

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

ENV-2019-AKL-

UNDER the Resource Management Act 1991

IN THE MATTER of an appeal pursuant to Clause 14 of Schedule 1
of the Act

BETWEEN **WHANGAREI DISTRICT COUNCIL and
FAR NORTH DISTRICT COUNCIL**

Appellants

A N D **NORTHLAND REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL BY WHANGAREI DISTRICT COUNCIL AND FAR NORTH
DISTRICT COUNCIL AGAINST DECISIONS ON PROPOSED REGIONAL PLAN
FOR NORTHLAND**

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Graeme Mathias

To The Registrar
 Environment Court
 Auckland

1. Whangarei District Council and Far North District Council appeal against a decision of Northland Regional Council on the Proposed Regional Plan for Northland ("PRP").
2. Whangarei District Council and Far North District Council made submissions on the PRP.
3. Whangarei District Council and Far North District Council are not trade competitors for the purposes of section 308D of the Resource Management Act 1991.
4. Whangarei District Council and Far North District Council received formal notice of the decision of the Northland Regional Council on the 2nd day of August 2019.
5. The decision was made by Northland Regional Council.
6. The decision that Whangarei District Council and Far North District Council are appealing is the decision of the Northland Regional Council to not include provisions providing for the release of Genetically Modified Organisms ("GMOs") into the Coastal Marine Area ("CMA") in the PRP such including definitions, rules and policies and an objective governing such releases.
7. The reasons for the appeal are as follows:
 - 7.1. The failure to include provisions, including definitions, policies, rules and an objective, governing the release of GMO's into the CMA as administered by Northland Regional Council is contrary to good resource management practice.
 - 7.2. Provision of appropriate definitions, rules, policies and an objective with respect to the release of GMOs into the CMA would be in accordance with the provisions of the Regional Policy Statement for Northland, the New Zealand Coastal Policy Statement, Part 2 of the Act and the provisions of the district plans for the districts administered by Whangarei District Council and Far North District Council.
 - 7.3. The relief sought by way of the inclusion rather than the exclusion of specific provisions governing the release of GMO's into the CMA would better provide for the management of the use, development and protection of the natural and physical resources of the Northland Region thereby enabling the people and the communities of the Northland Region to provide for their social, economic and cultural wellbeing and for their health and safety.
 - 7.4. The evidence for the inclusion of provisions governing the release of GMOs into the CMA overwhelmingly supports the inclusion, not exclusion, of such provisions.
 - 7.5. The inclusion of such provisions as sought to be included in the PRP would accord with Policy D.1.1.4 of the PRP which requires an assessment of environmental effects of the use of genetic engineering ("GE") and the release of GMOs to the

environment on tangata whenua as such policy as the PRP currently specifies has no supporting provisions to enable this policy to be implemented.

- 7.6. The evidence in support of including the provisions sought by the Appellants is rational and sufficient in indicating a significant degree of scientific uncertainty, including uncertainties that may not be resolved for some time.
 - 7.7. Adopting a precautionary approach to the uncertainty demonstrated in evidence, rules included in the PRP are necessary to enable Northland Regional Council to have regulatory control over whether or not an activity involving GE / GMOs should be approved, or how the potential environmental effects of the activity should be managed, including having regard to the sensitivity of the environment in the proposed location and the conditions that might be imposed on any resource consent (such as emergency response measures and performance bonds).
 - 7.8. As Northland Regional Council is the only council body that is able to manage GE / GMOs in the CMA it is appropriate this be done to complement the existing land-based management frameworks.
 - 7.9. Inclusion of provisions relating to the management of GE/GMOs in the CMA responds to significant community concern, as evidenced by the widespread desire for further PRP provisions expressed in primary submissions.
 - 7.10. Social, cultural and economic effects particular to the Northland community are better addressed through regional management, rather than relying on the EPA processes alone.
 - 7.11. Having regard to s66(2)(d) of the RMA provisions introduced now will also achieve consistency with the Auckland region which has GE / GMO provisions managing its CMA.
 - 7.12. The CMA provisions proposed in the relief sought are consistent with the statutory framework including Objective 2 and Policies 2 and 3 of the New Zealand Coastal Policy Statement 2010, and Policy 6.1.2 and Method 6.1.5 of the Regional Policy Statement.
8. Whangarei District Council and Far North District Council seek the following relief:
- 8.1. The inclusion of definitions, rules, policies and an objective in the PRP in the terms set out in the schedule of relief attached.

The following documents are attached to this notice:

- (a) copies of the submissions of Whangarei District Council and Far North District Council;
- (b) a list of names and addresses of persons to be served with a copy of this notice; and
- (c) a copy of the decision of Northland Regional Council.

Date: 5 September 2019



Signature of Graeme John Mathias being Solicitor for
and person authorised to sign on behalf of the Appellants

Contact details

Address for service of appellant: Thomson Wilson, Solicitors, Mansfield Terrace, PO Box 1042, Whangarei 0140

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Email: dy@thomsonwilson.co.nz

Contact person: Graeme Mathias, Partner

Advice to recipients of copy of notice of appeal

How to become party to proceedings

- 1 You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends. You must also serve a copy of that notice on Northland Regional Council and the appellant within the same 15-working-day period and serve copies on all other parties within 5 working days after that period ends.
- 2 If you are a trade competitor of a party to the proceedings, your right to be a party to the proceedings in the court may be limited (see section 274(1) and Part 11A of the Resource Management Act 1991).
- 3 You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

How to obtain copies of documents relating to appeal

- 4 The copy of this notice served on you does not have attached a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

- 5 If you have any questions about this notice, contact the Environment Court in Auckland.

**SCHEDULE OF PROVISIONS TO BE INCLUDED IN THE PROPOSED REGIONAL
PLAN FOR NORTHLAND GOVERNING THE RELEASE OF GENETICALLY
MODIFIED ORGANISMS IN THE COASTAL MARINE AREA**

B Definitions

<i>Genetically Modified Organism (GMO)</i>	<p>Unless expressly provided otherwise by regulations, any organism in which any of the genes or other genetic material:</p> <p>(a) have been modified by in vitro techniques; or</p> <p>(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.</p> <p>This does not apply to genetically modified products that are not viable and are no longer genetically modified organisms, or products that are dominantly non-genetically modified but contain non-viable genetically modified ingredients, such as processed foods.</p>
<i>Genetically Modified Organism Field Trials</i>	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.
<i>Genetically modified organism release</i>	<p>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.</p> <p>A Release may be without conditions (s34, HSNO Act) or subject to conditions set out s38A of the HSNO Act.</p>
<i>Genetically Modified Veterinary Vaccine</i>	A veterinary vaccine that is a genetically modified organism as defined in this Plan.
<i>Genetically modified medical applications</i>	The manufacture, trialling or use of viable and/or non-viable genetically modified organisms for medical purposes recognised as medicines under the Medicines Act 1981 and approved as safe to use by the Ministry of Health, including Environmental Protection Authority approved releases, except for the outdoor cultivation of pharmaceutical producing organisms.
<i>Viable Genetically Modified Veterinary Vaccine</i>	A genetically modified veterinary vaccine that could survive or replicate in the environment or be transmitted from the inoculated recipient.

