Submission Booklet

Submissions to

Draft
2014/2015
Exceptions Annual Plan

Contents

Note

Those Submitters highlighted in yellow above are those who have requested to be heard in support of their Submission at the Hearing.

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Submission No 001

From: Jean Anderson [jean.anderson@clear.net.nz]

Sent: Sunday, 16 February 2014 7:05 p.m.

To: mailroom@nrc.govt.nz; ask.us@fndc.govt.nz; council@kaipara.govt.nz; mailroom@wdc.govt.nz; info@arc.govt.nz; enquiry@aucklandcity.govt.nz; Fdc_info@franklin.govt.nz; info@envbop.govt.nz; info@tauranga.govt.nz; kaweraudc@kaweraudc.govt.nz; info@odc.govt.nz; mail@rdc.govt.nz; info@swktodc.govt.nz; general@taupo.govt.nz; customercare@wbopdc.govt.nz; information@whakatane.govt.nz; info@ew.govt.nz; info@hcc.govt.nz; info@hauraki-dc.govt.nz; info@mpdc.govt.nz; info@otodc.govt.nz; info@ruapehudc.govt.nz; Customer.services@tcdc.govt.nz; publicenquiries@waide.govt.nz; info@waipadc.govt.nz; waitomodc@waito.govt.nz; WebMail; gdc@gdc.govt.nz; info@trc.govt.nz; enquiries@npdc.govt.nz; contact@stdc.govt.nz; stratforddc@stratford.govt.nz; info@hbrc.govt.nz; info@chbdc.co.nz; council@hdc.govt.nz; info@napier.govt.nz; info@tararuadc.govt.nz; administrator@wairoadc.govt.nz; info@gw.govt.nz; contact@huttcity.govt.nz; uhcc@uhcc.govt.nz; Kapiti.council@kapiticoast.govt.nz; enquiries@pcc.govt.nz; info@wellington.govt.nz; Julie@cdc.govt.nz; mdc@mstn.govt.nz; administrator@swdc.govt.nz; help@horizons.govt.nz; enquiries@horowhenua.govt.nz; public@mdc.govt.nz; info@pncc.govt.nz; info@rangdc.govt.nz; info@ruapehudc.govt.nz; wdc@wanganui.govt.nz; info@tdc.govt.nz; Enquiry@ncc.govt.nz; mdc@marlborough.govt.nz; info@wcrc.govt.nz; Info@bdc.govt.nz; info@greydc.govt.nz; council@westlanddc.govt.nz; ecinfo@ecan.govt.nz; info@ashburtondc.govt.nz; info@ccc.govt.nz; info@hurunui.govt.nz; kdc@kaikoura.govt.nz; info@mackenzie.govt.nz; admin@selwyn.govt.nz; Enquiry@timdc.govt.nz; office@wmk.govt.nz; council@waimatedc.govt.nz; csunit@waitaki.govt.nz; info@cic.govt.nz; info@orc.govt.nz; info@codc.govt.nz; Help.desk@cluthadc.govt.nz; dcc@dcc.govt.nz; services@qldc.govt.nz; service@es.govt.nz; emailsdc@southlanddc.govt.nz; info@goredc.govt.nz; service@icc.govt.nz

Cc: IBell@adhb.govt.nz; communications@bopdhb.govt.nz; Info@ccdhb.org.nz; customerservice@superclinic.co.nz; ceo@hawkesbaydhb.govt.nz; ceo@huttvalleydhb.org.nz; beryl.harris@lakesdhb.govt.nz; communications@midcentraldhb.govt.nz; INQUIRY@ncc.govt.nz; ceo@scdhb.health.nz; contactus@southerndhb.govt.nz; David.Scott@tdh.org.nz; Jim.Green@tdh.org.nz; Corporate.contacts@tdhb.org.nz; info@waikatodhb.health.nz; board@wairarapa.dhb.org.nz; paul.patton@waitematadhb.govt.nz; gaylene.mahauariki@westcoastdhb.health.nz; contact@wdhb.org.nz; kathy.mcvey@tdh.org.nz

Subject: Letter from Physicians and Scientists for Global Responsibility New Zealand Charitable Trust

Attachments: NZCouncilsDHBs2014.pdf; IWCPNorthland.doc; Legal Opinions combined.pdf

We attach a letter addressed to all New Zealand Councils and ask that you accept and consider the following concerns as a submission when establishing your planning and budgeting documents for a sustainable future for your district and a healthy community, and in doing this draw support from members of District Health Boards and Local and Community Boards.

We ask that you please circulate to Councillors, CEOs and other appropriate recipients, and include Local and Community Board members in your region.

Thank you.

Jean Anderson
for Physicians and Scientists for Global Responsibility New Zealand Charitable Trust

PO Box 8188
TAURANGA 3145
+64 7 576 5721
www.psgr.org.nz

Submission No 001

PSGR

Physicians and Scientists for Global Responsibility

New Zealand Charitable Trust

Formerly Physicians and Scientists for Responsible Genetics New Zealand

PO Box 8188
TAURANGA 3145

+64 7 576 5721
roberta@clear.net.nz
www.psgr.org.nz

15 February 2012

CEOs, Mayors and Councillors of all Regional, District and City Councils in New Zealand,
cc Local and Community Boards, and CEOs and Board Members of all District Health Boards

Submission to Councils Future Community and Regional Plans

The Trustees of PSGR thank Council for their response to previous submissions and correspondence. We ask that you accept and consider the following concerns as a submission when establishing your planning and budgeting documents for a sustainable future for your district and a healthy community, and in doing this draw support from members of District Health Boards and Local and Community Boards.

Physicians and Scientists for Global Responsibility is a Charitable Trust established to provide independent scientific assessment and advice on matters relating to genetic engineering and other scientific and medical matters. We raise the following concerns with Council:

Genetic engineering

The following is just one indication of why New Zealand should preserve itself as a GE-free nation.

Field trials of transgenic canola took place in Tasmania in the late 1990s and 2000. Observing the effects, the Tasmanian Government decided to pursue agriculture that is free of genetically engineered organisms. Management issues of the former trial sites included seed persistence. Consequently, an annual audit of sites has taken place. The most recent was in May 2013, with all 53 sites inspected. Four sites had canola volunteers. In 2008, volunteers were found at twelve of the 53 sites,[1] twelve different sites to the 2013 audit. During audits, nearby roadsides and other areas are inspected to ensure containment is being achieved. This policy has been maintained and strengthened with a recent decision for an indefinite moratorium on release of GMOs to protect their brand and export economy.[2]

Over half the 2013 sites had not involved recent soil disturbance and it was acknowledged that these will have dormant canola seed in the soil that will not germinate until soil disturbance takes place. The Office of the Gene Technology Regulator (OGTR) advises canola seeds can be viable for up to 16 years.[3]

Australian farmers growing conventional canola have regularly secured a higher price for their crops. Exporters can check a list of countries that ban transgenic crops and require food labelling for any transgenic element on http://naturalrevolution.org/list-of-countries-that-ban-gmo-crops-and-require-ge-food-labels/.

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[1] http://safefoodfoundation.org/contamination-from-field-trials-in-tasmania/
[2] http://www.abc.net.au/news/2014-01-09/tasmania27s-gmo-ban-extended-indefinitely/5192112
[3] Former GE Canola Trial Sites Audit Reports, Department of Primary Industries, Parks, Water and Environment, http://www.dpipwe.tas.gov.au/internnsf/WebPages/CART-6795X9?open

Following community requests, the Bay of Plenty Regional Council included a precautionary statement on transgenic organisms in its Proposed Regional Policy Statement. An appeal by Scion (NZ Forest Research Institute) went to the Environment Court. The Court decision released on 18 December 2013[4] allowed the BOP RC to retain reference to transgenic organisms in its Regional Policy Statement.

The Court's decision sets a precedent. It clearly indicates that the Resource Management Act can be used to manage such activities in the Bay of Plenty region and it will also assist any future case in front of the Environment Court on this emerging issue. Communities and industries in the Bay can now work towards the inclusion of stricter rules in their District and City Plans to protect and keep their 'GE-free' environment status and marketing advantage. The Regional Policy Statement includes a policy directive to apply a Precautionary Approach to activities that have scientific uncertainty and where there is a serious risk of irreversible adverse effects. This can apply to the use of transgenic organisms in the BOP environment. The Environment Court recognised the community concerns regarding the outdoor use of transgenic organisms. It also indicated in its decision that the Council may propose more directive regulation in the future, including policies, objectives, and methods. These regulations would come as a result of further investigation (via a Section 32 report) showing that transgenic organisms are elevated to a matter of regional significance. The Court decision will also encourage New Zealand Councils to take steps to protect their communities in a similar manner.

Local government's role is to work in service to the public interest of present and future generations. Local government responsibility encompasses the environmental and social spheres in their regions. The precautionary approach as discussed here speaks to this responsibility in regards to new technologies such as the proposal to release transgenic organisms.

We attach a legal opinion by Dr Roydon Somerville QC - Managing Risks Associated with Outdoor Use of Genetically Modified Organisms (January 2013) - and a press release from the Inter-council Working Party on GMO Risk Evaluation and Management Options[5] which addresses some of the issues that Local government needs to consider in regards to the proposed uncontained use of transgenic organisms

Section 1.7 Precautionary approach (Environment Court decision)

"The ability to manage activities can be hindered by a lack of understanding about environmental processes and the effects of activities. Therefore, an approach which is precautionary but responsive to increased knowledge is required. It is expected that a precautionary approach would be applied to the management of natural and physical resources wherever there is uncertainty, including scientific, and a threat of serious or irreversible adverse effects on the resource and the built environment. It is important that any activity which exhibits these constraints is identified and managed appropriately. Although those intending to undertake activities seek certainty about what will be required of them, when there is little information as to the likely effects of those activities, public authorities are obliged to consider such activities on a case-by-case basis. Such consideration could be provided for in regional and district plans, through mechanisms such as zoning or rules enabling an assessment of effects through a resource consent process, or through other regulation such as bylaws. Any resource consent granted in such circumstances should be subject to whatever terms and conditions and/or reviews are considered necessary to avoid significant adverse effects on the environment and protect the health and safety of people and communities."[4]

PSGR strongly endorse a precautionary approach to transgenic organisms at all levels of government and regulation.

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[4] http://www.boprc.govt.nz/media/321876/environment-court-decision-18-dec-2013-env-2012-339-000041-part-one-section-17.pdf
[5] Inter-council Working Party on GMO Risk Evaluation and Management Options http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/Genetic-Engineering/Documents/GE-Reports/Letter-to-Minister-re-GMO-Survey.pdf

Glyphosate

The French parliament has adopted a law to prohibit private or public use of pesticides in green areas, forests or public space, to apply from 1 January 2020.[6] While this is a relatively small portion of agricultural chemical usage, it is a start to protect communities. PSGR urges Council to take similar action and ban the use of glyphosate-based herbicides in public places: roadsides, parks, reserves, community gardens, etc.

Recent studies highlight the effects on people of glyphosate, the active ingredient in RoundUp and many other herbicides.[7] Additional ingredients in some formulations are adjuvants and/or surfactants; e.g. polyethoxylated tallow amine (POEA), particularly toxic to animals and humans. A study released in January 2014[8] confirms glyphosate formulations have agents added that may be more toxic than glyphosate.

Glyphosate residues are found in the main foods in the Western diet. Negative impact on the body is insidious and manifests slowly over time, damaging cellular systems. It plays a part in most of diseases and conditions associated with the Western diet, including gastrointestinal disorders, obesity, diabetes, heart disease, depression, autism, infertility, cancer and Alzheimer's disease.[9]

A study has shown glyphosate was present in human urine samples taken from participants in 18 European countries. The test results averaged 43.9% with the chemical present.[10]

A review paper on glyphosate (2013)[11] prepared for the Scottish Parliament is a compilation from independent scientists, toxicologists, beekeepers, environmentalists, governments, industry, and regulators worldwide. The findings detail glyphosate's negative impact on human health and the environment.

To see a power-point presentation on glyphosate click on http://people.csail.mit.edu/seneff/, scroll down and click on "(Powerpoint Slides) (PDF Version)" to view 'Glyphosate: The Elephant in the Room'.

PSGR urges Council to refrain from using herbicides containing glyphosate or its salts for spraying in public areas and refer you to further information in our letter to Councils of 25 October 2013.

