



GE Free New Zealand

In Food and Environment Inc.

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Supplementary Submission

Dear Chair and Members of the BOP Regional Council,

Thank you for allowing GE Free NZ to present to you today.

GE Free NZ is a voluntary organisation. Our members come from all community sectors, both urban and rural.

We support the wording without change in point 1.7 however we consider the red line addition as contradictory to the statement. We will discuss below.

We would like to support the GE fee Northland submission, Soil and Health, Karen Summerhays and Forest and Bird submissions around the importance of the Precautionary Principle being strengthened in relation to IR1B1.

We also support Federated Farmers 116, Fonterra 13-6, Contact Energy 31, Ngati Makino Heritage Trust on the sustainable use of natural resources as enabled in the RMA whilst striking a balance between resource use and environmental protection.

And we support submitters 43-10 HNZ, AICI, NZKG, *et al* on the need for economic wellbeing to be better incorporated into the RPS.

We ask Council to include some type of prohibitive language in the new RPS to ensure that all GMO land use and all GMO aquaculture is prohibited on a local level (despite approval by the national regulator EPA using national, minimal regulations under the HSNO Act). This is necessary until such time as a truly strict liability regime is put in place and the risks to the regions biosecurity, unique biodiversity, primary producers (including farmers, foresters and horticulturists) and economy are adequately identified and evaluated.

We would further like to raise these points –

Outline of the RMA and HSNO Acts:

The RMA principles were developed to protect the natural and physical resources for the health and safety of the Community and future generations by sustaining the potential of natural and physical resources.

It also is there to protect the Environment by safeguarding the life-supporting capacity of air, water, soil, and ecosystem. To this end it is a duty of Regional Council RPS to consult with its wider community to identify potential risks to both the health and safety of its communities and the environment and to either, avoid, avert, or minimise any adverse economic and wellbeing effects.

To this end the Regional Policy Statement sets the guiding principles that the community have identified and this is what District councils take as their mandate for policy implementation.

In relation to GMO's the HSNO Act which was enacted through section: 13 of the RMA sets out the parameters in which the unknown effects are trialed in this country. However it does not have any control once a GMO is released either advertently or inadvertently. This is the jurisdiction of local bodies and bio security. Both the

Ministers in the last two Governments have stated that Local government can address local and regional concerns under the RMA should they chose to under a Section 32 analysis.

As has been previously discussed in GE Free Northland's submission detailed legal council has been sought on the action of local bodies in this context and the findings of the 9 council strong "Inter Council Working Party on GMO Risk Evaluation & Management Options" (Auckland-Cape Reinga) has found local regulation (in addition to national, minimal environmental standards) highly necessary when it comes to GMOs release in the regions.

Dr. Royden Somerville: QC reports detail that local authorities do have jurisdiction for managing GMOs as an outdoor land use. These reports are –

- Community Management of GMOs: Issues, Options and Partnership with Government. 2004
- Community Management of GMOs II: Risks and Response Options. 2005
- Community Management of GMOs III: Recommended Response Options (September 2010)

GMO's and Climate instability –

In the last few years the region has suffered serious flood events and minor earthquake damage.

Flood damage has shown that agricultural land is not immune from erosion. In Australia where a canola GMO field trial had been planted with the appropriate boundaries, flood water washed seed and plant matter down stream into the town around 10kms away. There are now wilding herbicide resistant canola plants growing in the urban areas near streams..

It is important that the BOPRPS have a plan in place to avoid a circumstance such as this, as it could become a costly liability on Council and a ratepayer's nightmare.

Responsible Scientific CRI Trials.

There has been a cavalier attitude to community concerns on GMO's and their effects on the environment. Three are detailed here:

Whakamaru – The site as 2010 7 years after the failure of the GE sheep trial ended. The land is a GE contaminated site and is still a hazard from the unknown DNA in the soil.

The GM secret Brassica Field Trial – ended after 1 year when a volunteer GE kale plant flowered. The trial was closed down after 2 breaches were identified. The poor clean up and monitoring of the site was identified as the reason.

The Scion GE Tree site.

Norway Spruce and Pine were engineered with herbicide and reproductive altering genes. This trial site is only segregated by a fence and the Redwood Park with its mature trees surrounds the site. After 2 years the Norway spruce Tree trial was closed down due to severely stunted and weak trees. However cuttings kept in the outdoors were found to have produced pollen structures after only 2 years. The perimeter fence did not keep out rabbits, which in fact dug under the fence creating significant holes which were not maintained or regularly checked. This led to the destruction of 19 of the trial trees when the fence was breached. The report found that material breaches had occurred.