C Rules

C.1.8 Genetically Modified Organisms

C.1.8.1 Genetically modified organisms in the coastal marine area – permitted activities

The following activities in the coastal marine area involving genetically modified organisms are permitted activities:

1. research and trials within contained laboratories, and
2. medical applications (including vaccines) involving the use of viable and / or non-viable genetically modified organisms, and
3. veterinary applications of genetically modified organisms (including vaccines) provided that any veterinary application of viable genetically modified organism vaccines is supervised by a veterinarian.

The RMA activities this rule covers:

- Use of genetically modified organisms in the coastal marine area (s12(3))
- Discharge of genetically modified organisms that are “contaminants” under the definition in s2 of the RMA (s15(1)(a))

C.1.8.2 Genetically modified organism field trials - discretionary activity

A genetically modified organism field trial in the coastal marine area is a discretionary activity provided:

1. The genetically modified organism field trial has the relevant approval from the Environmental Protection Authority and the application is consistent with Environmental Protection Authority approval conditions for the activity.
2. A Risk Management Plan is provided that addresses all matters set out in Policy D.5.33.
3. Details of a performance bond, with an approved trading bank guarantee, is provided that addresses all matters set out in Policy D.5.32.

Notification:

Any application for resource consent under rule C.1.8.2 must be publicly notified.

The RMA activities this rule covers:

- Use of genetically modified organisms in the coastal marine area (s12(3))

- Discharge of genetically modified organisms that are “contaminants” under the definition in s2 of the RMA (s15(1)(a))

C.1.8.3 Viable genetically modified veterinary vaccines - discretionary activity

The use of any viable genetically modified veterinary vaccine that is not a permitted activity under rule *C.1.8.1 Genetically modified organisms in the Coastal Marine Area – permitted activities*, is a discretionary activity, provided:

1. The genetically modified veterinary vaccine has the relevant approval from the Environmental Protection Authority and the application is consistent with Environmental Protection Authority approval conditions for the activity.
2. Details of a performance bond, with an approved trading bank guarantee, is provided that addresses all matters set out in Policy D.5.32.

Notification:

Any application for resource consent under rule C.1.8.3 must be publicly notified.

The RMA activities this rule covers:

- Use of genetically modified organisms in the coastal marine area (s12(3))
- Discharge of genetically modified organisms that are “contaminants” under the definition in s2 of the RMA (s15(1)(a))

C.1.8.4 Genetically modified organism releases – prohibited activity

Any:

1. genetically modified organism release (conditional or full), or
2. genetically modified organism field trial, or
3. use of any viable genetically modified veterinary vaccine,

that is not a permitted or discretionary activity in Section C.1.8 of this Plan, is a prohibited activity

The RMA activities this rule covers:

- Use of genetically modified organisms in the coastal marine area (s12(3))
- Discharge of genetically modified organisms that are “contaminants” under the definition in s2 of the RMA (s15(1)(a))

D Policies

D.5 Coastal

D.5.28 Precautionary approach to managing genetically modified organisms

Adopt a precautionary approach to assessing and managing the:

1. risks,
2. uncertainty and lack of information, and
3. significance, scale and nature of potential adverse effects,

associated with the use of genetic engineering or the release of genetically modified organisms in the coastal marine area.

D.5.29 Adaptive approach to the management of genetically modified organism

Adopt an adaptive approach to the management of the outdoor use, storage, cultivation, harvesting, processing or transportation of a genetically modified organism, including through periodic reviews of the genetically modified organism provisions, particularly if new information on the benefits and/or adverse effects of a genetically modified organism activity becomes available.

D.5.30 Avoiding adverse effects of genetically modified organism field trials

Ensure that any resource consent granted for genetically modified organism field trials avoids, as far as can reasonably be achieved, risk to the environment, adverse effects on indigenous flora and fauna, and the relationship of tangata whenua with flora and fauna from the use, storage, cultivation, harvesting, processing or transportation of a genetically modified organism.

D.5.31 Liability for adverse effects from genetically modified organism activities

Require consent holders for a genetically modified organism activity to be liable, including financial accountability, (to the extent possible) for any adverse effects caused beyond the site for which consent has been granted for the activity.

D.5.32 Bonds for genetically modified organism activities

Require bonds as a condition of resource consents for the use of genetically modified organisms to provide for the redress of any adverse effects (including any adverse economic effects on third parties) that become apparent during or after expiration of a consent, including consideration of (but not limited to) the following:

- (a) the significance, scale, nature and timescale of potential adverse effects,
- (b) the proposed measures to be taken to avoid those effects,
- (c) the monitoring proposed to establish whether an adverse effect has occurred or whether any adverse effect has been appropriately remedied, and
- (d) the likely scale of costs associated with remediating any adverse effects that may occur.

D.5.33 Risk management plan for genetically modified organism field trials

A Risk Management Plan for genetically modified organism field trials must include, but is not limited to, the following:

1. The species, characteristics and lifecycle of the genetically modified organism
2. All research undertaken that characterises and tests the genetically modified organism, and the certainty associated with the accuracy of that information.
3. The areas in which the genetically modified organism, including discharges, is to be confined.
4. Proposed containment measures for the commencement, duration and completion of the proposed field trial.
5. The actual and potential adverse effects to the environment, cultural values and economy associated with the field trial, including in the event the genetically modified organism escapes from the contained area,
6. The proposed measures, including contingency measures, that will be taken to avoid, remedy or mitigate actual and potential adverse effects.
7. Details of the monitoring to be undertaken, including how and by whom monitoring will be undertaken
8. Reporting requirements
9. Recommended conditions of resource consent covering the matters listed above.
10. Provision for the systematic review and approval of any amendments to the Risk Management Plan by Council.

F Objectives

F.0.15 Use of genetic engineering and the release of genetically modified organisms

The coastal marine area is protected from adverse effects on the environment associated with the use of genetic engineering and the release of genetically modified organisms.

**SUBMISSIONS OF WHANGAREI DISTRICT COUNCIL AND
FAR NORTH DISTRICT COUNCIL**

Submissions@nrc.govt.nz
Submissions to the Proposed Regional Plan
Northland Regional Council
Private Bag 9012
Whangarei Mail Centre
Whangarei 0148

Whangarei District Council Submission to the Proposed Regional Plan for Northland

Whangarei District Council (WDC) welcomes the opportunity to provide this submission to the Proposed Regional Plan (PRP). WDC supports the consolidation of the three regional plans into a single document, and commends the Northland Regional Council (NRC) on creating a document which is user friendly.