Fluoridation

Fluorine does not occur in the elemental state in nature, but exists in the form of fluorides in a number of minerals, of which fluorspar, cryolite and fluorapatite. Fluorine compounds are used in the production of aluminium and phosphate fertilizers and is a waste product from those industries.[12]

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[6] http://www.env-health.org/news/latest-news/article/new-french-law-will-ban-non

[7] Glyphosate is manufactured in different solution strengths, with various adjuvants (agents) under many tradenames - Accord, Aquaneat, Aquamaster, Bronco, Buccaneer, Campaign, Clearout 41 Plus, Clear-up, Expedite, Fallow Master, Genesis Extra I, Glyfos Induce, Glypro, GlyStar Induce, GlyphoMax Induce, Honcho, JuryR, Landmaster, MirageR, Pond-master, Protocol, Prosecutor, Ranger, Rascal, Rattler, Razor Pro, Rodeo, Roundup, I, Roundup Pro Concentrate, Roundup UltraMax, Roundup WeatherMax, Silhouette, Touchdown IQ - by include Bayer, Dow Agro-Sciences, Du Pont, Cenex/Land O'Lakes, Helena, Monsanto, Platte, Riverside/Terra, and Zeneca. http://en.wikipedia.org/wiki/Glyphosate

[8] 'Glyphosate commercial formulation causes cytotoxicity, oxidative effects, and apoptosis on human cells: differences with its active ingredient', Chaufan et al Int J Toxicol. 2014 Jan 16. Epub, 16 January 2014, PMID: 24434723. http://www.ncbi.nlm.nih.gov/pubmed/24434723?dopt=Abstract

9 Samsel et al, Entropy 2013, 15(4), 1416-1463; doi:10.3390/e15041416 http://www.mdpi.com/1099-4300/15/4/1416

[10] 'Determination of Glyphosate residues in human urine samples from 18 European countries', carried out by Medical Laboratory Bremen, Germany, http://www.foeeurope.org/sites/default/files/glyphosate_studyresults_june12.pdf

[11] http://www.gmwatch.org/index.php/news/archive/2013/15047-glyphosate-destructor-of-human-health-and-biodiversity

[12] 'Background document for development of Fluoride in Drinking-water' © WHO 2004 http://www.who.int/water_sanitation_health/dwq/chemicals/en/fluoride.pdf

Typically, fluoride used to fluoridate water supplies is a contaminated chemical by-product of the phosphate fertilizer manufacturing process, fluorosilicic acid. It is concentrated, highly toxic and contains hazardous impurities. Uranium and radium are two known carcinogens found in fluorosilicic acid used for water fluoridation, and polonium-210 is one of two decay products of uranium. Polonium decays into stable lead-206, raising significant health risks, especially for children. Research has shown that drinking fluoridated water increases lead absorption.

We recommend Council read 'Public Health Investigation of Epidemiological Data on Disease and Mortality in Ireland related to Water Fluoridation and Fluoride Exposure' (2013).[13] This Report was compiled for the Government of Ireland, the European Commission, and the World Health Organisation. It found public health authorities have pursued a policy of medicating the population with fluoridation chemicals for half a century without undertaking any clinical trials, medical, toxicological, scientific or epidemiological studies to examine how exposure to such chemicals may be impacting on the general health of the population. In the absence of any scientific data proponents continue a policy as both safe and effective for all sectors of society regardless of the age, nutritional requirements, medical status or the total dietary intake of fluoride of individuals.

A lifetime exposure to fluoride can lead to health risks,[14] especially to those with challenged immune systems, the young and the elderly. There is no antidote for fluoride toxicity and fluoride does not adsorb to activated charcoal in filters.[15]

In the interests of public health, PSGR urges all Councils to maintain fluoride-free drinking water supplies.

Off- and on-shore drilling for oil and gas

Both of the above have raised strong public comment. Of particular concern in 2014 are the results of potential accidents with off-shore exploration drilling being carried out by Anadarko Petroleum Corporation and later Shell, and the effects on-shore drilling and fracking oil wells will have on the environment, especially contamination of ground water and drinking water, and contamination of agricultural land used to grow animals and food crops. The bedrock of the New Zealand's economy is primary production, manufacturing and tourism, which sectors rely strongly on our 'Clean Green' reputation. Oil pollution could destroy that status.

The Deepwater Horizon oil spill in the Gulf of Mexico began on 20 April 2010. After several failed efforts, the well was declared sealed on 19 September 2010 although some reports indicate the well site continues to leak. A total discharge of 4.9 million barrels (210 million US gal; 780,000 m3) has been estimated.[16] The adverse effects continue in the health of people in the region, their livelihoods, and the environment.

The Rena grounding in October 2011 off Tauranga impacted on the environment extensively and proved how ill-equipped New Zealand is to handle oil spillages.[17]

Despite the ship carrying just 1700 tonnes of heavy oil and 200 tonnes of diesel fuel,[18] over a thousand tonnes of sand had to be removed from local beaches, aided by hundreds of volunteers combing the sand by hand for oil globules for months afterwards. More than two years later, such globules of oil can still appear.

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[13] Prepared by Declan Waugh BSc CEnv MCIWEM MIEMA MCIWM Environmental Auditor and Strategic Advisor on Risk Assessment and Management http://www.enviro.ie/Feb2013.pdf.
[14] http://water.epa.gov/drink/contaminants/basicinformation/fluoride.cfm
[15] http://emedicine.medscape.com/article/814774-overview
[16] http://en.wikipedia.org/wiki/Deepwater_Horizon_oil_spill
[17] For background material see http://en.wikipedia.org/wiki/Rena_oil_spill.
[18] http://en.wikipedia.org/wiki/2011_Tauranga_oil_spill

It could have been much worse. The Rena was a cargo ship rather than an oil tanker or – potentially even more dangerous – a deep sea oil well.

Following scientific principles http://oilspillmap.org.nz/ shows the potential effect of oil spillage from the 2014 deep sea drilling sites being tackled by Anadarko. Oil companies drilling in New Zealand are required to have contingency plans in the event of a blowout[19] and Anadarko has drawn up a 'worst case' accident scenario. It cites a daily oil flow higher than the 10,000 barrels a day estimated by Greenpeace in October 2013, a figure dismissed as ridiculous by New Zealand's Petroleum Exploration and Production Association and Prime Minister John Key.[20] 'Blowouts' are acknowledged to be more likely during exploration than during production and the risks rise with deepwater drilling. Because of the reported current lack of transparency in approving drilling permits, questions arise about ensuring that absolute best practice is applied.

In the event of a blowout, Maritime NZ would have charge. The Murdoch Review of Maritime NZ's handling of the Rena disaster is disturbing. Will the funding boost of NZ$2 million from government over three years to improve equipment and coordination be sufficient? Deepwater Horizon should provide salutary lessons to ensure a safety culture leaving nothing to chance. The US congressional investigation into that accident described the oil-spill response plan signed off by BP and Anadarko as "tragically flawed" and "embarrassing".

We refer Council to our website for detailed information on fracking[21] and to 'Evaluating the environmental impacts of fracking in New Zealand: An interim report'[22] from the Parliamentary Commissioner for the Environment. A second report is due in the first half of 2014. Further sites are 'NZ Petroleum Basins'[23], and 'Briefing - Out Of Our Depth: Deep-sea oil exploration in New Zealand and East Coast Basin'.[24]

Government maintains test-drilling applications should not have to go through a full public hearing process. This is not acceptable in the interests of New Zealand and its citizens. Exploratory drilling for oil and gas must remain publicly notifiable, open to public submissions and hearings. We urge Council to actively participate in your community on this issue.

Nanotechnology and waste disposal

We remind Council of our letter of 10 February 2013. In it we detailed evidence from hydroponic plant studies showing manufactured nano-materials can be taken up and processed by plants (Priester et al, 2012)[25] More recent studies[26] found manufactured nano-materials can impact on microbes and microbial processes related to nutrient cycling, to plant growth and composition if they are transferred from soil to plants. Highly sensitive spectral analysis techniques have now enabled scientists to trace nanoparticles taken up from the soil by crop plants and thus into the food chain.[27]

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[19] http://tvnz.co.nz/national-news/drilling-companies-prepared-potential-oil-blowout-5656950
[20] 'Oil: a risky business' NZ Herald, 18 January 2014, http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=11188335
[21] http://www.psgr.org.nz/ and click on Hydraulic Fracturing.
[22] http://www.pce.parliament.nz/publications/all-publications/evaluating-the-environmental-impacts-of-fracking-in-new-zealand-an-interim-report/
[23] www.nzpam.govt.nz/cms/pdf-library/petroleum-publications-1/2010%20NZ%20Petroleum%20Basin%20Report-WEB.pdf
[24] www.greenpeace.org/new-zealand/Global/new-zealand/P3/publications/climate/2011/Greenpeace%20Deep%20Sea%20Oil%20Briefing.pdf
[25] 'Soybean susceptibility to manufactured nanomaterials with evidence for food quality and soil fertility interruption', 2012, www.pnas.org/content/early/2012/08/14/1205431109?utm_source=HEADS-UP+24-30+AUGUST++2012&utm_campaign=SMC+Heads-Up&utm_medium=email (A)
'UCSB Scientists Demonstrate Biomagnification of Nanomaterials in Food Chain' http://ucsb.imodules.com/s/1016/indexNL.aspx?sid=1016&gid=1&pgid=252&cid=1417&ecid=1417&ciid=1790&crid=0
[26] http://phys.org/news/2013-02-x-rays-reveal-uptake-nanoparticles-soya.html
[27] 6 February 2013 in the journal *ACS Nano*, http://phys.org/news/2013-02-x-rays-reveal-uptake-nanoparticles-soya.html#jCp

Releasing manufactured nanoparticles to the environment is a serious potential risk to human and environmental health. Plants expose huge interfaces to their air and soil environment. Nanoparticles are adsorbed to these plant surfaces, taken up through nano- or micrometer-scale openings of plants and translocated in the plant body. Persistent nanoparticles associated with plants can thus enter the human food chain.[28]

Dispersing wastewater biosolids which may contain manufactured nano-materials on paddocks growing food crops could lead to agriculturally associated human and environmental risks. Biosolids that may contain manufactured nano-materials are routinely dispersed on New Zealand paddocks and into water systems and treated sewage that may contain such particles is discharged into the sea.[29]

PSGR urges Councils and District Health Boards to work closely on developing safety measures in regard to manufactured nano-materials. Potential gains from nanotechnology need to be weighed against the fact that science is increasingly being privatised and patents on nano-products and nano-technologies are growing rapidly. Vested interest can too easily override issues of safety, regulation, and public consultation and interest.

Electro-Magnetic Radiation

Today society relies on electronics to an enormous extent and it is hard to accept that these functions can disrupt bodily health. The American Academy of Environmental Medicine (AAEM) has called for precaution and more research into EMF, RF and general frequency exposure because of adverse health effects: "It is clear that the human body uses electricity from the chemical bond to the nerve impulse and obviously this orderly sequence can be disturbed by an individual-specific electromagnetic frequency environment."[30]

Of concern are wireless systems in schools, libraries and work places. We point Council to 'Public health implications of wireless technologies' (Sage and Carpenter, 2009).[31] Of further concern are Smart Meters installed by electricity supply companies. As of 22 January 2014, the number installed had reached one million units.[32]

PSGR recognizes that electric and electronic devices, and infrastructure and wireless communication are accepted parts of modern life, that the recent rise in use of these technologies has dramatically increased human exposure to electromagnetic radiation (EMR) and/or electromagnetic fields (EMF). Some applications of wireless technology would now be difficult to replace but we point to the warning issued by the European Environment Agency: "There are many examples of the failure to use the precautionary principle in the past, which have resulted in serious and often irreversible damage to health and environments. Appropriate, precautionary and proportionate actions taken now to avoid plausible and potentially serious threats to health from EMF are likely to be seen as prudent and wise from future perspectives."[33]

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[28] 'Plant nanotoxicology', Karl-Josef Dietz and Simone Herth, http://www.ulb.ac.be/facs/sciences/biol/biol/2013-2014/Dietz-Herth.pdf

[29] Mangere www.bvsde.paho.org/bvsaar/cdlodos/pdf/beneficialuse941.pdf; Guidelines for the Safe Application of Biosolids to Land in NZ, August 2003 www.waternz.org.nz/documents/publications/books_guides/biosolids_guidelines.pdf; The Cost-Benefits of Applying Biosolid Composts for Vegetable, Fruit and Maize/Sweetcorn Production Systems in NZ 2004 www.mwpress.co.nz/store/downloads/LRSciSeries27_Cameron2004_4web.pdf
Christchurch http://researcharchive.lincoln.ac.nz/dspace/bitstream/10182/1747/1/ssd_sewage_sludge.pdf

[30] 'Electromagnetic and radiofrequency Fields Effect on Human Health' American Academy of Environmental Medicine, http://aaemonline.org/emf_rf_position.html.

[31] 'Public health implications of wireless technologies' (Sage and Carpenter, 2009), http://www.ntia.doc.gov/legacy/broadbandgrants/comments/6E05.pdf

[32] http://www.ea.govt.nz/about-us/news-events/media-releases/22jan14/ 22 January 2014

[33] The David Suzuki Foundation, 'Electromagnetic Radiation and Fields' on http://www.davidsuzuki.org/issues/health/science/enviro-health-policy/electromagnetic-radiation-and-fields/

While the science on the health impacts of such radiation is not yet conclusive, many people are concerned about how long-term exposure to excessive EMR may impact human health and nature.

PSGR asks that Councils and District Health Boards recognise that electromagnetic disturbances are on the increase and that understanding and controlling the electrical environment is essential for the protection of individuals and communities. Using safer technology such as fibre optics and other non-harmful methods for data transmission will assist the process.

'Refuse, reduce, reuse, repair, recycle and rot'

In 2013, Dunedin City Council adopted a Waste Management and Minimisation Plan. Its vision statement is "Dunedin, a sustainable city in which 'waste' is transformed into a beneficial material or is returned benignly to nature." See http://www.dunedin.govt.nz/services/waste-minimisation for details.