These examples are just an outline to demonstrate that even when ERMA sets clear controls around the way Field trials are conducted, breaches occur. The most responsible scientists find it difficult to follow the rules. If there is a GE release the responsibility of councils in the management of GMO's will be virtually impossible to meet. Based on experiences overseas, there will be widespread pollen contamination, weed resistance, spray

drift, insect tolerance and environmental degradation. This can be assured as it has happened to the extent that non-GM seed of corn and soy is unobtainable in the US.

This has serious implication for the wellbeing of the rural community whose choose to not grow GMOs. There are serious concerns from our members over the adverse effects of GMOs on the environment, and economic wellbeing of both the growers and exporters who might be contaminated from GM pollen impacting on their agricultural business.

It is notable that the significant, long term and systemic risks of GMOs are such that they are refused cover by the commercial insurance industry.

Every production mode is represented in the Organic sector where the world-class certification system prohibits the use of GMOs. As can be seen the overseas markets are paying a premium for non-GMO produce.

Question:

- If there is GE contamination - who is liable and responsible?
- If a full release is given who is liable for clean up?
- If a GE ecotoxic event occurs who is liable for clean up?

Answer: The government says Local bodies are responsible under their duty of care.

In the RPS method 15 it states –

- The relevant regional plan shall include provisions requiring the reduction of risk to tolerable levels wherever the risk from natural hazards exceeds a tolerable level.

We would like to recommend that

- All GMO's to be grown or sold in the region are made a prohibited activity, or if this is unacceptable it is made a Fully Notified non compliant activity

We support the Councils Policy outlined to recognise risk, namely:

Policy NH 1B: Using criteria for assessing natural hazard risk.

However it is not known what "criteria" they would use and we believe this is too ambiguous.

Policy NH 2B: Managing new development and that would result in unacceptable natural hazard risk for new development

We would like a NEW Policy point to be added namely

Policy NH 2b (i): Avoiding novel rural production activities that would result in unacceptable natural hazard risk for the environment or existing businesses.

Policy UF 20B: Managing reverse sensitivity effects on rural production activities in rural areas (previously WL 11B and amended)

We support the Precautionary approach wording in Policy IR 1B

Apply a precautionary approach to the management of the natural and physical resource, where there is scientific uncertainty and a threat of serious or irreversible adverse effects on the resource and the built environment.

We support the wording on GMO in the Precautionary approach Section 1.7

Excepting additional red line addition in section: 1.7 Precautionary approach which we do not agree

The risks associated with a lack of complete understanding about natural processes should not prevent development that meets best practice, particularly where the activity has significant benefits to communities.

This was not in the original document and has been added in at the staff assessment but not noted. In the RPS individual report staff recommendation states that the wording in section 1.7 should be retained without change. However the red line addition was not in the original document and should be removed as it is mischievous to not note the addition.

We believe, and support submitter 6-3 Eastern BoP branch of Forest and Bird Protection Society, that there is significant evidence to show that there are massive administrative policy gaps in legislation around the issue on liability, production methods, environmental and ecosystem damage.

We do not agree with submitter 121:1 NZ Forestry Institute Ltd (Scion) to delete any reference to GMO and ERMA in relation to the precautionary approach

Unfortunately the adverse effects on Scion are not detailed and if it is monetary then if their existence is dependent on GMO production this is a political decision and not in the realm of the precautionary approach under the RMA.

It is also unfortunate that there is no detail in how the interface between the two Acts is duplicated. This closeness between the Acts gives communities reassurance as it allows them to consider the more local effects and how it might affect them; this is not the responsibility of ERMA and HSNO but the RMA.

Policy IR 1B Explanation

We totally disagree with the Dairy NZ Ltd who seek an amendment to Policy IR 1B by introducing the concept of “adaptive management” as a means of managing resources sustainably in the face of uncertainty. It does appear that staff have incorporated an explanation of “adaptive management” into the Explanation meaning of section 1.7 and IR 1B.

The Explanation statement does not reflect the seriousness of the adverse effects that could occur with any novel activity. The wording is confusing and ambiguous. The term “imperfect information” is subjective and does not give clarity to what is meant and what the stated outcome is. It therefore dilutes the guiding principles of the RMA and makes a mockery of a precautionary approach. If adverse effects are identified they should be avoided not adapted and should incorporate -

1. Anticipatory Action: There is a duty to take anticipatory action to prevent harm. Government, business, and community groups, as well as the general public, share this responsibility.

2. Right to Know: The community has a right to know complete and accurate information on potential human health and environmental impacts associated with the selection of activities, products, services, operations or plans.

3. Alternatives Assessment: An obligation exists to examine a full range of alternatives and select the alternative with the least potential harmful impact on human health and the environment, including the alternative of doing nothing.

