

The collaborative approach undertaken by local authorities in the Northland peninsula has been a cautious yet responsible way to proceed with this highly contentious issue. It is an excellent example of local government working together to address common concerns raised by their respective communities. It has received much favourable comment from the local and regional community and is being viewed by the rest of New Zealand with much interest and some anticipation. In other words, our efforts are viewed as innovative and progressive by our communities and by councils elsewhere.

It has also been a fiscally responsible approach to adopt. By sharing the costs of research and possible regulation amongst all local authorities in the North Auckland/Northland region, the cost to individual councils and to ratepayers has been minimised. To date, the entire process has cost each individual council around \$15,000. This has produced excellent value for money, including two major ground-breaking reports together with associated legal opinions from one of New Zealand's top resource management lawyers. Should councils on the Working Party on GE agree to undertake a community consultation programme to gauge support for local/regional management of GMO land uses this is likely to cost each council a further \$10,000.

However, it should be kept in mind, that should these investigations lead to a District Plan change to allow the regulation of GMO land uses, the two reports, the associated legal opinions, and the results of the community consultation programme will constitute a major portion of the section 32 analysis that is required to support a plan change. In other words, there should be no further major expenses in formulating an adequate section 32 analysis. The remaining cost would be in drawing up the plan change itself.

At the end of the day, should there be no agreement upon adopting a common regulatory regime for GMO land uses, the work to date and the consultation proposed would be money well spent. The councils involved could justifiably say to their respective communities that they have fully investigated the issue of GMO land uses in their districts and region and that, following consultation on the options, they have adopted a position (whatever that may be) based upon sound research, full information, responsible procedures, and a collaborative approach with their neighbours.

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