

Appendix F Legal Opinion



13 February 2018

By email: benl@nrc.govt.nz

Mr Ben Lee
Northland Regional Council
Whangarei
Auckland

Dear Ben,

Re: Proposed Northland Regional Plan – GMO's

You have asked us what Council's obligations are concerning the inclusion of provisions about genetically modified organisms (GMO's) in the proposed Northland Regional Plan.

Policy 6.1.2 of the Northland Regional Policy Statement (RPS) provides:

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

Method 6.1.5 then provides:

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

These provisions are not yet operative as they are the subject of an outstanding appeal by Whangarei District Council. However, the only issue remaining in that appeal is whether the provisions should be extended to cover GMO's other than plant ones. The outcome of that will not affect the question you have asked.

The provisions in the RPS follow the identification in paragraph 2.6 of the RPS of the use of GMO's and their release into the environment as an issue of significance to tangata whenua in the region.

The policy requires that Council adopt a precautionary approach towards introducing GMO's.

The method requires that Council apply the policy when reviewing its plan or considering a plan change.

Neither the policy or method require

- That Council includes GMO provisions in the regional plan,

- That Council considers a plan change to include GMO provisions in a regional plan , or
- That Council initiates a plan change to include GMO provisions in a regional plan.

If and when Council considers a plan change for GMO provisions, then it is obliged to apply Policy 6.1.2. If the intention was that Council must include GMO provisions in a plan, then the policy and/or method would have been worded accordingly, as is the case , for example, in Method 7.1.7 of the RPS which requires that:

(1) The district councils shall notify a plan change to incorporate finalised flood hazard maps into district plans in the first relevant plan change following the operative date of the Regional Policy Statement or within two years of the Regional Policy Statement becoming operative, whichever is earlier. ...

Under S65 of the RMA, Council may prepare a regional plan for any of its functions, and change it after it becomes operative. Under clause 16A of the First Schedule to the Act, it may also prepare a variation of a proposed regional plan before it becomes operative.

However, both those provisions set out what a Council may do, not what it must do.

Finally, neither S6 of the Act, which lists some matters of national importance for which Councils must recognise and provide, nor any NZ Policy Statement include the use or introduction of GMO organisms into the environment as matters which Council must address as part of its obligations under the Act.

In our view, neither the RPS nor the Act require Council to initiate a plan variation or plan change to address GMO's.

If you require anything more at this stage, please let us know.

Yours sincerely


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