WDC has reviewed the provisions of the proposed plan against the following matters:

- WDC's Vision, to be a vibrant, attractive and thriving District by developing sustainable lifestyles based around our unique environment, the envy of New Zealand, and recognised worldwide.
- WDC's Mission, to create the ultimate living environment.
- WDC's statutory obligations and functions to administer the Whangarei District under the requirements of the Local Government Act 2002.

WDC Infrastructure Committee endorsed this submission on the 9 November 2017.

Creating the Ultimate Living Environment

WDC's vision is to be a vibrant, attractive and thriving District by developing sustainable lifestyles based around our unique environment; the envy of New Zealand and recognised worldwide. WDC's mission is to create the ultimate living environment. Key to achieving this vision is ensuring there is an appropriate planning and regulatory framework in place to ensure the sustainable management of the District's resources. The PRP is an important document within this framework.

Statutory Functions of Local Government

The PRP has been reviewed against Whangarei District Council's (WDC) legal obligations under the Local Government Act 2002 ("LGA 02") to undertake functions in accordance with the purpose of local government. The LGA02 identifies this role as the provision of functions and services "to meet 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"¹.

¹ S10(1)(b)LGA02;

In relation to the provision of local infrastructure and public services, 'good quality' is defined as meaning infrastructure and services that are "(a) efficient; and (b) effective; and (c) appropriate to present and anticipated future circumstances."²

S.11(b) LGA02 specifically identifies that the role of a local authority is to "perform the duties, and exercise the rights conferred on it by or under (LGA 02) and any other enactment". In performing this role "a local authority must have particular regard to the contribution" that "certain core services make to its communities", including the provision of:

- a) network infrastructure, including the provision of water;
- b) public transport services;
- c) solid waste collection and disposal;
- d) the avoidance or mitigation of natural hazards;
- e) libraries, museums, reserves, and other recreational facilities and community amenities.

Under the umbrella of these 'core services', WDC owns, operates and maintains systems, assets, facilities and networks (some of which meet the definition of 'regionally significant infrastructure') that are critical to meeting the daily needs of the community. These include (but are not limited to):

- Transportation infrastructure (including roads, walking and cycling facilities);
- Social, recreational and community facilities, including parks, reserves and facilities;
- The reticulated water network, including water storage, trunk lines and treatment plants;
- The reticulated wastewater and stormwater network;
- Coastal hazard protection structures that provide protection to infrastructure and public land.

WDC supports recognition of the role of core local infrastructure under the Proposed Regional Plan, and considers the framework will, in many areas, enable WDC to carry out infrastructure maintenance with minimal consenting requirements and regulation. This approach is supported. WDC seeks to ensure that the PRP aligns with the mandate for District Councils to deliver functions and services that meet the current and future needs of communities for good-quality local infrastructure, local public services, and support the performance of regulatory functions in a way that is most cost-effective for households and businesses.

In making this submission, WDC confirms that it could not gain an advantage in trade competition, is not directly affected by an effect of the subject matter of the submission that adversely affects the environment; and does not relate to trade competition or the effects of trade competition.

WDC wishes to be heard in support of its submission and would consider making a joint submission if others make a similar submission.

Yours sincerely,



Tony Horton
Manager- Strategy

² S.10(2) LGA02;

New Map layer requested for Acid Sulphate Soils	Add Maps (supported by rules)	Over recent years there has been mounting evidence that soils, known as "Acid Sulphate Soils" are abundant throughout Northland. The Marsden City Development in Ruakaka is a well known example of the risks that acid soils present to infrastructure, however the environmental effects of acid soil disturbance (well documented overseas) are less understood in New Zealand. WDC considers that the correlation between acid soil disturbance and risk of environmental harm through the release of acidity and metals into groundwater and habitat systems should be explored further, and that this is a matter that sits appropriately under the functions of the Regional Plan, given the document regulates land disturbance, dredging and dewatering activities. In support of this request, WDC has commissioned Opus to map the risk of acid soils across the Northland Region. WDC request that acid sulphate soils are mapped and appropriate rules included in the proposed Regional Plan. Further detail is located later in this submission.
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Genetically Modified Organisms

NRC is a member of the Inter-council Working Party on GMO Risk Evaluation and Management Options. Other councils on the Working Party, namely Auckland Council, Whangarei District Council and Far North District Council, have included provisions in their planning documents to regulate the outdoor use of genetically modified organisms (GMOs). All three councils have prohibited the release of GMOs on land and made field trials a discretionary activity with performance standards in regard to liability and the posting of bonds. Auckland Council (as a Unitary Authority) has also prohibited the release of GMOs in the Coastal Marine Area (CMA) and made field trials within the CMA a discretionary activity with performance standards in regard to liability and the posting of bonds.

The Regional Policy Statement (RPS) for Northland contains provisions relating to GMOs. These provisions are currently under appeal and are not yet operative. However, they are likely to require a precautionary approach to outdoor uses of GMOs. To maintain consistency with other member councils on the Inter-council Working Party and in anticipation of operative precautionary provisions in the RPS it is submitted that NRC should include provisions relating to GMOs in the CMA in its Proposed Regional Plan for Northland. These provisions should be the same (or similar) as those in the Auckland Unitary Plan to ensure a consistent approach across Northland and Auckland and eliminate cross boundary issues.

The Auckland Unitary Plan GMO provisions are available on request or from the Auckland Council website. These provisions include objectives, policies, and rules. The rule table is reproduced below:

Table E37.4.1 Activity table specifies the activity status of the use of genetically modified organisms on land pursuant to section 9(3) of the Resource Management Act 1991 and the activity status of works, occupation and activity in the coastal marine area pursuant to sections 12(1), 12(2) and 12(3) of the Resource Management Act 1991. The following activities are included in the activity table:

(A1) Genetically modified organism activities not specifically provided for or prohibited, including research within contained laboratories, medical applications, and veterinary applications involving use of non-viable genetically modified products are Permitted Activities.

(A2) Genetically modified organism field trials on land and within the coastal marine area and any structure intended to house, or otherwise contain, plants and animals which are associated with the conducting of genetically modified organism field trials are Discretionary Activities.

(A3) The use of any viable genetically modified veterinary vaccine of a specific dose supervised by a veterinarian is a Permitted Activity.

(A4) The use of any viable genetically modified veterinary vaccine not otherwise provided for is a Discretionary Activity.

(A5) Genetically modified organism releases – food-related on land and within the coastal marine area and any structure intended to house or otherwise contain plants and animals which are associated with outdoor genetically modified organisms releases, except as specifically provided for, are Prohibited Activities.