In Nelson, 92% of citizens recycle. See http://www.nelsoncitycouncil.co.nz/services/rubbish/recycling-3.

PSGR urges all Councils to follow these examples and also work to achieve a target of zero waste to landfill.

Council's Future Plans

PSGR urges all Councils to apply strong precautionary policies on genetically engineered organisms and on nanoparticles for Unitary, Local and Regional plans to meet your duty of care to your community and to protect district environments. We call on Councils and District Health Boards to be cognisant of the risks of genetically engineered organisms, nanoparticles, glyphosate-based herbicides, fluoride and EMR/EMF in terms of human health.

Councils and DHBs represent their community. Duty of care should always take account of public opinion, health and safety.

Response to this submission to local community and regional plans

As stated earlier, please consider this correspondence as a formal submission to your plans.

We wish to be kept informed of the process of submissions and outcomes. In general we do not wish to appear to speak to the submission at hearings, although we are open to invitation by Councils and District Health Boards to address representatives when required and when feasible.

We look forward to your response.

The Trustees
Physicians and Scientists for Global Responsibility New Zealand Charitable Trust

Paul G Butler, BSc, MB, ChB, Dip.Obst. (Auckland), FRNZCGP, General Practitioner, AUCKLAND

Jon Carapiet, BA(Hons), MPhil. Senior Market Researcher, AUCKLAND

Bernard J Conlon, MB, BCh, BAO, DCH, DRCOG, DGM, MRCGP (UK), FRNZCGP
General Practitioner, ROTORUA

Elvira Dommisse BSc (Hons), PhD, Mus.B, LTCL, AIRMTNZ, Scientist, Crop & Food Research Institute (1985-1993), working on GE onion programme, CHRISTCHURCH

Michael E Godfrey, MBBS, FACAM, FACNEM
Director, Bay of Plenty Environmental Health Clinic, TAURANGA

Elizabeth Harris, MBChB, Dip Obs, CNZSM., CPCH, CNZFP; DMM, FRNZCGP
General Practitioner, KUROW

Frank Rowson BVetMed MATAMATA

Peter R Wills, BSc, PhD, Associate Professor, University of Auckland, AUCKLAND

Damian Wojcik, BSc, MBChB, Dip. Religious Studies, Dip.Obst., DCH, FRNZCGP, FIBCMT (USA), FACNEM, Master Forensic Medicine (Monash), Director and founder of the Northland Environmental Health Clinic, WHANGAREI

Jean Anderson, Businesswoman retired, TAURANGA.

Ends

Media Release - Embargoed until 4 February 2013

Councils to consider the prohibition of commercial outdoor uses of GMOs in Northland and Auckland and requirement for consents under the RMA for outdoor field trials

An inter-council working party, representing all local authorities in Northland and Auckland, has recommended to member councils that they consider regulating the outdoor use of GMOs under the Resource Management Act (RMA) through provisions in their planning documents.

This would involve inserting objectives, policies and rules in existing district plans in Northland and in Auckland Council's new Unitary Plan prohibiting the release of genetically modified organisms (GMOs) to the environment and making field trialing of GMOs a discretionary activity, subject to strict liability conditions for any environmental or economic harm that may eventuate.

The Inter-council Working Party on GMO Risk Evaluation and Management Options comprises the Far North, Kaipara and Whangarei District Councils and Auckland Council. Northland Regional Council is a member but did not participate in the project. The Working Party has produced draft planning provisions, a section 32 evaluation supporting those provisions, and a legal opinion from Dr Royden Somerville QC.

The section 32 evaluation is a requirement under the RMA to show why the proposed provisions are necessary to achieve the purpose of the Act and that they are the most appropriate, efficient and effective to achieve that purpose. The evaluation is also required to take into account the costs and benefits of the proposed provisions and the risk of acting or not acting if there is uncertain or insufficient information about the subject matter.

The Working Party has carried out a thorough evaluation of the necessity for regulation of GMOs at a district and/or regional level, in addition to national regulation under the Hazardous Substances and New Organisms Act (HSNO), over an extended period of 10 years.

This evaluation has confirmed there are potentially significant risks to local government and their communities from outdoor use of GMOs, including environmental, economic and socio-cultural risks. There is also considerable uncertainty (including scientific uncertainty) and lack of information about those risks. There is a lack of scientific agreement on the long term effects of releasing GMOs into the environment and a lack of information on long term environmental consequences. There is uncertainty and disagreement as to the short and long term economic benefits and dis-benefits from GMO crops and animals. And there are different cultural views as to the appropriateness of GM technology and GMOs, particularly from Maori.

In addition, the potential adverse effects of releasing GMOs into the environment could be significant – including possible major (and long term) harm. Moreover, these effects could be irreversible. Once released to the environment it is, in most instances, impossible to eradicate such organisms. They are, in effect, there for ever, whatever the consequences.

Against these risks, significant deficiencies in the national level regulation of GMOs have been identified. A key gap is that there is no liability under HSNO for damage arising as a result of an activity carried out in accordance with an approval from the national regulatory body, the Environmental Protection Authority (EPA). Nor is there any requirement under HSNO for applicants to prove financial fitness or provide bonds in order to recover costs should damage occur.

Thus, affected parties, including existing primary producers and councils, will tend to bear any costs arising from unexpected events and ineffective regulation of GMOs. Given the experience overseas of widespread contamination of non-GMO crops and rapid development of herbicide resistant pests and weeds, these costs could be considerable.

In response to the risks and associated uncertainties, along with community preferences for a precautionary approach expressed in the Colmar Brunton survey commissioned by the Working Party in 2009 and in public submissions to, and lobbying of, councils in Northland/Auckland, the section 32 evaluation has concluded that a strong precautionary approach to the release of GMOs to the environment is warranted. Such an approach is legitimised by, and indeed

inherent to, the RMA. However, at the national level, HSNO makes the exercise of precaution a matter for the EPA's discretion. The EPA is required only to consider the necessity for caution.

In accord with a strong precautionary approach, the section 32 evaluation supports the prohibition of releases of GMOs to the environment and the requirement for consent as a discretionary activity for GMO field trials. The section 32 analysis also supports provisions that set strict liability rules for potential economic and environmental harm, to the extent possible, and the requirement for bonds and proof of financial fitness.

However, the section 32 evaluation acknowledges the desirability of keeping future options open, and thus supports an adaptive risk management approach that would enable on-going review of prohibiting the release of GMOs, and the change of activity status to discretionary should new information come available, or scientific consensus be achieved, that shows that the benefits of releasing a particular GMO, or class of GMOs, outweigh the risks for the Northland/Auckland region.

Such a precautionary approach to risk management is supported by the courts. In particular, Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development (CA285/05 2007) examined the appropriate use of the prohibited activity status in planning documents. In this case the Court of Appeal held that prohibiting an activity could be appropriate when a planning authority has insufficient information about an activity and wishes to take a precautionary approach, even though it does not rule out the possibility of that activity being permitted in the future when further information may become available.

The draft plan provisions are in the form of a plan change to councils' RMA planning documents. The provisions are in a generic form that can be adapted to each council's particular plan should it choose to undertake such a plan change. The provisions apply to land uses and to use of coastal waters. The plan provisions relate only to outdoor uses of GMOs, either releases to the environment or outdoor field trials. They do not include the use of GMOs in contained facilities, such as hospitals, universities, or research institutions, nor to medicines or food products that do not contain viable GMOs.

The documentation will now be referred to member councils on the Working Party for decisions on how to proceed from here. Should a decision be made to include provisions in council's planning documents, further consultation is required prior to publically notifying any changes.

Dr Kerry Grundy, convener of the Working Party, states:

"The collaborative approach to the issue of GMOs in the environment undertaken by local authorities in the Northland and Auckland regions has been a cautious yet responsible way to proceed with this contentious and complex issue. It is an excellent example of local government working together to address common concerns raised by their respective communities.

The comprehensive evaluation that has been undertaken over a long period of time, and the documentation produced as a result of that evaluation, provides a robust and comprehensive examination of the issue of GMOs in the environment, including both the risks arising from the outdoor use of GMOs and options to manage those risks.

The documentation provides councils on the Inter-council Working Party on GMO Risk Evaluation and Management Options with sufficient information to make an informed decision over management options for outdoor uses of GMOs and sufficient analysis and support to proceed with a change to district and/or unitary plans to manage GMOs should councils decide to undertake such an approach".

ENDS

For further information please contact Dr Kerry Grundy, Convener of the Inter-council Working Party on GMO Risk Evaluation and Management Options, (09) 430 4200, kerryg@wdc.govt.nz. The full documentation is available on Whangarei District Council's website at www.wdc.govt.nz

Submission No 001

Legal Opinions

Managing Risks Associated with Outdoor Use of Genetically Modified Organisms

Dr Royden Somerville QC

January 2013

Contents

CONFIDENTIAL

TO: Mr G J Mathias

Thomson Wilson

P O Box 1042

WHANGAREI

INTERIM OPINION
ON LAND USE CONTROLS AND GMOs

Dr R J Somerville QC
Barristers Chambers
PO Box 5117
Dunedin

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EXECUTIVE SUMMARY

1. Pursuant to the Resource Management Act 1991 (the RMA) the Whangarei District Council (WDC) has jurisdiction to control land use activities involving outdoor field-testing and the release of genetically modified organisms (GMOs) for research or commercial use, to promote the sustainable management of natural and physical resources of the district.

2. The provisions of the Hazardous Substances & New Organisms Act 1996 (HSNO) do not preclude the WDC from exercising its jurisdiction to control GMO-related land uses within its district plan pursuant to the RMA.

3. Any objective to take a precautionary approach to managing risks associated with GMO-related land uses, the development of policies to establish GMO-exclusion areas or GMO-management areas, and methods for implementing such an objective and policies in a district plan, need to accord with the provisions of Part II, sections 31 and 32, and any relevant regulations pursuant to the RMA.

4. A precautionary approach to managing risks involving GMO-related land uses is possible pursuant to section 3(f), section 5(2)(a)(b) and (c), section 7, and section 32(4) of the RMA.

5. A strong precautionary management objective which involves a policy of establishing GMO-exclusion areas within which GMO-related land uses are prohibited, is available to the WDC.

6. An alternative precautionary risk management objective which involves a policy of establishing a GMO-management area or areas within which GMO-related land uses are controlled by risk management methods including rules and standards, while GMO-related land uses outside the management areas are prohibited, is available to the WDC.

7. The Environment Court is able to consider whether the objectives, policies, and methods developed by the WDC are valid pursuant to the relevant provisions of the RMA on a plan reference.

8. The WDC has jurisdiction to develop a long-term council community plan to address sustainable development approaches to manage risks associated with GMO-related land use activities pursuant to the LGA.

9. The WDC has jurisdiction to develop and promulgate bylaws for its district for the purpose of protecting, promoting, and maintaining public health and safety associated with GMOs pursuant to the LGA.

10. The High Court is able to judicially review provisions of a long-term council community plan or bylaws promulgated under the LGA to determine whether they are intra vires the provisions of the LGA, reasonable, and for a proper purpose.

11. Because of HSNO procedures for addressing environmental risks, there is a greater chance of a successful challenge in the High Court against bylaws addressing the same purpose under the LGA than a long-term council community plan established under the LGA for sustainable development purposes.

12. The Environmental Risk Management Authority (ERMA) is required to take into account provisions of a district plan developed under the RMA, and a long-term council community plan and bylaws developed under the LGA, when considering notified applications for approvals involving the trialling or release of GMOs within the district. However, ERMA is not bound by such instruments.

OPINION

1.0 INSTRUCTIONS

Thank you for your instructions of 28 January 2004.

You have asked for my interim opinion on three matters:

1. Does the Whangarei District Council (the WDC) have jurisdiction to impose land use controls to manage risks involving genetically modified organisms (GMOs)?

2. If so, how does it develop and implement such controls incorporating a precautionary approach?

3. Could such controls be successfully challenged in the Environment Court or High Court?

2.0 INTRODUCTION

My opinion focuses on the provisions of the Resource Management Act 1991 (the RMA) and the Local Government Act 2002 (the LGA) when considering whether the WDC as a territorial authority has jurisdiction to impose land use controls in planning instruments to manage risks involving outdoor field-testing and the release of GMOs for the purposes of research or commercial use. I also consider whether the provisions of the Hazardous Substances and New Organisms Act 1996 (HSNO) preclude that in the case of a district plan under the RMA.

In this opinion I use for illustrative purposes two general ways in which precautionary approaches can be incorporated into objectives, policies, and methods for managing environmental risks involving GMO-related land uses. The first is by establishing GMO-exclusion areas over part or all of the district,[1] and the second is by using GMO-management areas.[2] These two approaches are not exhaustive, but demonstrate the legal implications of managing what may be perceived by the people and communities of the district as a significant environmental risk.

The definition of "environment" in the RMA and in the HSNO Act is the same.

> **"Environment" includes** –
> (a) Ecosystems and their constituent parties, including people and communities; and
> (b) All natural and physical resources; and
> (c) Amenity values; and

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[1] Exclusion areas were raised by the Royal Commission on Genetic Modification 2001, 13.1: "that the methodology for implementing HSNO section 6(e) be made more specific to:

…

- allow for specified categories of genetically modified crops to be excluded from districts where their presence would be a significant threat to an established non-genetically modified crop use."