4. Full Cost Accounting: When evaluating potential alternatives, there is a duty to consider all the reasonably foreseeable short and long-term costs and benefits to public as well as private sectors of the community. These

costs should be considered over time and space and whether they are monetary or non monetary, and in terms of the reasonableness and equitable distribution on whom they fall.

We ask that the staff recommended explanation is deleted and the following explanation be added.

Explanation - Decisions applying the Precautionary Principle must be transparent, participatory, and informed by the best available information, when making decisions that may affect the environment, health, and quality of life of the communities. Any decisions will fully include the public by notifying any risk activity in the appropriate manner.

The Law Commission

There are serious concerns over the adverse effects of GMOs on the environment, and economic wellbeing of both the growers, exporters and those who have been contaminated from GM pollen on their agricultural business. There is no depth of understanding of how the indigenous flora and fauna will be affected. Even if the flora is not of the same species the effects on the insect pollinators and ecosystems could damage them irreversibly. The fauna is also threatened as most birds rely on insects and certain plants to sustain them. Air and water and ecosystems will become contaminated with transgenes.

If we look at history, all of the following organisms were introduced as being economically beneficial, until the demand disappeared, or the outcomes of the introduction revealed the complexity of their negative impacts. Take the examples of introduced animal like mustelids, rodents, marsupials, deer and pigs and plant species didimo, clematis, ragwort, gorse broom and 200 more have become a costly management burden to RC and Communities.

Also the persistence of chemicals in the environment like DDT and organophosphates and spray drift has led to legislation on Chemical trespass. There is no legislation in HSNO that will govern the spread of transgenes in the environment.

As it stands those polluted have to prove contamination by the polluter. If a farmer is obeying the rules around the GMO management they are considered not-liable for a contamination that occurs inadvertently and it is the polluted person who has to prove loss of livelihood. Socialising the cost of GMO contamination and liability is a massive flaw in good governance and an administrative gap that exposes council and ratepayers to costs.

The Law Commission in 2002 stated -

- It is difficult to estimate the level of risk posed by GMOs;
- It is difficult to assess the magnitude of the potential damage that could be caused;
- GMOs have the potential to create catastrophic levels of harm;
- GMOs have the potential to cause irreversible damage;
- Some of the potential negative effects of GMOs will likely manifest in the long term and be diffuse in nature”

Why Council must address the issue on behalf of its ratepayers

- Government will not provide indemnity against any GMO costs
- GMO's are not covered by insurance because of potential for long term, gradual and systemic risks
- Territorial Bodies will be liable for GMO clean up costs of the Environment.
- BOP RC has a “duty of care” to protect their ratepayers for any such dangers in their jurisdiction (RMA Sec:32)

Under Section 32 Council must look at their "duty of care" and Prohibit GMO's as

Under the RMA "duty of care" must look at an activity in light of its key principle objective in protecting, sustaining, safeguarding and avoiding and averting effects on the Environment.

In this the

- Financial risks to local bodies are unacceptable.
- Financial Risks to Landowners are unacceptable.
- The Council must be precautionary in relation to GMO costs and liability.
- The Council must look to protecting, preventing and avoiding risk - now and for future generations

We ask that the use of genetically modified and transgenic Organisms for agriculture, aquaculture, horticulture or forestry is prohibited, until the risk liabilities have been adequately identified and evaluated and put in place. (Field Trials omitted)

In Summary

We support and recommend:

The Precautionary Principle approach with amendments.

We ask that the section 1.7 redline addition (p.10) is deleted and a clearer Explanation statement of IR 1B (p.123) is adopted.

That GMO's are placed on the list of PROHIBITED / NOTIFIED NON-COMPLIANT activities.

That a a rule change is implemented placing STRICT LIABILITY controls on all damages to the environment, health and economy, which result from the activity and expansion of GMOs.

Yours sincerely,

Claire Bleakley
President of GE Free NZ in Food and Environment.

References:

BOP Regional Policy Statement Red line strikethrough

Resource Management Act

Hazardous Substances and New Organisms Act 1996.

•Community Management of GMOs: Issues, Options and Partnership with Government. 2004
[Community Management of GMOs - Issues, Options and Partnership with Government](#) [315.5kb]

•Community Management of GMOs II: Risks and Response Options. 2005
[Community Management of GMOs II - Risks and Response Options](#) [503.2kb]

-Community Management of GMOs III: Recommended Response Options (September 2010) [Community Management of GMOs III - Recommended Response Option](#) [256.7kb]

[GMO - Legal Opinion](#) [30.4kb]

June 2010 Inter Council Working Party on GMO Risk Evaluation & Management Options
[Letter to Minister for the Environment](#) [79.2kb]

Nick Smith [Minister for the Environment's Response](#) [116.3kb]

5 August 2010 Dr. Kerry Grundy (Convenor of the ICWP on GMOs) [Analysis of Minister's response](#) [86.6kb]