(A6) Genetically modified organism releases – non food-related on land and within the coastal marine area and any structure intended to house or otherwise contain plants and animals which are associated with outdoor genetically modified organism releases, except as specifically provided for, are Prohibited Activities.

Outdoor field trials, including those in the CMA, have performance standards applying to them including liability provisions and the posting of bonds to address potential economic or environmental harm.

The Unitary Plan also contains definitions for:

Genetically modified organism; Genetically modified organism field trials; Genetically modified organism release; Veterinary vaccine; Genetically modified veterinary vaccine; Viable genetically modified vaccine

The plan provisions in the Auckland Unitary Plan and in the WDC and FNDC District Plans are based on draft plan provisions and a section 32 analysis produced by the Inter-council Working Party. These are available on the WDC website or on request. There is a number of supporting legal opinions associated with this work, also available on the WDC website or on request. It is submitted that the analysis required to support similar provisions relating to the CMA in the Proposed Regional Plan for Northland is readily available and equally applicable to Northland.

WDC requests that provisions, similar to the GMO provisions in the Auckland Unitary Plan relating to the CMA be included in the Proposed Regional Plan for Northland.

Wednesday 15 November 2017

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PRP Submissions
Northland Regional Council
Private Bag 9021
Whangārei Mail Centre
Whangārei 0148

FAR NORTH DISTRICT COUNCIL SUBMISSION ON THE PROPOSED NORTHLAND REGIONAL PLAN

The Far North District Council (FNDC) welcomes the opportunity to provide a submission on the Proposed Northland Regional Plan. FNDC are currently undertaking a consolidated review of their District Plan and have not yet completed a draft for public feedback. This is an important opportunity to ensure that District Plan approaches are consistent with the Regional Plan. Consistent implementation of the Resource Management Act 1991 provides certainty for developers and the public.

FNDC generally supports the proposed plan. However, some proposed provisions may have implications for FNDC with regard to:

- Providing affordable infrastructure.
- Efficient, integrated processing of resource consents for landuse and subdivision.
- Community wellbeing


The attached submission addresses the provisions that are likely to have implications for FNDC.

FNDC could not gain an advantage in trade competition through this submission.

FNDC wishes to be heard in support of its submission and if others make a similar submission would consider presenting a joint case with them at a hearing.

The FNDC District Plan Team looks forward to working with the NRC Policy and Monitoring Department. Please do not hesitate to contact them for further information regarding this submission.

Yours sincerely



Bill Lee
Acting General Manager
Strategic Planning and Policy

Additional Provisions Requested by FNDC

Provision	Relief Sought	Reason
Policy D.4.35	<p>Insert the following Policy:</p> <p>When considering an application for resource consent in mapped acid sulphate soil risk areas, consider the proposed methods for avoiding remedying or mitigating effects on infrastructure, water quality and biodiversity.</p>	Exposing acid sulphate soils can result in discharges of acid that damage water quality, biodiversity and infrastructure
Proposed Genetically Modified Organisms Provisions	<p>We understand that the Federated Farmers appeal to the Appeal Court regarding jurisdiction has been withdrawn. Consequently, the RPS is likely to contain controls of GMO's. Subject to the resolution of Regional Plan provisions we seek the following relief;</p> <ol style="list-style-type: none"> 1. insert Regional Plan provisions that integrate the RPS and proposed District Plan provisions regarding GMO's. 2. insert Regional Plan provisions to control GMO's in the CMA that are consistent with the provisions of the Auckland Council. 	<p>In 2016 FNDC held hearings on proposed PC 18 – Genetically Modified Organisms. FNDC has sought regional consistency in the management of GMO's.</p> <p>FNDC is a member of the Inter-council Working Party on GMO Risk Evaluation and Management Options. Other councils on the Working Party, namely Auckland Council and Whangarei District Council have included provisions in their planning documents to regulate the outdoor use of genetically modified organisms (GMOs). All three councils have prohibited the release of GMOs on land and made field trials a discretionary activity with performance standards in regard to liability and the posting of bonds. Auckland Council (as a Unitary Authority) has also prohibited the release of GMOs in the Coastal Marine Area (CMA) and made field trials within the CMA a discretionary activity with performance standards in regard to liability and the posting of bonds.</p> <p>The Regional Policy Statement (RPS) for Northland contains provisions relating to</p>

		<p>GMOs. These provisions are currently under appeal and are not yet operative. However, they are likely to require a precautionary approach to outdoor uses of GMOs. To maintain consistency with other member councils on the Inter-council Working Party and in anticipation of operative precautionary provisions in the RPS it is submitted that NRC should include provisions relating to GMOs in the CMA in its Proposed Regional Plan for Northland. These provisions should be the same (or similar) as those in the Auckland Unitary Plan to ensure a consistent approach across Northland and Auckland and eliminate cross boundary issues.</p>
Monitoring Provisions	<p>Insert provisions stating the methods/indicators to be used to monitor progress towards regional objectives and compliance with policies.</p>	<p>S.35 of the RMA requires Councils to monitor and keep records.</p> <p>The RPS states that NRC will produce a monitoring strategy to monitor progress toward objectives and compliance with policies. This strategy sits outside the Regional Plan enabling flexibility when best practice monitoring changes.</p> <p>Monitoring of NPS-FM indicators may affect activities such as water takes and discharges. Some forms of monitoring, such as MCI are new in this region.</p> <p>The absence of reliable longitudinal datasets is an issue for FNDC. Regional data sharing and transparency is required to ensure regional policy objectives are met.</p>
Climate Change	<p>Insert a policy "the reasonably foreseeable effects of climate change</p>	<p>In some areas local government decision makers may have to consider managed retreat.</p>

	will be considered when deciding whether to grant applications for resource consent" or similar relief.	<p>It may not be appropriate to place infrastructure in areas that are highly likely to suffer erosion or inundation. The infrastructure may have to be relocated.</p> <p>The RPS refers to climate change throughout the issues, objectives and policies. This policy thread has not been picked up in the Regional Plan.</p>
Water Shortage Directions	<p>Reinstate policy D.4.17 from DRP: <u>Water shortage direction</u> <u>When issuing a water shortage direction pursuant to section 329 of the RMA, give priority to the following needs (in order of priority from highest to lowest:</u> <ol style="list-style-type: none"> 1) <u>takes for domestic or municipal supply and the maintenance of animal health, and</u> 2) <u>water required for the sole purpose of preventing the death of permanent viticulture or horticulture crops (...) provided a contingency plan is implemented, and</u> 3) <u>other takes.</u> </p>	<p>FNDC would like to work with other agencies and communities to promote more efficient use of water.</p>
Natural Hazard Maps and Models	Retain ability to update hazard maps and models in response to new evidence.	<p>FNDC has not received the final version of hazard maps or the results of the NRC LIDAR project. Also MFE is currently drafting a National Policy Statement for Natural Hazards.</p>

