

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Proposed Natural Resources Plan of the  
Greater Wellington Regional Council

**JOINT HEARING OF SUBMISSIONS BY COMMISSIONERS OF THE GREATER  
WELLINGTON REGIONAL COUNCIL**

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**SUBMISSIONS OF LEGAL ADVISOR FOR  
GE FREE NEW ZEALAND**

**Dated 6 June 2017**

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## **MAY IT PLEASE THE PANEL -**

### **INTRODUCTION**

1. GE Free New Zealand in Food and Environment (“GE Free NZ”) is an Incorporated Society. It is a non-Governmental Organisation with a Board and large membership.
2. GE Free NZ was a s274 party to both Environment Court proceedings concerning genetically modified organisms (“GMOs”), where it supported provision for GMOs under regional policy statements.<sup>1</sup> GE Free NZ (Northland) was also a s274 party to the High Court proceeding on GMOs in Whangarei in February 2016 which upheld the Environment Court decision concerning the Northland Regional Policy Statement.<sup>2</sup>
3. GE Free NZ has concerns about the potential risks posed by a release of GMOs into the environment. They agree with the view that the science is unproven and the risk of biological and ecosystem harm is too great not to include precautionary provisions for GMOs under local plans.
4. GE Free NZ say that there is a risk from GMOs to “social, economic, and cultural wellbeing” and GMOs also pose a biological and ecosystem risk. This is because GMO contamination could have significant adverse effects on the environment, economic markets, and way of life, for both organic and non-GMO businesses.

### **GE FREE NEW ZEALAND’S EVIDENCE**

5. GE Free NZ are calling evidence from witnesses in the following order:
  - (a) Ms Claire Bleakley, President of GE Free NZ on its goals, work and desire for a precautionary approach to be taken to GMOs;
  - (b) Mr James Kebbell, an organic grower and Executive Director of Commonsense Organics Ltd. on the effects GMO contamination

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<sup>1</sup> *New Zealand Forest Institute Limited v The Bay of Plenty Regional Council* [2013] NZEnvC 298 (EC); and *Federated Farmers of New Zealand v Northland Regional Council* [2015] NZEnvC 159 (EC).

<sup>2</sup> *Federated Farmers of New Zealand v Northland Regional Council* [2016] NZHC 2036.

could have on his business and the wider environment and community if it were to occur within the Greater Wellington Region; and

- (c) Mr Donald Nordeng, CEO of BioGro New Zealand, on certification of organic and non-GMO farming and the risk posed to producers by GMO contamination.

## THE LAW AND THE ROLE OF THE RMA IN REGULATING GMO USE

6. The case of *Federated Farmers of New Zealand v Northland Regional Council* ruled that local councils have the power under the Resource Management Act 1991 (“RMA”) to control the use of GMOs via their local planning instruments.
7. In his decision Judge Newhook ruled that the RMA and the Hazardous Substances and New Organisms Act 1996 (“HSNO Act”) “offer significantly different functional approaches to the regulation of GMOs”.<sup>3</sup>
8. The HSNO Act is limited to regulating the introduction of new organisms (including GMOs) to New Zealand. The HSNO Act “does not regulate the potential adverse effects of GMOs beyond approving them for release”, and does not provide for integrated management.<sup>4</sup>
9. The RMA, on the other hand, enables authorities to provide for the use and protection of resources “in a fully integrated fashion, taking into account regional needs for spatial management that might differ around the country for many reasons”.<sup>5</sup>
10. This decision was upheld in the High Court by Judge Peters after Federated Farmers appealed the Environment Court’s decision.<sup>6</sup>
11. GE Free NZ therefore considers that there is jurisdiction for the Greater Wellington Regional Council (“Council”) to make provision for objectives,

<sup>3</sup> [2015] NZEnvC 159 (EC), at paragraph [49].

<sup>4</sup> [2015] NZEnvC 159 (EC), at paragraph [45] and section 2 and 2A .

<sup>5</sup> [2015] NZEnvC 159 (EC), at paragraph [49].

<sup>6</sup> *Federated Farmers of New Zealand v Northland Regional Council* [2016] NZHC 2036.

policies, rules and other planning tools in relation to GMOs under the Proposed Natural Resources Plan (“Proposed Plan”).