In Australia, on the 31st July 2003, the Ministerial Council responded to concerns about the commercial cultivation of GM crops in jurisdictions, with the issuing of a new policy principle recognising non-GM crop growing areas, declared under state or territory law (Gene Technology Act recognition of designated areas principle 2003) in New South Wales, Victoria, Tasmania, South Australia, Western Australia and Australia Capital Territory. The policy principle binds the gene technology regulator, prohibiting the grant of any GMO licence which is inconsistent with the policy principle.

[2] Cf aquaculture management areas (AMAs) in a proposed regional coastal plan for Tasman District approved by the Environment Court in *Golden Bay Marine Farms Ltd v Tasman District Council* W42/01.

(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:

When I address RMA matters, I consider the role of a territorial authority and the contents of a district plan, rather than the role of a regional council and the contents of regional resource management instruments. The matters I address in a district context are not precluded because of statutory requirements involving regional policy or planning instruments.

Much of what I say about developing objectives and policies to address environmental risks concerning GMO-related activities in a district plan will apply to regional instruments. However, a further opinion would be needed to address a regional council's jurisdiction to impose controls on GMO-related land use activities.

If the WDC were to decide to control GMO-related land uses it would useful if that could be achieved so that regional and district objectives and policies were integrated. However, whether or not a regional response could be achieved, for there to be efficient and effective regulatory land use controls, the territorial authority would need to be involved.

3.0 WDC's JURISDICTION TO MANAGE ENVIRONMENTAL RISKS INVOLVING GMO-RELATED LAND USES PURSUANT TO THE RMA AND LGA

3.1 Purposes of RMA and LGA

The objective of establishing a precautionary risk management approach to GMO-related land uses, the development of policies creating GMO-exclusion areas or GMO-management areas over all or part of the WDC's district, and methods for implementing such an objective and policies, need to be for the purposes of promoting the sustainable management of the natural and physical resources of the district pursuant to the RMA (s5(1)), and of promoting the social, economic, environmental, and cultural wellbeing of communities in the present and for the future, pursuant to the LGA (s10(b)).

The objectives of these two statutes contain two concepts: sustainable management (RMA) and sustainable development (LGA). These are interrelated and apposite to judging whether their statutory purpose is being furthered.

Under the RMA, the local government environmental policy-maker and the specialist Environment Court are working towards the same objective, that of sustainable management as defined in section 5(2) of the RMA. The way that is achieved is by a public law process which recognises the two main concepts in the RMA, namely the provision for the development of environmental policies to promote the goal of sustainable management and the use of integrated environmental management to implement that goal.

Section 5 states, inter alia:

> **5. Purpose –**
>
> …
>
> (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Section 5(2) contains a multitude of ethical considerations. This means an environmental decision-maker has considerable leeway when making policy and strategic decisions in order to attain the goal of the legislation. The concepts in section 5(2) are flexible which enables the RMA to provide successfully for an over-arching goal, without defeating its specific provisions, which may be more restrictive in purpose.

Under the LGA, the concept of sustainable development is recognised. Section 10(b) states:

10. Purpose of local government

The purpose of local government is-

…

(b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

Sustainable development encourages social and economic development, but only so long as the biophysical environment is not degraded to a point where future generations of humans would be prejudiced. In promoting sustainable development, the aim is that society and the environment should be ecologically sound, economically viable, and socially just. Ecology and economics should not be treated in a dichotomous way but should be linked for the wellbeing of future generations.[3] Because of the language in section 5(2) of the RMA and 10(b) of the LGA, the WDC has to make value-judgements about what will promote sustainable management or

[3] New Zealand has also signified its acceptance of the goal of sustainable development by becoming involved internationally through the 1992 United Nations Conference on Environment and Development (UNCED, or The Earth Summit) which produced inter alia, the Rio Declaration on Environment and Development (the Rio Declaration) and the Environmental Agenda for the 21st Century (Agenda 21). The Rio Declaration identifies twenty-seven guiding principles on sustainability. Agenda 21 is a forty chapter plan for use by governments, local authorities, and individuals, to implement the principle of sustainable development.

sustainable development in its district. It needs to be involved in a transparent and participatory process involving people and communities of the district and identifying the value-choices the community believes should be preferred in the public interest.

The WDC may consider that the way rural land is used in its district is a significant resource management issue. The people of the district may consider that sustaining the principal uses of rural land in the district depends on avoiding or managing environmental risks associated with GMO-related activities. This sustainability objective may be in order to promote a number of values within the purpose provisions of the statutes, ranging from socio-economic, cultural, health and safety values, to concerns about the biophysical environment, for example, biological diversity.

When exercising a statutory power of decision-making involving a value-based choice as to what will promote sustainable management or sustainable development, both the RMA and the LGA provide guiding principles for the decision-maker.

When addressing whether GMO-exclusion areas or GMO-management areas in the district would promote the purpose of the RMA, the principles contained in sections 6, 7 and 8 need to be considered. Section 7 is particularly relevant:

> **7. Other matters** – In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –
> (a) Kaitiakitanga:
> [(aa)The ethic of stewardship:]
> (b) The efficient use and development of natural and physical resources:
> …
> (d) Intrinsic values of ecosystems:
> …
> (f) Maintenance and enhancement of the quality of the environment:
> (g) Any finite characteristics of natural and physical resources:

Whether land use controls involving GMO-related land uses would promote sustainable development in the district, would require consideration by the WDC of section 14(1)(h) of the LGA.

14. Principles relating to local authorities

(1) In performing its role, a local authority must act in accordance with the following principles:

…

(h) in taking a sustainable development approach, a local authority should take into account –

(i) the social, economic, and cultural well-being of people and communities; and

(ii) the need to maintain and enhance the quality of the environment; and

(iii) the reasonably foreseeable needs of future generations.

3.2 Additional statutory provisions under the RMA for district plans

The RMA stipulates that each territorial authority prepare a district plan[4] to assist it to carry out its functions in order to achieve the purpose of the Act.[5] For the purpose of carrying out its functions under the RMA and achieving the objectives and policies of its district plan, a territorial authority is empowered to include in its plan rules which prohibit, regulate, or allow activities.[6] In making a rule, the territorial authority is to have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect.[7]

Preparing district plan provisions to address GMO-related land uses as a significant resource management issue means the WDC needs to comply with section 74(1) of the RMA.

74. Matters to be considered by territorial authority – (1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations.

Section 31 states:

31. Functions of territorial authorities under this Act - (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use,

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4 S73(1).
5 Ibid, s72.
6 Ibid, s77B.
7 Ibid, s76(3).

development, or protection of land and associated natural and physical resources of the district:

(b) The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –

…

(ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and

…

(f) any other functions specified in this Act.

The definition of "effects" in section 3 is:

3. Meaning of "effect" – In this Act, unless the context otherwise requires, the term "effect" … includes-

(a) Any positive or adverse effect; and
(b) Any temporary or permanent effect; and
(c) Any past, present, or future effect; and
(d) Any cumulative effect which arises over time or in combination with other effects-

regardless of the scale, intensity, duration, or frequency of the effect, and also includes-

(e) Any potential effect of high probability; and
(f) Any potential effect of low probability which has a high potential impact.

Section 32 states:

32. Consideration of alternatives, benefits, and costs- (1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by-

…

(c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1); or
(d) the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1.
(2) A further evaluation must also be made by-
(a) a local authority before making a decision under clause 10 or clause 29(4) of Schedule 1; and
(b) the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.
(3) An evaluation must examine-
(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
(4) For the purposes of this examination, an evaluation must take into account-
(a) the benefits and costs of policies, rules, or other methods; and
(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

> (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
> (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.

Because there is a presumption in section 9 of the RMA that land can be used unless there are specific provisions in a plan which prohibit that or require a resource consent, a section 32 analysis needs to show why that presumption should be rebutted and why precautionary objectives, policies, and methods are needed to manage environmental risk as the most appropriate ways to achieve the purpose of the RMA.[8]

The reference to "risk" in section 32(4)(b) in the context of uncertain or insufficient information would suggest a need to consider management steps which anticipate future adverse effects which cannot be quantified by a probabilistic risk analysis.[9]

A precautionary risk management approach involves taking anticipatory measures and considering alternatives in light of potential significant or irreversible harm that could result from proceeding on the basis of uncertain and/or inadequate information.[10]

A precautionary approach to managing environmental risk is recognised in section 3(f), section 5(2)(a)(b) and (c), section 7, and section 32(4) of the RMA.

Any objective to take a precautionary approach to managing environmental risks associated with GMO-related land uses, the development of policies to establish GMO-exclusion areas or GMO-management areas, and methods for implementing such an objective and policies in a district plan, need to accord with the provisions of Part II, sections 31 and 32, and any relevant regulations pursuant to the RMA.

Therefore, I am of the opinion that there is jurisdiction under the RMA for the WDC, and the Environment Court standing in its place, when considering a district plan

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8 Cf the position with the coastal marine area, water, and air where there is a reversed presumption and activities involving such resources are prohibited unless a section 32 analysis shows that plan provisions or resource consent procedures will promote the purpose of the RMA.

9 Section 32(4)(b) is wider than the wording in section 7 of the HSNO Act which refers to scientific matters when taking a precautionary approach.

10 The precautionary approach is discussed further in section 4 of my opinion.

reference, to control land uses regarding activities which involve GMOs in order to promote the sustainable management of natural and physical resources.

3.3 Statutory provisions under the LGA for long-term council community plans

If the community believes an outcome it wants in the district, in terms of its present and future social, economic, environmental and cultural wellbeing, is to have GMO-related activities excluded or managed in restricted areas, such an outcome could be included in a long-term council community plan.[11]

This is the best strategic instrument in the LGA in which to set out a significant policy statement in order to promote sustainable development which reflects community values concerning GMO-related matters.[12] Section 93(1) of the LGA requires every local authority to have a long-term council community plan at all times.

The processes for adopting a long-term council community plan and its general content are stated in Part 6 of the LGA. The provisions also set out the obligations and special consultative procedures for the determination and adoption of such a plan.

In section 5 of the LGA, "community outcomes" in relation to a district or region, means:

> **5. Community outcomes,** in relation to a district or region, -
>
> (a) means the outcomes for that district or region that are identified as priorities for the time being through a process under section 91; and
>
> (b) includes any additional outcomes subsequently identified through community consultation by the local authority as important to the current or future social, economic, environmental, or cultural well-being of the community.

Under section 91(2) of the LGA, the purposes of the identification of community outcomes include, inter alia:

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[11] A long-term community plan has a much longer focus than the annual plan.

[12] Pursuant to Part 1 of Schedule 10, a long-term community plan should set out a summary of the local authority's policy on determining significance (as defined in section 5).

> **91. Process for identifying community outcomes**
>
> …
>
> (2) The purposes of the identification of community outcomes are –
>
> (a) to provide opportunities for communities to discuss their desired outcomes in terms of the present and future social, economic, environmental, and cultural well-being of the community; and
> (b) to allow communities to discuss the relative importance and priorities of identified outcomes to the present and future social, economic, environmental, and cultural well-being of the community;

A long-term council community plan, once adopted by resolution of a local authority has the effect of providing a formal and public statement of the authority's intentions in relation to the matters covered in the plan (s96(1)), which could include outcomes involving GMO-related activities within its district. As a statement of intention only, the plan is non-binding in the sense that once it is adopted a local authority may, subject to limitations under sections 80 and 96, make decisions inconsistent with its plan under section 96(3). No person is entitled to require a local authority to implement a plan's provisions under section 96(4).

Therefore, the WDC has jurisdiction to develop a long-term council community plan to address sustainable development approaches to manage risks associated with GMO-related land use activities pursuant to the LGA.

3.4 Statutory provisions under the LGA for bylaws

Section 145(b) of the LGA provides a general bylaw-making power for territorial authorities who may make bylaws for their district for the purpose of "protecting, promoting and maintaining public health and safety".[13]

Section 155(1) of the LGA provides:

> **155. Determination whether bylaw is appropriate**
> (1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.

[13] Pursuant to section 86, the special consultative processes need to be followed.

Therefore, the WDC has jurisdiction to develop and promulgate bylaws for its district addressing perceived health risks associated with GMOs pursuant to the LGA.

3.5 The HSNO Act and the RMA

Whether the HSNO Act precludes objectives, policies, and methods for managing risks associated with land uses involving GMOs being included in a district plan needs to be addressed.

For a useful summary of the scheme of the HSNO Act, see *Mothers against Genetic Engineering Inc v Minister for the Environment.*[14] Since that decision, which sets out the approval procedures to do with new organisms being imported, developed, field-tested or released, the 2003 Amendment to the HSNO Act has been enacted and addresses conditional releases.

The purpose of the HSNO Act as stated in section 4 is to:

> protect the environment, and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms.