NAMES AND ADDRESSES OF PERSONS TO BE SERVED

Submitter	Full Name	Email	Address 1	Address 2	Address 3
Far North District Council	Tammy Wooster	Tammy.Wooster@fndc.govt.nz			
Whangarei District Council	Tony Horton	tony.horton@wdc.govt.nz;sarah.irwin@wdc.govt.nz			
The Soil & Health Association of New Zealand	Mellissa Pearson and Phernne Tancock	Phernne@legalchambers.co.nz;melissap@4sight.co.nz			
Grammer Z	Zelka Linda Grammer	linda.grammer@gmail.com			
GE Free Tai Tokerau (Northland Inc).	Zelka Grammer/Martin Robinson	organics@value.net.nz			
GE Free NZ	Claire Bleakley	president@gefree.org.nz;p.bleakley@orcon.net.nz			
Organics Aotearoa	Brendan Hoare	info@oanz.org			
Sanderson J	John Sanderson	sandmanandbecky@gmail.com			
Carapiet J	John Carapiet	youcangetmeonline@yahoo.com			
Auckland GE Free Coalition (AGEFC)	J Carapiet	youcangetmeonline@yahoo.com			
Jones B	Bob Jones	colonel_bob_jones@mail.com			
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McDonald M	Mary McDonald	maryroygmcd@gmail.com			
Ajani S	Shushila Ajani	shushila1@gmail.com			
Physicians and Scientists for Global Responsibility New Zealand Charitable Trust	Jean Anderson	psgrnzct@gmail.com			

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Marks M	Maiki Marks	will-mark@live.com			
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DECISION OF NORTHLAND REGIONAL COUNCIL

DECISION OPTION 2 – NO NEW PROVISIONS

Decisions in response to submissions on the Proposed Regional Plan for Northland Genetic Engineering and Genetically Modified Organisms

Section 1 Introduction

- [1] On 6 September 2017 the Northland Regional Council ('the Council' or 'NRC') notified the Proposed Regional Plan for Northland ('the Plan' or 'pRPFN'). This Decision relates specifically to the submissions that were received on Genetic Engineering and Genetically Modified Organisms (GE / GMO).
- [2] The hearing and consideration of submissions on GE / GMO function was a function retained by the Council and was addressed through a separate hearing process to the hearing and consideration of other submissions on the Plan. For the avoidance of doubt, the Council affirms that throughout the performance of its duties on this matter it has been objective in considering and making decisions on the submissions.

Hearings Process

- [3] A total of 83 submitters made submissions on GE / GMO¹. The relevant Council summary of submissions is Part K.1 of the Summary of decisions requested (March 2018). The pRPFN as notified did not contain provisions, including rules, of the scope sought by the primary submitters. While many submissions referred to what had occurred in Northland and Auckland Plans, and previous work that was carried out by a joint council working party, no specific s32 analysis or detailed set of proposed provisions was provided. The Hearing Panel issued Minute 1 on 30 January 2018 which requested that s32 Evaluations be prepared for provisions which were not assessed by the Council. In response to that Minute, s32 evaluations and provisions were submitted by David Badham, consultant planner on behalf of the Whangarei District Council and Far North District Council and Vern Warren, consultant planner on behalf of (originally) the Soil & Health Association, GE Free Tai Tokerau and many other submitters².
- [4] The Council appointed Mr Peter Reaburn, an experienced and independent consultant town planner, to prepare the s42A report. Via Minute 7, the Council set in place a process by which

¹ Noting that there was some doubling-up of submissions in the submission's summary

² The submitters are listed in Vern Warren's s32 evaluation report.

the s42A report was made available to submitters approximately one month in advance of the date by which expert evidence on behalf of submitters was to be provided. It was also encouraged through the Minute that non-expert evidence be provided. In accordance with the Minute, a s42A Addendum report was provided approximately two weeks before the hearing.

- [5] The hearing was held at Northland Regional Council, 36 Water Street, Whangārei, on Tuesday 30 October 2018 and Wednesday 31 October 2018. The hearing was then adjourned. During the hearing, Council members asked questions of submitters to enhance the Council's understanding of their requests, the grounds for them, and advice given in the s42A reports. The Council endeavoured to conduct the hearings with a minimum of formality to an extent that allowed for fairness to all submitters.
- [6] In Minute 8 following the hearing the Council indicated that it had, after considering all relevant material, arrived at a preliminary view (that is, not the Council's final decision), that:
- The Proposed Regional Plan will not include provisions for the management of GMOs on land (outside the coastal marine area).
 - The Proposed Regional Plan will include provisions for the management of GMOs in the coastal marine area.
- [7] It was further noted that Council had received recommended provisions from each of the expert planners (Vern Warren, David Badham and Peter Reaburn) which were similar. The expert planners were directed to work together with the goal of coming up with an agreed set of provisions. These were subsequently provided to submitters for further comment prior to a reconvened hearing, which was held on 26 February 2019. The planners were invited to attend and answer questions. Submitters were also able to attend, although not to participate.
- [8] The hearing was then adjourned for Council to go into public excluded deliberations (on the same day). Following deliberations, Council requested further information and directed Council staff to facilitate them:

Minute 10:

- i. A legal opinion to answer the question - would the inclusion of provisions in the Regional Plan to regulate GMOs increase Council's legal liability to clean-up or otherwise address the illegal use or introduction of a GMO in the coastal marine area?
- ii. Advice from Aquaculture New Zealand on any actual or anticipated use by the aquaculture industry of genetically modified veterinary vaccines.

Minute 11:

- i. A legal opinion to answer the question: If the Regional Plan included rules regulating GMOs in the coastal marine area, what would council's responsibility be to monitor and enforce the rules?
 - ii. Would it increase Council's legal liability to clean-up or otherwise address the accidental release of a GMO resulting from an 'act of god' on an otherwise authorised use of GMOs (for example, a tsunami destroying a contained GMO field trial undertaken on a wharf)?
 - iii. What have other councils (that have GMO provisions in their respective plans) budgeted for the potential clean-up of the accidental or illegal release of GMOs and the costs (including staff time) of monitoring and enforcement of GMO use?
- [9] All responses were placed on the Council's website, and submitters who submitted on the inclusion of GMO provisions and wished to be heard, were notified of the responses.
- [10] Overall, the Council was assisted by all the requests and suggestions by submitters and their witnesses and by the s42A report author which have substantially assisted the Council in its deliberations and in the Council's decision-making. The submissions and reports have all contributed to an effective and fair process for which Part 1 of Schedule 1 of the RMA provides.