12. The Far North District Council, Whangarei District Council, Hastings District Council, Auckland Council, and Northland Regional Council have all reached decisions to contain precautionary provisions regarding GMO's in their local planning instruments.<sup>7</sup>

### **INTEGRATED MANAGEMENT**

13. GMO proposals require approval from the Environmental Protection Authority (“EPA”) under the HSNO Act.
14. The HSNO Act consenting process gives particular attention to the technical aspects of managing individual proposals. However, it does not involve:
  - (a) consideration of the geographic distribution of GMO projects;
  - (b) consideration of the need to geographically protect areas of particular value from GMO activities, such as sensitive farming practices (e.g. organic farming);
  - (c) consideration of the preferences of a community; or
  - (d) integration of the management of natural and physical resources, and the effects of GMO activities on natural and physical resources, on a geographic basis.
15. The HSNO Act does not, therefore, provide a planning framework through which GMOs can be geographically / spatially managed in an integrated manner.
16. The RMA establishes a regime whereby local authorities are called upon to prepare policy and plans to implement sustainable management on a geographic basis through the use of integrated management of natural and physical resources at a regional level, and integrated management of effects on the environment at a district level.

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<sup>7</sup> Policy 6.1.2 Northland Regional Policy Statement, Plan Change 18 Far North District Plan, Plan Change 131 Whangarei District Plan, Section 29.1 Proposed Hastings District Plan, Hearing Topic 24 Auckland Unitary Plan.

17. Consideration of the location and distribution of proposals involving GMOs on a regional basis, together with protection of rural resources for organic or biodynamic farming, are important resource management matters for consideration by local authorities in carrying out their functions under the RMA.

### **SOCIAL, ECONOMIC AND CULTURAL EVIDENCE**

18. There may be benefits to be derived from contained GMO activities where the risks can be managed. Those potential benefits do not, however, offset the need for a precautionary approach where there is a risk of significant adverse effects on the environment.
19. It is clear from the definition of environment under s 2 of the RMA that social, cultural and economic values form part of the environment and are matters that require consideration in their own right. Regions and districts are made up of a rich tapestry of people and communities with different views as to what constitutes wellbeing. The RMA does not pick winners and losers. It seeks to ensure that different views of wellbeing can be planned for in an integrated way that avoids spatial conflict and adverse effects of existing activities that enable peoples wellbeing.
20. This approach is neatly summarised in *Blakely Pacific Ltd v Western Bay of Plenty District Council*, where the Environment Court held:

*"[T]he phrase people and communities [recognises] that there may be different groups within New Zealand who may have different views and emphasis ... It is not correct that Section 5 of the Act is to enable landowners/developers only."*

21. GE Free NZ's evidence raises concerns about potential adverse impacts of GMO activities on the ability of the organic sector and the community to provide for their social, economic and cultural well-being. In particular, it shows that:
  - (a) GMO contamination of organic and non-GMO food producers risks: (a) loss of organic and GMO free certification; (b) reputational damage; (c) loss markets and premiums paid for GMO free produce;

and (d) loss of livelihood; and

(b) GMO contamination risks compromising the cultural views and lifestyle decisions of people and communities at a local level concerning what constitutes their wellbeing.<sup>8</sup>

## CONCLUSION

22. GE Free NZ considers that a precautionary approach to GMOs be included in the Proposed Plan. This is because:
- (a) There is no scientific consensus as to the potential affects GMOs might have on the biophysical environment. This uncertainty as to biophysical harm justifies a precautionary approach.
  - (b) GE Free NZ's evidence shows that, irrespective of the biological threat, GMO contamination risks significant adverse effects on social, economic and cultural values.
23. Application of an integrated management and a precautionary approach to GMOs under the RMA is the best available technique for managing the potential adverse effects posed by GMOs to other land uses within the region. It is also consistent with the sustainable management purpose and Part II of the RMA to establish regional plan provisions (e.g. issues, objectives, policies, rules and methods) that manage the release, location and management of GMOs where they have the potential to adversely affect other land use activities.
24. GE Free NZ considers that it is important that there is consistency between the Auckland Unitary Plan, the Northland Regional Policy Statement, and the Far North District, Whangarei District and Hastings District Plans' thereby eliminating cross boundary issues.

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<sup>8</sup> *Blakeley Pacific Ltd v Western Bay of Plenty District Council* [2011] NZEnvC 354 (EC), at paragraphs [189] and [190]. “[T]he phrase people and communities [recognises] that there may be different groups within New Zealand who may have different views and emphasis ... It is not correct that Section 5 of the Act is to enable landowners/developers only.”

25. The decision GE Free NZ seeks from the Greater Wellington Regional Council is that the Proposed Natural Resources Plan be amended to include the following:
- (a) To adopt a precautionary approach to the management of GMOs by prohibiting the field-testing and release of GMOs.
  - (b) To adopt a resource management framework for GMOs that is region specific taking into account environmental, economic and social well-being considerations.
  - (c) A provision that allows for the review of the Proposed Natural Resources Plan provisions relating to GMOs, particularly if there is new information that becomes available on the benefits/adverse effects of a GMO activity.

**Dated 6<sup>th</sup> June 2017**

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**M J Davis**

**Legal Advisor for GE Free New Zealand**