The purpose of the RMA is stated in section 5:

> **5. Purpose -** (1)The purpose of this Act is to promote the sustainable management of natural and physical resources.
> (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –
> (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
> (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
> (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

While both enactments have provisions in common and refer to the protection of the environment and the health and safety of people and communities, the focus of the HSNO Act is clearly more limited, applying only to hazardous substances and new

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14 CIV2003-404-673.

organisms.[15] Although the guiding principles which inform a decision-maker when acting under the RMA and the HSNO Act are couched in similar language they are not the same in every respect and relate to achieving different statutory purposes.[16]

Section 25 of the HSNO Act states:

> **25.** Prohibition of import, manufacture, development, field-testing, or release – (1) No -
>
> (a) hazardous substance shall be imported, or manufactured: and
>
> (b) new organisms shall be imported, developed, field-tested or released: otherwise than in accordance with an approval issued under this Act or in accordance with Parts XI to XV of this Act.

The principal question, when interpreting the provisions of the HSNO Act and the RMA, is whether the HSNO Act, being later in time, expressly or impliedly precludes the WDC from developing and implementing district plan provisions which are aimed at managing risks associated with GMO-related land uses.

Where two statutes deal with the same subject matter and it is reasonably possible to construe the provisions so as to give effect to both, then that must be done.[17] In such a case the correct approach to interpretation is to first attempt to give each its effect without creating conflict or inconsistency between the two. It is only in cases where statutes are "so inconsistent with, or repugnant to the other that the two are incapable of standing together" that it is necessary to decide which statute is to prevail.[18]

Whether there has been an express or implied repeal of the RMA is addressed by firstly comparing the extent of the overlap of issues in both statutes.

In *Minister of Conservation v Southland District Council*[19] the Environment Court addressed the overlapping provisions of the RMA and the Forests Amendment Act

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15 For example, the definition of "natural and physical resources" are the same in both statutes. Cf definition of "effects" in the RMA (s3(f)) which is precautionary and not found in the HSNO Act.

16 Sections 6, 7 and 8 of the RMA and sections 5, 6, 7 and 8 of the HSNO Act.

17 See *Stewart v Grey County Council* [1978] 2 NZLR 577, 583.

18 Ibid. 583.

19 A039/01, 17.

1993.[20] It considered the purpose of the two statutes, and applying the principles of statutory interpretation concerning overlapping statutes, held:

> The stated purpose of each Act refers to sustainable management. The definition of sustainable forest management in Part IIIA shows that it is concerned with the sustainability of the forest. By comparison, the definition of sustainable management in the 1991 Act shows that it is concerned with effects on all natural and physical resources of the environment, particularly effects on resources that are external to those being managed. [para 77]
>
> The purpose of Part IIIA may overlap to an extent with the purpose of the 1991 Act, in that sustainability of an indigenous forest may also be part of sustainability of management of natural and physical resources generally. However, exempting certain SILNA land from the control for the purpose of sustainability of the forest does not conflict with applying to that land the control for the purpose of promoting sustainable management of natural and physical resources generally, particularly in respect of external effects. [para 81]
>
> From that consideration we find that although there is some overlap of issues between the two enactments, they are capable of being construed so that they stand together, each having its effect without creating conflict between them. [para 84]

Where there is overlap between the two statutes and inconsistency is unavoidable, then the specific statute will prevail over the general. In *Stewart v Grey County Council* the Court found the Mining Act 1971 prevailed over the Town and Country Planning Act 1953, as the Mining Act was an exclusive code with regard to the use of land for mining purposes and thus pre-empted the land use control provisions of the Town and Country Planning Act, p584.

In principle, the general provision remains intact but it is inapplicable to the situation covered by the specific legislation and is impliedly repealed.[21] An example is the case of *Ngati Kahu Ki Whangaroa v Northland Regional Council*[22] where the Court found that the effect of the Fisheries Act 1996 was to exclude the functions of the

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20 The Forests Amendment Act 1993 inserted a new Part IIIA in the Forests Act 1949. Part IIIA states:

> *The purpose of this Part of this Act is to promote the sustainable forest management of indigenous forest land.*

The term "sustainable forest management" is defined as follows-

> '*Sustainable forest management' means the management of an area of indigenous forest land in a way that maintains the ability of the forest growing on that land to continue to provide a full range of products and amenities in perpetuity while retaining the forest's natural values.*

The term "indigenous forest land" is defined as follows-

> *'Indigenous forest land' means land wholly or predominantly under the cover of indigenous flora.*

21 Burrows, *Statute Law in New Zealand* (2nd Ed), 277.

22 A95/2000, 17.

relevant local authorities under the RMA where an overlap existed. There are also specific provisions in the RMA which do that.[23] There are no provisions in the HSNO Act which exclude the functions of a district council under the RMA.[24]

Also, the functions of the Environmental Risk Management Authority (ERMA) under the HSNO Act are different from those of the WDC under section 31 of the RMA.

Section 11 of the HSNO Act states:

> **11. Powers, functions, and duties of Authority –** The Authority may-
> (a) Advise the Minister on any matter relating to the purpose of this Act, including, but not limited to, -
> (i) The extent to which persons are complying with the provisions of this Act:
> (ii) Inconsistencies or conflicts between any controls placed on hazardous substances and new organisms under this Act and any controls placed on any hazardous substance and new organisms under any other Act:
> (iii) The consideration and investigation of the use of environmental user charges in accordance with section 96 of this Act:
> (b) Monitor and review-
> (i) The extent to which the Act reduces adverse effects on the environment or people from hazardous substances or new organisms:
> (ii) The enforcement of this Act including, but not limited to, the exercise of any power under section 103 of this Act by any enforcement officer:
> (c) Promote awareness of the adverse effects of hazardous substances and new organisms on people or the environment and awareness of the prevention or safe management of those effects:
> (d) Contribute to and cooperate with international forums and carry out international requirements as directed by the Minister:
> (e) Enquire into any incident or emergency involving a hazardous substance or a new organism:
> (f) Keep such registers relating to hazardous substances and new organisms as may be required by this Act or as may be necessary to administer this Act:
> (g) Carry out any powers, functions, and duties conferred on it by or under this Act or any other enactment.

ERMA is required to consider matters related to the environmental effects concerning a specific GMO rather than establishing integrated policies on a district-wide basis for

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23 See section 30(2) of the RMA: **30. Functions of regional councils under this Act** - …(2) The functions of the regional council and the Minister of Conservation [under subparagraph (i) or subparagraph (ii) or subparagraph (vii) of subsection (1)(d)] do not apply to the control of the harvesting or enhancement of populations of aquatic organisms, where the purpose of that control is to conserve, [use,… enhance, or develop any fisheries resources controlled under the Fisheries Act 1996].

24 The Environment Court has held the RMA is not subject to the Reserves Act 1977 when considering land which involves both statutes. See *Auckland Volcanic Cones Soc Inc v Transit NZ Ltd* A203/2002.

managing land uses in order to promote the sustainable management of the natural and physical resources of the district.

Therefore, the functions of each authority need not produce inconsistent controls and as such it should be presumed that the HSNO Act was not intended to limit the general provisions of the RMA and the functions of a territorial authority in relation to managing the risk of significant or irreversible adverse environmental effects from the use of land for GMO-related activities to promote the purpose of the RMA.

A contextual interpretation of the HSNO Act and the RMA suggests that the application of the decision-making process by ERMA under the HSNO Act and the WDC under the RMA need not be incompatible with the legislative regimes in each statute.[25]

However, the WDC would need to take into account ERMA's view of site specific matters and, to use the High Court term, "tread carefully".[26]

The High Court in *Bleakley v Environmental Risk Management Authority*[27] recognised that the RMA provisions go beyond the provisions of the HSNO Act.

> Given that the authority found there was no such danger of escape, there was no obligation in law – and it certainly was not appropriate – for the authority to venture into more orthodox pollution issues. It is true that the Act has an environmental protection purpose, as does the Resource Management Act, however, that prima facie wide purpose is to be read in the context of its subject-matter and specifics. It is to protect the environment against hazardous substances and organisms, and not on a wider scale. The wider scale is the role of others under general legislation in the RMA. Thus, if spraying milk on pastures were to raise a concern that heritable material might escape, that would be a concern for the authority. If after authority action, there was no risk of escape of heritable material but there remained a risk of another environmental character – eg destruction of aquatic life in streams – that would be a concern to be dealt with under the Resource Management Act. It would not be an authority matter, despite the breadth of the opening sections of the Act. It is a not unfamiliar judicial problem to reconcile legislation relating to specific activities, and a general legislation in the Resource Management field. This ground of appeal cannot succeed.

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25 When interpreting the provisions of the statutes, the Interpretation Act 1999 applies.
26 See *The Director-General of Civil Aviation v the Planning Tribunal* CP128/95, p11.
27 [2001] 3 NZLR 213, 243.

In *Minister of Conservation v Southland District Council*, when comparing the provisions of the RMA and the Forests Amendment Act, the Environment Court stated:

> The intended relationship between Part IIIA and the 1991 Act is indicated by the duty imposed by Part IIIA that any resource consent required under the 1991 Act for cutting or felling any indigenous timber pursuant to a sustainable forest management plan is to be obtained. [para 79]

Section 142(2) of the HSNO Act expressly addresses the Act's relationship to the RMA with regard to the storage, use, disposal, or transportation of any hazardous substance, requiring every person exercising a function under the RMA to comply with the HSNO Act and any regulations made under the HSNO Act in that regard. However, it is recognised in the HSNO Act that greater levels of control can be imposed pursuant to the RMA.

Section 142(3) states that:

> nothing in subsection (2) of this section shall prevent any person lawfully imposing more stringent requirements on the storage, use, disposal, or transportation of any hazardous substance than may be required by this Act… where such requirements are considered necessary by that person for the purposes of the Resource Management Act 1991.

There is nothing in the HSNO Act to preclude the WDC imposing greater levels of control in its district plan for RMA purposes than those imposed by ERMA under the HSNO Act even though the controls relate to GMO-related land uses.[28]

In *The Director General of Civil Aviation v The Planning Tribunal*[29] the Tribunal considered the effect of an aircraft accident upon the environment. It found that although an accident may be a low probability, its potential effect is such as to militate against the granting of a resource consent for a heliport in the district. Although the Director-General of Aviation had issued a conditional determination in respect of the proposed heliport, and the Civil Aviation Authority as the statutory body charged with investigating whether the proposed heliport would be safe had

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28 Often, more than one statute involves a consenting or standards regime for addressing natural and physical resources; for example, the RMA and the Building Act 1991. See *Christchurch International Airport v Christchurch City Council* [1997] 1 NZLR 573.

29 CP128/95.

approved it, the Planning Tribunal was entitled to take a more particular look at the communities affected.

> In this case the Tribunal directed itself precisely to these matters and concluded that an air accident in this area, although of low probability, would have a high potential impact on the social and economic conditions of the local communities dependent on the tourist trade. Plainly air safety must be considered by the Council and the Tribunal. While the essential function of the Director is to set the minimum safety standards that are acceptable, and that must involve some degree of risk, and while in the ordinary situation that would normally satisfy a Council or the Tribunal, nevertheless the Tribunal is entitled to take a more particular look at the communities affected. I think too as a matter of law it is open to the Tribunal to require a higher degree of safety than that required by the Director. A Council and the Tribunal is not necessarily thereby contradicting the Director, as the issues are not identical. Further, the Director's requirements could involve obvious error and it would be contrary to the public interest that prima facie this should bind a Council or the Tribunal.(pp8-10)

If the Council imposed a lower standard of safety than ERMA, the ERMA controls would prevail in specific situations. The application of the RMA cannot lower the level of control which is imposed by ERMA under the HSNO Act. If for RMA purposes, which may relate to district-wide socio-economic or cultural matters rather than just health and safety matters or potential impacts on biophysical values of the area, further controls are needed, there is nothing in the HSNO Act to prevent such controls being included in a district plan.

ERMA is obliged to co-operate with a district council where resource consents for land use activities are required under the RMA.

The Hazardous Substances and New Organisms (Methodology) Order 1998 states that ERMA:

> 2(e) "Must co-operate with other bodies (for example, government departments, Crown entities, and local bodies), in particular, when a hazardous substance or new organism also requires approvals under other enactments."

Therefore, I am of the opinion that the provisions of the HSNO Act do not preclude the WDC from exercising its jurisdiction to control GMO-related land uses within its district plan pursuant to the RMA.

4.0 PRECAUTIONARY APPROACH TO MANAGING ENVIRONMENTAL RISKS IN A DISTRICT PLAN PURSUANT TO THE RMA

A checklist for establishing district plan provisions is:

To-

- Identify issues.
- Determine environmental results to be achieved.
- Specify objectives.
- Specify policies.
- Specify methods including rules.
- Specify standards, terms and conditions for rules or activities.[30]

If a resource management issue is to manage GMO-related land use risks where there is uncertainty, a lack of information, and complex environmental systems, a district plan's objectives and policies will be largely based on value-judgements about what level of control will promote sustainable management of the natural and physical resources of the district. Methods, such as rules and standards for implementing such risk management objectives and policies, are likely to be more mechanistic.

4.1 Addressing environmental risk management in objectives and policies in a district plan

Environmental risk decisions involve legal, scientific, cultural, economic, and political questions. Ultimately, environmental risk management is governed by values which in turn determine the choices made by decision-makers and society at large.