The Decisions report

- [11] The Council has no substantial disagreement with the analyses undertaken by the s42A author noting that Mr Reaburn's conclusions in relation to whether or not provisions should be introduced were "finely balanced". This Decisions report contains a summary only of the conclusions the Council has reached in relation to the issues raised in submissions and highlights matters of particular concern that have led to the decision made. To avoid further unnecessary duplication and repetition the Council affirms that, except where the detailed findings in this Decisions report vary from the s42A Reports, the Council adopts those reports, which should be read as forming part of this Decision report. Further, to the extent that the commentary is relevant to the GE / GMO matter, the Council adopts the following parts of the Hearing Panel's recommendation report³ made on all other submissions to the pRPFN.
- Section 2 The Resource Management Act
 - Section 3 Higher Order and other Relevant Instruments
 - Section 5 Council's Approach to the Plan
 - Section 6 Tangata Whenua
 - Section 7 Additional Objective and Policies (General Approach)

³ The hearing of all other submissions (all but the GE/GMO submissions) was delegated to a Hearing Panel to make recommendations to Council.

Section 2

Issues Raised in Submissions

[12] All primary submissions supported inclusion of restrictive, precautionary or prohibitive provisions into the pRPFN for managing GE / GMO in the region, or parts of the region. In summary, the submissions sought that the pRPFN be amended to:

- give effect to the GMO 6.1.2 policy in the Northland Regional Policy Statement 2016 ('RPS');
- provide a region-specific approach to managing GMOs, taking into account environmental, economic, cultural and social well-being considerations and including strong precautionary and prohibitive GE provisions, policies and rules for all environments - land, inland waterways and coastal – and all possible vectors of such organisms;
- add provisions in the Coastal, Land and Water and Tangata Whenua parts of the PRP to address concerns to tangata whenua and potential adverse effects on biosecurity, indigenous biodiversity, existing non-GM primary producers and public health from outdoor use of GMOs; and
- include provisions consistent with / align with / be the same as provisions in the Auckland Council Unitary Plan, and the Far North District Council and Whangarei District Council plan changes.

[13] With one exception, the further submissions received supported the primary submissions. The one exception was the further submission from Federated Farmers. That further submission opposed all of the primary submissions on the basis that:

- *There is no scope to include the provisions sought in the Proposed Regional Plan.*
- *Even if there was scope, there is no justification (in terms of RMA s32) for including the provisions sought in the Proposed Regional Plan.*

[14] The key questions evaluated in this Decisions Report include:

1. Is there a legal basis for including GE / GMO provisions in the Proposed Regional Plan?
2. Is there a legal constraint to including GE / GMO provisions in the Proposed Regional Plan?
3. Is there a legal obligation to include GE / GMO provisions in the Proposed Regional Plan?
4. Is there a sufficient evidential basis to include GE / GMO provisions in the Proposed Regional Plan?

5. Would the inclusion of provisions in the Regional Plan to regulate GMOs increase Council's legal liability to clean-up or otherwise address the illegal use or introduction of a GMO in the coastal marine area?

Section 3 Evaluation

Legal Basis for Regional Plan Provisions

- [16] There was a consensus amongst the parties, including from Federated Farmers, that s12(3) of the RMA provides a statutory basis for the inclusion of GE/ GMO provisions in the CMA.
- [17] There was less certainty in relation to whether GE / GMOs constituted a "contaminant" under s15 of the RMA. The evidence in general concluded that, considering the large range of circumstances that may be presented, a particular form of GE / GMO may or may not be considered a contaminant. While s15 may not apply in all cases, it is likely to in some and on that basis the Council finds that it is appropriate to refer in the provisions to s15 as being a statutory basis for the inclusion of GE/ GMO provisions in the pRPFN.

Legal constraints in relation to Regional Plan Provisions

- [18] The Council was referred to a number of Court decisions that have addressed whether there is jurisdiction to include GE / GMO provisions in a regional plan. Consistent with those Court decisions the Council is satisfied that there is no express exemption for consideration of control of new organisms under the RMA in either the RMA or the Hazardous Substances and New Organisms Act 1996 ('HSNO'). The Council notes in particular the High Court's finding that, while there was an overlap between the HSNO Act and the RMA:

"...there is nothing present in these pieces of legislation to prevent the establishment of objectives, policies and methods to achieve integrated management of natural and physical resources in the broad terms directed by the RMA.... I consider that there is a readily identifiable policy reason for that in these pieces of legislation, read together. Once having been approved for import and release into New Zealand under HSNO, regional authorities can provide for use and protection of them together with other resources in a fully integrated fashion, taking account of regional needs for spatial management that might differ around the country for many reasons, not the least of which might include climatic conditions, temperatures, soils, and other factors that might drive differing rates of growth of new organisms and/or of other organisms, as just a few of perhaps many examples. I agree with the opposition parties that the RMA and HSNO offer significantly different functional approaches to the regulation of GMOs".

⁴ Federated Farmers of New Zealand v Northland Regional Council CIV-2015-488-0064 [2016] NZHC 2036 Paragraphs 48 and 49

- [19] In relation to the justification required under RMA s32 for including provisions in the pRPFN, the notified pRPFN s32 document did not assess GE / GMO provisions further than noting this was a matter that may be addressed at a later date. As noted in Section 1 above, the Council requested through Minute 1, s32 evaluation reports for the provisions sought to be introduced by submissions, and two s32 reports were subsequently provided. The Council has had particular regard to those Section 32 Reports.⁵ Section 32AA of the RMA requires a further evaluation of any further changes made, which can be the subject of a separate report, or referred to in the decision-making record.⁶ If it is referred to in the decision-making record, it should contain sufficient detail to demonstrate that a further evaluation has been duly undertaken.⁷
- [20] An assessment of the efficiency and effectiveness of amendments to the pRPFN must involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment. If practicable, the assessment should quantify those benefits and costs; and assess the risk of acting or not acting if there is uncertain or insufficient information about the subject-matter. This Decisions report, including the Section 32 documentation provided, the s42A reports the scientific, economic and cultural evidence provided at the hearing and Appendix A is intended to form part of the Council's decision-making record. The Council adopts this material as evaluations under s32 and s32AA.

Legal obligations in relation to Regional Plan Provisions

- [21] The Council has carefully considered the s42A report, the submissions and the evidence relating to Council's obligations under Section 67(3) of the RMA, and in particular the New Zealand Coastal Policy Statement and the Northland Regional Policy Statement ('RPS'). A number of submitters considered that there was an obligation under these higher order documents for the regional plan to manage GMOs. However the conclusion reached by the author of the s42A report, informed by legal advice received by the Council, was that there was no legal obligation. In that respect Council notes that the EPA is legislatively mandated to control GMOs, and their role includes having regard to such matters as effects on the natural environment and on issues of concern to tangata whenua. The extent to which the EPA processes would address matters that could only be addressed by the pRPFN was the subject of some debate, including as to whether the EPA process would reach decisions that aligned with community views, or would otherwise be sufficiently robust to avoid environmental risks. Overall, the Council has found that it is for it, as the decision-maker, to consider and determine whether, after taking a precautionary approach in its considerations, it is necessary to add another layer of GMO management as part of the pRPFN.