Environmental risk is the product of the probability of untoward environmental harm resulting from the activity, and the severity of the consequences of unintended adverse effects (consequence rating), especially those which in the future might result in harm to people or damage to other components of the environment. A number of

[30] In preparing a plan a territorial authority must have regard to management plans and strategies prepared under other Acts (s66(2)).

qualitative terms are used with environmental risk, such as "acceptable," "tolerable," and "minor." These terms take on particular significance when one needs to address the risk of serious or irreversible environmental impacts under the RMA.

If risk is seen as a continuum from minor to significant, then a local authority must decide what is so significant for the environment that it is unacceptable, because it would not promote the goal of the RMA and therefore needs to be managed.

Traditionally, the role of the civil courts involves considerations of the onus of proof, causality, party contributions and damages, when adjudicating and deciding common law actions, and the courts are concerned about what has happened in the past, (the law normally following changing social values). Whereas, a local authority and the Environment Court, when dealing with the risk of potentially significant or irreversible adverse environmental effects, have to address worst-case situations, future policy and planning issues, and evidential concepts involving the treatment of scientific uncertainties, by considering risk management techniques such as the precautionary approach. Risk assessment, decision-making, and management need to be ongoing, as environmental risk is changing all the time.

The precautionary principle is a post-modern approach to making decisions about risk management where it is not possible to remove scientific and behavioural uncertainties systematically, and ways need to be found to regulate the use and development of natural and physical resources that take such uncertainties into account.

It helps frame a process for making value-choices in the absence of reliable scientific evidence of the likelihood of some environmental impacts and the seriousness and irreversibility of their consequences.

The precautionary principle is an approach which has been developed in international environmental law.[31] For example, the Rio Declaration, Principle 15 states:

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[31] For example, the Rio Declaration on Environmental Development, Principle 15, Agenda 21, Chapter 17. Agenda 21 states the principle, inter alia, as: "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if the cause and effect relationships are not fully established scientifically." The precautionary

> In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to protect environmental degradation.

The application of the precautionary principle is essentially a risk management approach and a values-based policy response to environmental risks rather than a quantitative risk assessment approach.

It is a principle that allows for reflexive management responses to serious environmental risks. It facilitates adaptive approaches to managing these risks so that as information comes to hand management approaches can be reviewed, amended and refined. It allows for emphasis to be placed on a participatory process and the use of various disciplines to determine on behalf of society what an acceptable risk is.

If there is reasonable uncertainty regarding possible environmental damage arising out of a proposed course of action, then risk management becomes an established decision norm by applying the precautionary principle or applying a precautionary approach. Uncertainty and a lack of information lead to a bias towards precaution rather than being neutral in environmental decision-making.

In *Shirley Primary School v Telecom Mobile Communications Ltd*[32] the Environment Court considered that the wording of section 3(f) encapsulates precisely what the precautionary approach is about. (s3(f)). It considered it is unnecessary to rely on international expressions of the precautionary principle.[33] Section 3(f) states:

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concept has been included in the preamble to the Convention on Biological Diversity 1992: "where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimise such a threat". The 1996 Environment 2010 Strategy, Ministry for the Environment, states: "the precautionary principle should be applied to resource management practice, where there is limited knowledge or understanding about the potential for adverse environmental effects or the risk of serious or irreversible environmental damage." See also the most recent Sustainable Development Action Programme (January 2003) that endorses the principle.

32 [1999] NZRMA 66.

33 However, there may be occasions where it is still necessary to apply the precautionary principle and the court has not excluded that possibility. See *Ngati Kahu Ki Whangaroa v Northland Regional Council* A95/2000.

> **3. Meaning of "effect"** – In this Act, unless the context otherwise requires, the term "effect" … includes –
> …
> (f) Any potential effect of low probability which has a high potential impact.[34]

In *Golden Bay Marine Farmers v Tasman District Council*[35] the Environment Court considered the application of a precautionary approach in reference proceedings on a proposed regional coastal plan. It held:

> A precautionary approach in reference proceedings on a proposed plan or plan change may be applied in various ways:
> (a) through the application of and analysis of the factual evidence under the provisions of s.3 RMA, particularly s.3(f) – that regard be had "*to potential effects of low probability but high potential impact*";
> (b) after findings of fact are made, a precautionary approach may be inbuilt into the various relative provisions of the plan – objectives, policies, rules, methods, etc;
> (c) such a precautionary approach may define the classification of the activity – prohibited, discretionary, controlled – depending on the nature of the activity;
> (d) such an approach may be supported by statutory management plans or other methods;
> (e) such an approach may be promoted through the application of review conditions under s.128, and decisions on enforcement orders where the Environment Court has a discretion to make orders in certain circumstances (s.319(2)).[36]

If the WDC wishes to apply a precautionary approach when considering the use, development, and protection of natural and physical resources of the district, then there is a real advantage if it states that in the objectives and policies of the district plan, so that a hearing committee or the Environment Court is directed to act on known ethical concerns for the district, involving future generations.

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34 In *Clifford Bay Marine Farms Ltd v Marlborough District Council* C131/2003 the Environment Court confirmed its interpretation and application of section 3(f) in the *Shirley Primary School* case.

35 W42/01 at 76. The New Zealand Coastal Policy Statement (the NZCPS) includes the precautionary approach to activities with unknown but potentially significant adverse effects. This means a regional coastal plan needs to reflect such an approach to environmental risk management. Policy 3.2.10.

36 The Court also considered on the evidence that several parties were attempting to turn the principle into a standard, whereas it is an approach fully recognised in the provisions of the RMA.

A strong precautionary risk management approach available to the WDC is to implement a policy of establishing GMO-exclusion areas within which GMO-related land uses are prohibited.

An alternative precautionary risk management approach which involves a policy of establishing a GMO-management area or areas within which GMO-related land uses are controlled by risk management methods including rules, while GMO-related land uses outside the management areas are prohibited, is also available to the WDC.

If a local authority and Environment Court were left to address the potential effects of GMO-related land use without guiding precautionary risk management objectives and policies in a district plan, the approaches taken by the Environment Court to environmental risks in *Land Air Water Association v Waikato Regional Council*[37] would apply. These are a consideration of:

(i) Evidence of adverse effects or risk to the environment, rather than mere suspicion or innuendo;
(ii) The gravity of the effects, regardless of scientific uncertainty, if they do occur;
(iii) Uncertainty or ignorance regarding the extent, nature, or scope of potential environmental harm;
(iv) The effects on the environment – whether they are serious or irreversible;
(v) Recognition that the Act does not endorse a "no-risk" regime;
(vi) The impact on otherwise permitted activities.

4.2 Methods for incorporating precautionary rules and standards into district plans

4.2.1 **Rules**

Section 76(1)(a) and (b) state:

> **76. District rules –** (1) A territorial authority may, for the purpose of –
> (a) Carrying out its functions under this Act; and
> (b) Achieving the objectives and policies of the plan, -
> include [rules in a district plan].

[37] A110/01. For another Environment Court case addressing environmental risks see *Contact Energy Ltd v Waikato Regional Council* A4/00.

Rules can categorise GMO-related land use activities and impose environmental standards.[38]

Categorisation of activities for GMO-exclusion areas

A strong precautionary approach is to create a GMO-exclusion area within which GMO-related land uses are categorised as prohibited activities. This means it would require a plan change application and a section 32 analysis to change the activity status or redefine the exclusion area.

Categorisation of activities for GMO-management areas

If a GMO-management area were to be established, site-specific approvals may be contingent on a low acceptability level of environmental risk (non-complying activity status). A further method is to approve the activity subject to conditions and environmental standards additional to any controls ERMA may have imposed (restricted discretionary or controlled activity status).

4.2.2 **Environmental Standards for GMO-management areas**

Environmental standards

There are three principal types of environmental risk standards:

- environmental technology standards;
- environmental performance standards; and
- environmental process standards.

Environmental technology standards

These are prescriptive standards setting out environmental safeguards or methods to be used in specific situations. These standards prescribe the technology to be used to achieve planned environmental outcomes. They are often expressed in numerical or narrative terms. Therefore, when preparing environmental technical standards at the

[38] S77B.

time of consultation with experts, industry, and those members of the public with a particular interest in the risks being addressed, a range of values is drawn on. These standards rely on science and the local authority's understanding of science to predict the best approach to managing environmental risk. They are sometimes referred to as design or specification standards. The main drawback of using environmental technological standards in statutory plans and resource consent conditions when compliance with a technological standard is all that is required to have legal authority to continue with an activity, can be that because the best science at the time of the implementation applies, there may be no incentive for developers or consent authorities to invest in research and development to find better ways for managing environmental risk.

Environmental performance standards

Environmental performance standards are usually framed in such a way that environmental policy goals are set out for developers by local authorities. In the future, local authority decision-makers and developers can work together to meet environmental performance standards, and to include in plans and resource consent conditions[39] environmental performance goal outcomes which are designed to place less stress on the environment and mitigate risks. Predictive modelling with conservative risk thresholds is a precautionary approach to setting performance standards. However, uncertainty, a lack of information and complex environmental systems may make it difficult to establish what acceptable environmental performance standards are when addressing significant GMO-related environmental risk.

Environmental process standards

Applying the precautionary approach as a part of any regulatory regime, requires a format which includes not only formal rules prescribing what action should be taken (formalistic), but also goals to guide actions (contextual). The formalistic approach to

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[39] Common law principles for planning conditions require that the conditions (i) be imposed for a planning purpose and not an ulterior purpose, (ii) they must fairly and reasonably relate to the development proposed, and (iii) they must not be so unreasonable that no reasonable planning authority could have imposed them; see *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] All ER 731, and applied in *Housing New Zealand v Waitakere City Council*, CA158/00.

regulatory regimes has the advantage of consistency for environmental decision-makers. But it often needs to be developed using a scientific basis so that "numerical", environmental, technological, and environmental performance standards can be set, whereas, using the contextual approach in a regulatory regime involves providing the tools to select the best options for addressing uncertainties surrounding environmental risks.

The inclusion of a precautionary approach in a regulatory regime involves placing risk management in a process context for deciding what value to place on the environment (when determining what is acceptable risk in the long term), and for setting the management goals and the ways of achieving them. Environmental standards which allow this to happen are sometimes referred to as environmental process standards.

Process-based standards address procedures and parameters for achieving a desired result, in particular, the process to be followed in managing identified risks of serious or irreversible environmental adverse effects. These are useful standards when addressing environmental risks that are difficult to measure because of uncertainty and changing information. They are adaptive management-orientated standards which identify processes to be followed to achieve sustainable management.

4.3 Adaptive risk management methods for GMO-management areas[40]

Another precautionary risk management approach is to use adaptive risk management methods.

Adaptive risk management techniques are derived from new scientific and ecological insights that interpret the natural world as dynamically changing, full of uncertainty, and continually surprising.[41] Management actions and monitoring programmes are carefully

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40 The Environment Court has accepted such methods as appropriate precautionary risk management approaches when addressing aquaculture development and sustainability of the marine ecosystem in *Kuku Mara Partnership (Forsyth Bay) v Marlborough District Council* W25/2002, *Golden Bay Marine Farmers v Tasman District Council* W19/2003, and *Clifford Bay Marine Farms Ltd v Marlborough District Council* 131/2003.

41 A T Iles "Adaptive Management: Making Environmental Law and Policy More Dynamic, Experimentalist and Learning" (1996) *Envtl. & Pl LJ 288.*

designed to generate reliable reporting and to clarify the reasons underlying outcomes, actions and objectives, and are then adjusted, on the basis of this feedback and improved understanding. In addition, decisions, actions and outcomes are carefully documented and communicated to others so that knowledge gained through experience is passed on.[42]

If precaution is placed at the forefront of managing risk then existing RMA methods are useful tools. Appropriate adaptive precautionary risk management techniques involving plan provisions, and resource consent conditions, include the use of conditions subsequent which incorporate procedures and environmental controls. These allow for risk management procedures to be used after a proposal is under way to allow for the management of the proposal to adapt to new and changing risk information.

Methods which allow the management of environmental risks where there is a lack of information and uncertain science, include staging, monitoring, management plans, best practicable option (BPO), co-regulation, reviews, limited resource consent terms, financial contributions, performance bonds and financial assurance requirements.[43]

A district plan can set out formulae for calculating financial instruments, funding research, and monitoring requirements as effective precautionary measures. If damage were to occur by way of environmental contamination from approved sites within a managed area, then financial instruments can be used requiring the land user to pay for clean-up costs and effective mitigatory steps.[44]

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42 See CS Holling (ed) *Adaptive Environmental Assessment and Management*, John Wiley & Sons, Chichester, 1978, 286. Examples of adaptive management approaches are seen in LH Gunderson, CS Holling, S Light (eds), *Barriers and Bridges of the Renewal of Ecosystems and Institutions*, Columbia University Press, New York, 1995; KN Lee, *Compass and Gyroscope: Integrating Science and Politics for the Environment*, Island Press, Washington DC, 1993; DS Slocombe, "Implementing Ecosystem-based Management" (1993) 43 *Bioscience* 612; and LH Gunderson, S Light, CS Holling, "Lessons from the Everglades: Learning in a Turbulent System" (1995) *Bioscience* Supplement S-66.

43 The High Court has confirmed the ability to change the rate and way a development proceeds, through the use of a review condition specified in a resource consent in *Minister of Conservation and others v Tasman DC* HC, Nelson C1V2003-485-1072, 9.12.03

44 See section 108, RMA for the ability to impose financial contributions by way of resource consent conditions.

These methods allow for environmental administrators and decision-makers to work through the tensions that might occur with the conflicting interests and values of applicants to use land for GMO-related activities, local authorities, members of the community, iwi and others. The whole process is designed to be transparent.

A further opinion would be required, accompanied by expert economic and planning advice, before decisions could be made as to the appropriate categorisation of GMO-related land use activities and the most effective and efficient controls for inclusion in a GMO-management area.

5.0 THE ABILITY TO CHALLENGE PROVISIONS IN A DISTRICT PLAN, COMMUNITY PLAN AND BYLAWS IN THE ENVIRONMENT COURT OR HIGH COURT

5.1 Environment Court and RMA

The Environment Court is able to consider whether objectives, policies, and methods developed by the WDC for inclusion in its district plan, are valid pursuant to the relevant provisions of the RMA on a plan reference.

The court has held that value-judgements are normally not justiciable, but the beliefs and the information upon which the values are developed, are able to be examined by the court. See *Ngati Hokopu Ki Hokowhitu v Whakatane District Council.*[45]

Therefore, the evaluation carried out under section 32 by the WDC when developing any objective, policy or method, to promote the purpose of the RMA needs to be robust. It needs to show why the resource management issues involved with GMO-related land uses cannot be addressed by leaving any risk assessment and management decisions to ERMA pursuant to the HSNO Act.

Considerable multi-disciplinary work would be required to carry out such an evaluation.

5.2 High Court and long-term council community plans under LGA

Because it is promulgated pursuant to statutory powers, a long-term council community plan developed under the LGA as a strategic statement of what is considered will promote sustainable development in a district can be reviewed in the High Court. However, the High Court is unlikely to set aside the provisions of a statutory instrument that contains policy statements based on community values. This is because, as one author has noted:

> By contrast, courts tend to consider that except in extreme cases, they should not interfere with decisions of policy made by governmental bodies. This is partly because judges are not elected by or directly answerable to the people; and partly

[45] C168/2002.

> because court procedures are not seen as the most appropriate way of making policy decisions.[46]

The reason for that approach is stated by Richardson P in *Wellington City Council v Woolworths NZ Ltd (No.2).*[47]

> There are constitutional and democratic constraints on judicial involvement in wide public policy issues. There comes a point where public policies are so significant and appropriate for weighing by those elected by the community for that purpose that the Courts should defer to their decision except in clear and extreme cases. The larger the policy content and the more the decision making is within the customary sphere of those entrusted with the decision, the less well equipped the Courts are to reweigh considerations involved and the less inclined they must be to intervene.

However, the procedures followed by the WDC in establishing the long-term community plan could be challenged in the High Court. Such challenges can be based on the fact that the procedures were not followed according to law, that a breach of natural justice was involved, that the local authority acted unreasonably, unlawfully or irrationally, or that the long-term community plan is ultra vires the LGA because it addresses matters which it has no jurisdiction to address pursuant to the LGA.[48]

5.3 High Court and bylaws under LGA

In order for a bylaw to be invalidated by the courts, it must be deemed so unreasonable that no reasonable body of persons could in good faith have passed it.[49] However, a court is slow to hold void a bylaw that has been validly made by a local authority, on the grounds of unreasonableness, and it is presumed that the local authority will not act unreasonably.[50] The superior courts will often defer to local authorities with regard to their bylaw-making powers.[51]

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46 P Cane, *An Introduction to Administrative Law* (3rd ed), Clarendon Press, Oxford, 1996, 112.

47 [1996] 2 NZLR 537 (CA).

48 See *Takapuna City Council v Auckland Regional Council* [1972] NZLR 705, p711; "The law on this topic is already well settled, though its application may sometimes be difficult. The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential upon those things which the legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited." (9 *Halsbury"s Laws of England*, 3rd ed, 62 para 129).

49 See *McCarthy v Madden* [1914] 33 NZLR 1251, 1259.

50 See *Everton v Levin Borough Council* [1953] NZLR 134, 136.

51 In *McCarthy v Madden* [1914] 33 NZLR 1251, 1268.

However, a bylaw may be declared invalid where it unnecessarily interferes with a primary right of the public without producing a corresponding benefit to the inhabitants of the locality.[52] A bylaw that is partial and unequal in its operation may also be declared invalid on the grounds of unreasonableness.[53]

In this case a bylaw passed by a local authority that would prohibit GMO-related activities would not extinguish an existing right. Indeed, section 25 of the HSNO Act prohibits the field-testing or release of any GMOs without approval under the Act. As such, no right under the general law is being abridged. Furthermore, section 145 of the LGA gives a local authority the power to make bylaws to protect, promote, and maintain public health and safety, which allows for the regulation of private activities in accordance with the empowering statute and for the prohibition of certain activities on these grounds. Such a bylaw may not be unreasonable in principle merely because it prohibits the release of GMOs considered to be of significant risk to public health and safety by a local authority.

Section 14 of the Bylaws Act 1910 states that no bylaw shall be invalid merely because it deals with a matter already dealt with by the laws of NZ, unless it is repugnant to the provisions of those laws. While the HSNO Act also deals with the assessment and management of risk for the purpose of the health and safety of people and their communities, this does not prevent a local authority from passing a bylaw prohibiting persons from trialling or releasing GMOs in the interest of public health and safety.

However, I am of the opinion that because the purpose of the HSNO Act is to "protect the environment and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms" (s4), a bylaw purporting to have an identical purpose, means it would be open to the High Court to declare it unreasonable if it were promulgated without an in-depth risk assessment of the sort undertaken by ERMA.

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52 See *Martin v Smith* [1933] NZLR 636, 642.
53 See *Hanna v Auckland City Corporation* [1945] NZLR 622, 631.

6.0 CONCLUSION

I am of the opinion that there is jurisdiction under the RMA for the WDC and the Environment Court to control land uses regarding activities which involve outdoor field-testing or the release of GMOs for research or commercial use, in order to promote the sustainable management of natural and physical resources.

There is nothing in the HSNO Act or the Hazardous Substances and New Organisms Amendment Act 2003 to preclude land use controls being included in district plans pursuant to the RMA. Providing the WDC changes its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations, then it has jurisdiction to impose land use controls for GMO-related activities.

I am also of the opinion that precautionary objectives, policies, and methods could be lawfully included in the WDC's district plan to manage risks involving GMO-related land uses.

I have considered the provisions of the LGA and am of the view that the sustainable development of the district could include the management of GMO-related risks. There could be strategic benefits from developing a sustainable development policy under the LGA for inclusion in a long-term council community plan. However, I am less confident that a bylaw prohibiting GMO-related activities for health and safety purposes, established under the LGA, could resist a legal challenge by judicial review in the High Court.

Dr R J Somerville QC
23 February 2004

31 March 2005

Thomson Wilson
Barristers & Solicitors
P O Box 1042
DX AP24512
WHANGAREI

Attention: Mr G J Mathias

Dear Partners

Opinion on land use controls and GMOs

Thank you for your letter of the 12th of December 2004.

Introduction

In my interim opinion of the 23rd of February 2004, I suggested:

> A further opinion would be required, accompanied by expert economic and planning advice, before decisions could be made as to the appropriate categorisation of GMO-related land use activities and the most effective and efficient controls for inclusion in a GMO-management area.

A report entitled *The Community Management of GMOs II - Risk and Response Options* (the report) has now been prepared by Messrs Terry and Kyle which addresses these matters. I have consulted with them over legal aspects raised in the report.

You have asked for my opinion on two points:

1. *Provide advice on an as required basis with respect to the options for framing a rule change under the Resource Management Act including comment on the merits of different generic options, such advice to be shared directly with other consultants assisting the Council on this matter.*

2. *Provide a review of a suggested plan change to assess it against the requirements of section 32 of the Resource Management Act, its expected robustness to legal challenge and any potential variations to the proposed rule that could improve it.*

Advice to consultants on options

In my interim opinion I set out a fundamental checklist for establishing district plan provisions for incorporating a precautionary approach to managing environmental risks pursuant to the Resource Management Act 1991 (the RMA).[1]

A checklist for establishing district plan provisions is:

To –

- Identify issues.
- Determine environmental results to be achieved.
- Specify objectives.
- Specify policies.
- Specify methods including rules.
- Specify standards, terms and conditions for rules or activities.

I am of the opinion the report contains sufficient information for the district council to undertake the above process. It identifies risk management options available pursuant to the RMA, and the consequences of potential adverse environmental effects (including on economic conditions) from using land in the district for GMO-related activities. It also highlights the ability to include financial instruments in a district plan as an efficient and effective risk management method.

In my opinion, subject to a comprehensive consultation programme with the community, from a legal perspective the report provides a sufficient foundation for the preparation of a specific chapter in a proposed district plan with an objective of managing risks associated with GMO-related land uses, and policies and methods to implement that objective in order to promote sustainable management of the land resources of the district pursuant to the RMA.[2]

1 Interim opinion, section 4, page 23.
2 Report, page 48.

Section 32 requirements

If the community urges the district council to prepare GMO-related land use risk management objectives, policies, and methods, to be incorporated into its proposed district plan, or a private plan change were promoted to do that, then section 32 of the RMA applies to the proposed plan provisions.

You have asked for my assessment of any suggested plan change in terms of section 32. The heading of section 32, "*consideration of alternatives, benefits, and costs*", describes the statutory purpose of the section when a district council evaluates a proposed plan change to address environmental risks associated with GMO-related land uses as a significant resource management issue for its area.[3]

The mandatory components of any evaluation are set out in section 32(3), and (4).

> (3) An evaluation must examine-
>
> (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
>
> (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
>
> (4) For the purposes of this examination, an evaluation must take into account-
>
> (a) the benefits and costs of policies, rules, or other methods; and
>
> (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

The way the work of Messrs Terry and Kyle has evolved means that at this stage it focuses on options for the council rather than suggesting specific draft plan provisions. Notwithstanding that, I am satisfied that there is sufficient information in the report to undertake a section 32 analysis if the district council were to proceed to consult with the community and develop objectives and policies for inclusion into its district plan to manage the level of environmental risk the community is prepared to accept in order to promote the sustainable management of the land resources of the district.

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[3] Section 5(2) and (3) of the Interpretation Act 1999 allows for the headings of sections to be used to establish the meaning of a provision.

However, if a district plan is to include financial instruments as a method for mitigating or offsetting adverse environmental effects resulting from GMO-related land uses, then further work is required before a section 32 assessment could be completed.[4]

Section 108(10) states:

> **108. Conditions of resource consents –**
> …
> (10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless –
> (a) The condition is imposed in accordance with the purposes specified in the plan [[or proposed plan]] (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and
> (b) The level of contribution is determined in the manner described in the plan [[or proposed plan]].

If the council were to consider, as part of a section 32 evaluation, that it was not appropriate to include objective(s), policies, and methods for managing environmental risks associated with GMO-related land uses (including the use of financial instruments) in order to promote sustainable management of the land use resources of the district, then it still has other statutory obligations pursuant to the RMA.

Even without plan provisions, if there was potential or actual damage from GMO-related land uses to adjacent land or to the wider community, the district council can become involved in enforcement issues pursuant to sections 17 and 314.

Because the council is a public authority and is obliged to act in the public interest when exercising its statutory duties, it can be subject to judicial review proceedings in the High Court for the way in which it exercises any discretion it has to act or not to act.

A relevant statutory duty is found in section 35, which states, inter alia:[5]

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[4] For a discussion of the challenges of undertaking a section 32 assessment when introducing financial instruments into a district plan to address adverse environmental effects from a proposed land use, see M.J. Grant, *Equity in the Environment? Financial Contributions* 7th RMLA Conference, Christchurch, September 1999, pages 11, 16, 17.

[5] An appeal on the grounds that a statutory body should be immune from a claim for negligence for a failure to enforce conditions of a water right (including a monitoring condition), was rejected by the Court of Appeal in *Taranaki Catchment Commission & Regional Water Board v Roach* [1983] NZLR 641.

> **35. Duty to gather information, monitor, and keep records** - (1) Every local authority shall gather such information, and undertake or commission such research, as is necessary to carry out effectively its functions under this Act.
> (2) Every local authority shall monitor-
> (a) The state of the whole or any part of the environment of its region or district to the extent that is appropriate to enable the local authority to effectively carry out its functions under this Act; and
> [(b) the efficiency and effectiveness of policies, rules, or other methods in its policy statement or its plan; and]
> (c) The exercise of any functions, powers, or duties delegated or transferred by it; and
> (d) The exercise of the resource consents that have effect in its region or district, as the case may be, -
> and take appropriate action (having regard to the methods available to it under this Act) where this is shown to be necessary.
> [(2A) Every local authority must, at intervals of not more than 5 years, compile and make available to the public a review of the results of its monitoring under subsection (2)(b).]

I note that there is reference in the report to civil liability issues which may face a district council concerning environmental damage resulting from GMO-related land uses.[6] It is not within the scope of my instructions to address this matter. However, public authority liability is a complex subject and in my opinion, one cannot assume that the district council would be immune from liability as a result of the way in which it exercises its statutory duties under the RMA, and particularly if it has made commitments to manage GMO-related land use activities in its long-term council community plan promulgated under the Local Government Act 2002.[7]

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6 At page 51 of the report there is reference to a Crown Law Office opinion of the 3rd November 2004: *Advice on potential for civil liability arising from rules controlling GMOs*.