⁵ RMA, s66(1)(c).

⁶ RMA, s 32AA(1)(d) and (2).

⁷ RMA, s 32AA(1)(d)(i).

Evidential Basis for Including Provisions in the Regional Plan

- [22] At the hearing scientific evidence was given by Professor Jack Heinemann on behalf of Whangarei District Council / Far North District Council and Professor Andrew Allan on behalf of Federated Farmers. Professor Heinemann and Professor Allan were some distance apart in their views on the risks associated with GMOs, Professor Allan being much more confident that GM is safe. Professor Allan also criticised the evidence to date as not having had regard to gene editing, an issue responded to by Professor Heinemann at the hearing. The evidence indicated that the scientific community does not have consensus on this issue. To the extent that this may suggest a precautionary approach is therefore justified, the Council finds this is a relevant, although not determining factor. Other relevant considerations include the apparent lack of urgency associated with this issue, the comfort that an EPA process must be conducted regardless of any pRPFN provisions and Council's concerns about the absence of some key information and the process that has been adopted to this point. These are all matters further addressed below.
- [23] The only expert economic evidence was from Dr John Small, on behalf of Whangarei District Council / Far North District Council. For the reasons put forward in his evidence Dr Small concluded that introducing GE / GMO provisions into the pRPFN would provide net benefits and should be approved. As a part of this analysis, Dr Small stated that there appears to be no GMO close to release for which there is a realistic prospect of release in the Northland Region over the 10-year life of the Plan. He was of the view that, if precautionary approach provisions were introduced now, the absence of any likely prospect of GMO applications meant opportunity costs would be very low. While accepting this evidence, as far as it went, Council was left with the question as to why it was necessary to introduce provisions into the pRPFN which would unlikely be used in the life of the plan, particularly considering the process by which those provisions has been arrived at. In that respect, the Council is concerned that the provisions proposed have not been developed through Council's own RMA section 32 process, are translated provisions rather than bespoke to the Northland CMA, and have not had the robust comment and analysis that may have been conducted through the normal public notification process.
- [24] An additional costs concern for Council, not recognised in Dr Small's evidence, relates to what the introduction of the proposed provisions may mean in respect of Council's monitoring, compliance and enforcement obligations.
- [25] The proposed provisions include imposition of a bond. Council agrees that this would be a key mechanism for addressing the risk of escape of GMOs from approved GMO facilities. However Council finds that calculating a bond is too speculative and could well be so high that it would make proposals untenable.
- [26] Expert cultural evidence was given by Dr Benjamin Pittman and Tui Shortland. The iwi and hapū management plans⁸ that exist in relation to Northland iwi and hapū contain a strong signal that GMOs are culturally inappropriate. Dr Pittman explained why the introduction of GE / GMO would be offensive to the principles of tikanga and seriously damage the mauri of

⁸ As recognised under s.66(2A) RMA

the environment. These are relevant and important. The question remaining is the extent to which these concerns would otherwise be satisfactorily addressed as part of the EPA process. The Council finds that there may be benefits in having the opportunity for iwi and hapū input at the regional (as opposed to national) level, and that gives some justification for introducing a management regime at the regional level. This benefit must be weighed against other factors.

- [27] The expert planning evidence, from Peter Reaburn, the s42A author, David Badham, consultant planner on behalf of the Whangarei District Council and Far North District Council and Vern Warren, consultant planner on behalf of the Soil & Health Association, was largely in alignment. Informed by the other specialist evidence, all planners considered that it was appropriate to introduce GE / GMO provisions into the CMA for precautionary reasons. Mr Warren additionally referred to parts of the statutory framework, including the NZCPS and RPS, as requiring the introduction of provisions. As noted earlier in this Decision report, the planners were ultimately agreed on the wording of CMA provisions to be introduced into the pRPFN.
- [28] The evidence from Gavin Forrest on behalf of Federated Farmers, while not expert planning evidence, raised a number of questions regarding whether there should be GE / GMO provisions at this time, and the reasoning given to date for RMA provisions, at least of the type proposed, being necessary given other options available. Council has made the following findings in relation to the questions Mr Forrest raised:
1. While the pRPFN as notified did not contain provisions, including rules, of the scope sought by primary submitters the Council is satisfied that there is jurisdiction to do so. The general theme of primary submissions was clearly that provisions based on the Auckland Unitary Plan should be introduced into the pRPFN. The Council has attempted to take a careful approach to ensure that submitters and further submitters are aware of what provisions could be introduced, including through inviting submitters in Minute 1 to provide provisions, and s32 analyses of those provisions. This was done, by two major submitter parties and was thus available for all parties from an early stage in the hearings process for the parties to consider and provide comment on. Further information and evidence was sought and provided throughout the hearings process. It is an accepted response to s32 that the process is iterative and includes information provided right up to the stage of final consideration by the decision-maker. However, while Council accepts there is jurisdiction, it also accepts that there may be some doubt as to whether the issue has been thoroughly tested with the public and in that respect greater confidence could have been gained if the pRPFN as notified had contained provisions, including rules, relating to GE / GMOs.
 2. The evidence confirmed that there are no current or imminent risks that would require immediate decisions. There is no particular activity or use of GE / GMOs that is currently more than a theoretical possibility in Northland's CMA. In that respect, while Professor Heinemann identified some possibilities, there is a major question as to whether these are "real" prospects, at least in the foreseeable future. The Council finds that greater

specificity of potential activities, uses, risks and effects is required so that provisions, if found to be necessary at all, are devised in a more targeted manner. On the basis of current information that there is no short term risk, the Council finds there is time to further consider whether GMO provisions need to be developed and, if there is that need, how they can be appropriately developed so that they are bespoke to Northland, and then have the robust examination enabled through the normal public notification process.

3. The use of Pest Management Plans and / or Regional Pathway Management Plans prepared under the Biosecurity Act to manage the adverse effects of GE / GMO are not a replacement for provisions considered and introduced under the RMA.
4. It is not accepted that the evidence presented by those favouring pRPFN provisions consistent with other plans is out of date, however it is accepted that the Federated Farmers evidence presents another view, and that has added to the information on which decisions have been considered and made.

[29] A number of submitters continued to seek land-based provisions throughout the hearings process. While acknowledging submitters' desire that provisions be adopted that are as comprehensive as possible, the Council has determined that it is not appropriate for land-based provisions to be included in the pRPFN, for a number of reasons:

1. As noted by the s42A author, land-based provisions would need to rely on s15 RMA as the statutory basis. Section 15 RMA would apply only if GE / GMOs was regarded as being a contaminant. The consensus in evidence was that, while some GE / GMOs could potentially be defined as a contaminant, this would be case-dependent. In order to provide a statutory basis, it would therefore be necessary to specify what forms of GE / GMO would be a contaminant, and therefore subject to regional plan land-based management. Given the potential range of GE / GMOs (on land) is substantial this would be a very difficult exercise.
2. No submitter proposed provisions to address this concern or indeed any land-based provisions for Council's consideration.
3. The Council agrees with submitters that concerns relating to GE / GMOs apply as much, or even potentially more, to the land as the CMA, and that GMOs do not recognise CMA / land boundaries. RPS Policy 6.1.2 (Precautionary Approach) applies to both regional and district councils. Method 6.1.5 specifically envisages district councils as taking a role in applying the policy. As an example, the Council was advised that the Auckland Unitary Plan provisions relied upon by many submitters are not regional plan provisions – they are CMA and district plan provisions. In relation to land-based concerns this strongly suggests that provisions are better addressed in district plans, where there is no question that s9 RMA provides a statutory basis. In that respect, Whangarei District Council and Far North District Council already have GE / GMO provisions and the Council was advised that the Kaipara District Council is currently considering introduction of provisions into its district plan. To the extent that land-based GMO proposals may have

a potential effect within the CMA, provisions within the CMA are not necessary to ensure those effects are addressed and appropriately managed.

4. The provisions that have been sought for inclusion in the pRPFN are essentially the same as those that have already been introduced by the Whangarei District Council and Far North District Council into their respective district plans. No submitter identified how the same land-based provisions in the pRPFN would provide any additional benefits to sustainable management of the environment. To the contrary, separate processes would be confusing, inefficient and potentially even conflicting which could result in uncertain and costly outcomes for applicants and the community.

- [30] In addition to the above, the Council has carefully considered all other evidence presented, including that by lay witnesses.
- [31] The Council recognises that it may be shown later that a particular proposal for GE / GMOs will not result in adverse effects or that the EPA process will adequately manage potential adverse effects. It is further recognised, if it is later found that it is appropriate to amend the provisions, including to provide for any GMO that may be found to have benefits without adverse effects, this will incur time and monetary costs. In any case, the evidence is that proposals for GE / GMOs is unlikely over the life of the pRPFN. Council has accordingly found it is not necessary to introduce provisions into the pRPFN at this stage. Further development of the knowledge and science associated with GMOs, and the extent to which regional control may be required, will ensure that there is no unnecessary extra level of management in the meantime.
- [32] The response Council received from Aquaculture NZ stated that they see no need in the immediate or foreseeable uptake of GMOs or GMO based vaccines into the NZ aquaculture industry and that a precautionary approach was supported. The response has been taken into account in Council's considerations, noting that Aquaculture NZ did not make any particular comment about the form proposed provisions should take.

Council liability

- [33] The Council has obtained legal opinions from its lawyers Wynn Williams in relation to matters of legal liability on the Council arising from the introduction of GE / GMO provisions. The opinion concludes that the inclusion of provisions in the Proposed Regional Plan to regulate GMOs will not increase the Council's legal liability to clean-up or otherwise address the illegal use or introduction of GMOs in the coastal marine area.
- [34] Notwithstanding legal liability Council has remained concerned that there may be an enhanced expectation on the part of the community to address adverse effects arising from unlawful or accidental use of GMOs. This would become a "social cost". The extent to which that expectation may be enhanced through explicit regulation of GMOs in the pRPFN is a matter of serious concern to the Council, particularly as there is a separate management regime through the EPA that may prove effective itself in managing GMOs and would, in the

event of an issue arising, focus responses at the national, rather than regional, level. It would also focus responsibility for monitoring and enforcement on fewer agencies, thus minimising the risk of not having a co-ordinated response.

Conclusion

[35] In summary, the Council finds that:

1. There is no basis or justification for GE / GMOs to be managed by the pRPFN on land, particularly given the district plan management that already exists over most of Northland.
2. The evidence shows that there is no prospect of GE / GMOs being introduced into Northland's CMA over the expected life of the pRPFN. This gives the opportunity for a more robust analysis of the need for, and means of, addressing regional level regulation of GE / GMOs.
3. Management of GE / GMOs by the EPA, particularly in relation to the CMA, may still be shown to be sufficient, without an extra layer of regional plan management.
4. The proposed provisions have been adapted from other Council's generic provisions and are not appropriately targeted to what may be a more focused and relevant management regime for Northland's CMA. Any future plan changes that may be shown to be necessary, including in respect of a GMO that may be shown to have significant benefits, could involve significant cost and time.
5. The proposed provisions requiring imposition of a bond to address the risk of escape of GMOs, while essential, involve significant uncertainties in relation to calculating a sufficient bond amount, and could well be so high that it would make proposals untenable.
6. Further experience of the EPA processes, at least as they relate to the CMA, need more time to evolve to see whether they prove effective itself in managing GMOs. This will, in the event of an issue arising, focus responses at the national, rather than regional, level, including in relation to monitoring and enforcement on fewer agencies, thus minimising the risk of not having a coordinated response.
7. Having regard to the above, and having taken a precautionary approach in its considerations, Council finds there is insufficient basis to introduce further provisions relating to GE / GMOs into the pRPFN at this time.
8. The Council is confident that its findings are not inconsistent with Objective 2 and Policies 2 and 3 of the NZCPS 2010, or Policy 6.1.2 and Method 6.1.5 of the RPS.

[34] In making this decision Council has given serious consideration to the considerable community interest (addressing social, economic and cultural wellbeing), exhibited by the many submissions and substantial body of evidence supporting regulation. Council recognises, that in making the decision it has, the communities represented by submitters will be

disappointed. However, the Council in balancing the weight of community concern with the issues it has identified in this decision has found that there has been insufficient analysis and that there is insufficient justification to introduce further provisions relating to GE / GMOs into the pRPFN at this time. The Council will however continue to monitor this issue and is prepared to review its position in future if further information becomes available.

Section 4

Decision

- [35] The Council has considered and deliberated on GE / GMO provisions in the pRPFN; the submissions lodged on it; and the reports, evidence and submissions made and given at the public hearing. In reaching its decisions the Council has sought to comply with all applicable provisions of the RMA. The Council has had particular regard to the evaluations and further evaluations of the amendments to the pRPFN it has decided upon. The relevant matters the Council has considered, and its reasons for them, are summarised in the s42 reports and the main body of this report. The Council is satisfied that its decision is the most appropriate for achieving the purpose of the RMA and for giving effect to the higher-order instruments, including the RPS and the NZCPS.
- [36] Relief sought in submissions is not accepted for the reasons outlined in this Decisions Report.