7 For issues concerning civil liability and public authorities, see Butler and McLay *Liability of public authorities*, NZ Law Society Booklet June 2004. For a discussion of liability issues and GMO-related activities, see S. Todd, *Liability issues involved, or likely to be involved now or in the future, in relation to the use, in New Zealand, of genetically modified organisms and products"*; E.J. Currie *Liability for damage from genetic modification*, Biotechnology & Law 2004, 2nd Annual Lexis Nexis Conference, March 2004; Simon Terry and others *Who Bears the Risk? Genetic Modification & Liability* (2 ed, Chen Palmer & Partners and Simon Terry Associates Ltd, Wellington, 2001); Charles River Associates *Review of Chen, Palmer & Partners and Simon Terry Associates, Who Bears the Risk* (Charles River Associates (Asia Pacific) Ltd, Wellington, 2001); M. Christensen and P. Horgan "Genetic Modification: The Liability Debate" (unpublished, 2001) http://www.lifesciencenz.com/Repository/020118_liability.pdf *Liability for loss resulting from the development, supply, or use of genetically modified organisms*, Study Paper 14, Law Commission May 2002.

The law concerning claims for economic loss resulting from a breach of statutory duty by a public authority is not circumscribed and depends to a large extent on the nature of a relevant statutory duty.[8] The High Court has confirmed that it would expect to try and link common law obligations to the statutory obligations contained in the RMA.[9]

The RMA does not preclude civil actions. Section 23 of the RMA states:

> **23. Other legal requirements not affected** - (1) Compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law.
> (2) The duties and restrictions described in this Part shall only be enforceable against any person through the provisions of this Act; and no person shall be liable to any other person for a breach of any such duty or restriction except in accordance with the provisions of this Act.
> (3) Nothing in subsection (2) limits or affects any right of action which any person may have independently of the provisions of this Act.
> [emphasis added]

Conclusion

I am satisfied that the report provides sufficient information to allow consultation with the community in order to make the necessary judgements about what level of control over GMO-related land uses will promote sustainable management of the natural and physical resources of the district pursuant to the RMA.

I am also satisfied that if the council, after consultation with the community, were to develop objectives and policies for managing the risk of adverse environmental effects from GMO-related land uses, that there is sufficient information in the report to carry out a section 32 evaluation of them. However, methods (including rules

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8 Currently in England and Wales the general test as to whether or not there could be a claim in negligence against a public authority involves questions such as:
- Does the statute in question exclude a private law remedy?
- Can a common law remedy co-exist with the statutory duty or power?
- Has there been an omission? Is there a duty of care to do something or refrain from doing something?
- Has the public body undertaken a responsibility which gives rise to a common law duty of care?

See A.R. Keene, *Negligence claims against public bodies*, New Law Journal, 21 January 2005, p86.

9 See *Ports of Auckland v Auckland City Council* [1999] NZLR 600.

covering financial instruments) would still need to be developed for inclusion in the district plan before a section 32 assessment of a proposed plan change could be completed.

Whether or not the council proceeds to initiate a plan change to address environmental risks associated with GMO-related land uses in its district, it still has statutory and public law obligations pursuant to the RMA.

I have not addressed the issue of risks to the district council of civil proceedings if environmental damage resulted from GMO-related land uses, in the absence of objectives, policies or methods (including controls) for the managing of such a risk, because that is outside the scope of my instructions. However, it should not be assumed that the district council, as a public authority, will automatically be immune from liability.

Yours faithfully

Dr R J Somerville QC

Submission No 001

Dr R J Somerville QC

Barristers Chambers
106 George Street, Dunedin 9058

PO Box 5117 DXYP80539
Telephone (03) 477 3488
Facsimile (03) 474 0012
Mobile 0274323109

Email rjs@barristcrschambcrs.co.nz

18 January 2013

Thomson Wilson Law
Barristers & Solicitors
P 0 Box 1042
WHANGAREI 0140

Attention: Graeme Mathias

Re: **Outdoor Use of Genetically Modified Organisms (GMOs)**

I. Introduction

Thank you for your instructions of 21 November 2012. I have reviewed the January 2013 draft section 32 analysis (the evaluation) and proposed plan provisions on the outdoor release of genetically modified organisms (GMOs) in terms of the Resource Management Act 1991 (the RMA or the Act) and relevant case law. I have not revisited the matters I addressed in my earlier opinions.

The plan provisions commissioned by the Inter-council working party on GMO risk evaluation and management options (working party) provide for a precautionary approach to the way the use of natural resources is managed for the outdoor use of GMOs in order to achieve the purpose of the RMA.

In my opinion I focus on the legal implications of the proposed policies and rules which include a classification of activities as prohibited or discretionary in order to achieve the objective of a precautionary approach to managing the risk of potential adverse effects of GMOs on the environment from the activities.

II. Background

A precautionary risk management response is often used when risks are identified but are difficult to assess due to a lack of information and uncertainty about the effects on the environment of a proposed use of natural resources. This can involve scientific uncertainty. It is a policy response that reflects the values of the community expected to bear the environmental risks, and its acceptability or tolerance of such risks.

The section 32 evaluation discloses that the consultation process by the working party with the relevant communities of interest, and by local authorities during the development of their long term plans and other local government instruments, established that the relevant communities consider the risk associated with outdoor GMOs is a significant resource management issue. The evaluation also records that iwi authority plans indicate that iwi wish to have a precautionary approach taken to the resource management issue. The consultative process indicates that there is a community desire for RMA controls and not merely for a reliance on the consenting processes contained in the Hazardous Substances and New Organisms Act 1996 (HSNO).

There is no national policy statement (NPS) or national environmental standard (NES) in place under the RMA which addresses the outdoor release of GMOs. There is a proposed NPS on indigenous biodiversity, but at this stage that is not required by law to be given effect to in RMA instruments prepared by local government.

The evaluation addresses the application of the precautionary approach by the prohibition of the general release of GMOs pursuant to the RMA because at the time of preparing these proposed planning provisions there is a lack of sufficient information in order to address the risk of potential adverse effects of the relevant activities on the environment. By placing a burden on the proponent of such an activity to provide sufficient information in order to meet the statutory tests for plan changes would allow for the community bearing the risks to be involved in that RMA process.

The evaluation also addresses the application of the precautionary approach by using a discretionary activity classification in respect of the field trials of GMOs. These RMA controls relate to risk management approaches which are additional to those the Environmental Protection Authority (EPA) can utilise during the field trials contained in the HSNO.

III. Section 32 Tests

I have considered whether the statutory tests in section 32(3) and (4) of the RMA have been addressed in the evaluation of the proposed plan changes contained in the draft document.

Section 32 evaluation

32 Consideration of alternatives, benefits, and costs

(3) An evaluation must examine-

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account-

(a) the benefits and costs of policies, rules, or other methods; and
(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

[Emphasis added]

IV. Objectives

The proposed objectives state:

Proposed Objective

1.4.1[1]

The environment, including people and communities and their social, economic and cultural well being and health and safety, is protected from potential adverse effects associated with the outdoor use, storage, cultivation, harvesting, processing or transportation of GMOs through the adoption of a precautionary approach, including adaptive responses, to manage uncertainty and lack of information.

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[1] See also Objective 2.3.1.

Proposed Objective 1.4.2[2]

The sustainable management of the natural and physical resources of the district/region with respect to the outdoor use of GMOs, a significant resource management issue identified by the community.

In evaluating the proposed objectives the following factors are relevant:

(a) The proposed objectives are aimed at using a precautionary approach to address a significant resource management issue with the goal of achieving the purpose of the Act.[3]

(b) The precautionary approach is consistent with the ethic of stewardship and kaitiakitanga contained in section 7(a)(aa) and the obligation to future generations in section 5(2)(a).

(c) The use of a precautionary approach to risk management in RMA policy and planning instruments is not unusual for addressing risks involving the environment.[4]

(d) The evaluation recognises that the precautionary approach to risk management is also used in international instruments for addressing GMOs which New Zealand is a party to.[5]

(e) A precautionary approach allows for a flexible way to manage the use, development and protection of natural resources in order to respond to information as it becomes available. This is sometimes called 'adaptive management'.

(f) A precautionary approach allows for regulatory controls to be put in place if predictions about the likelihood of potential adverse effects on the environment of an activity cannot be assessed sufficiently and may turn out to be erroneous.

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2 See also Objective 2.3.2.
3 Section 5(2).
4 For example, the New Zealand Coastal Policy Statement. The Bay of Plenty Regional Council Proposed Regional Policy Statement refers to a precautionary approach in respect of GMOs.
5 The United Nations Convention on Biodiversity and the Cartagena Protocol.

(g) A precautionary approach to managing risks recognises that uncertainty and a lack of information are reasons for putting controls in place in terms of section 5(2)(c) rather than reasons for not having RMA controls and permitting an activity under the Act.

(h) Uncertainty about the level of risk in respect of potential adverse effects on the environment from the general release of GMOs into the environment is relevant when determining what will achieve the sustainable management of the natural resources in the areas concerned. There are uncertainties about how to manage the co-existence of GMOs with other conventional uses of natural resources, and how to establish separation distances. [6] Also there is uncertainty about how to evaluate the risk of potential adverse effects of the activities on the environment in terms of section 3(f) of the RMA in order to protect the environment and safeguard the life-supporting capacity of natural and physical resources in the area.[7]

(i) A precautionary approach also allows for the proponent of an activity to carry the burden of providing sufficient information, rather than the burden being placed on the decision-maker to locate sufficient information in order to make a decision about whether the activities in a policy and planning context should be allowed.

V. Policies and Rules

One of the proposed policies for managing the risks relating to the release of GMOs and aimed at achieving the objective of adopting a precautionary approach is set out as follows:

Proposed Policy 1.4.1.1 and 2.3.1.1

To adopt a precautionary approach by prohibiting the general release of a GMO, and by making outdoor field trialling of a GMO a discretionary activity.

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6 These issues are not restricted to New Zealand. See Mary Dobbs, "Excluding Coexistence of GMOs? The Impact of the EU Commission's 2010 Recommendation on Coexistence", *Review of European Community in International Environmental Law* (RECIEL) 20(2) [2011] at 180.

7 (f) any potential effect of low probability which has a high potential impact.

Other policies relate to RMA controls in respect of outdoor field trialling of GMOs.

In my opinion the evaluation has addressed the provisions in section 32(4)(b) of the RMA which requires the evaluation of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods. It is apparent that that evaluation is particularly relevant in respect of the proposed policies.

Dr Kenneth Palmer in "Local Authorities Law in New Zealand"[8] addressed the provision in section 32(4)(b) as follows:

> The reference to the "risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods" requires consideration of the precautionary principle or precautionary approach in respect of policy and plan provisions. Although the RMA has no equivalent provision applying to a resource consent application, a Court has held that the precautionary approach is implicit in the sustainable management purpose under s5 of the RMA, in relation to providing for health and safety and safeguarding the life supporting capacity of air, water, soil and ecosystems.[9]

Prohibited activity status

The evaluation contains a rationale for prohibiting the general release of a GMO in district and unitary plans pending the availability of sufficient information about the risk of any potential effects of the activities on the environment. The evaluation also reflects community values in respect of the environmental risks the community is prepared to accept at the moment.

The evaluation recognises that the aim is not to exclude the general release of GMOs in the long term if sufficient information becomes available to address the risk of their potential adverse effects on the environment. The evaluation indicates that the burden should be on the proponent to satisfy the statutory requirements for a plan change by providing sufficient information and that would also involve the wider community in the process.

In respect of the use of a prohibited activity classification Dr Palmer has summed up the legal position as follows [10]:

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8 Brookers, Wellington, 2012 at page 819.

9 Shirley Primary School v CCC [1999] NZRMA 66 (EnvC)(safety of electronic communications facility); Francks v CRC [2005] RNZRMA 97 (HC) (Building line restriction justified for erosion risk).

10 "Local Authorities Law in New Zealand" Brookers, Wellington, 2012 at page 842.

> The categorisation as a prohibited activity is not a category that should be liberally adopted, but should be reserved for justifiable situations. The situations may relate to the need to take a precautionary approach, where effects from activities are not known, or to regulate a staged approach, provide for comprehensive development, express community expectations as to undesirable or unacceptable developments (nuclear power stations, oil storage, meat works) or other justifiable grounds. The Court in the *Coromandel Watchdog* case noted that the discretion could be influenced by the cost benefit analysis and precautionary approach raised under the s32 evaluation, the need to achieve the purposes and principles in Part 2 of the RMA, and the need to consider the effect of activities on the environment. The Court held that the view of the RMA as a permissive, effects-based philosophy oversimplified the obligation on local authorities. It stated:
>
> > "The labels 'permissive' and 'effects-based' do not comprehensively describe the sustainable management purpose in s5 of the Act. The use of those labels should not overshadow the numerous matters that are required to be considered by local authorities when undertaking the processes required by the Act."

The Court of Appeal in **Coromandel Watchdog of Hauraki Inc v Ministry of Economic Development**[11] addressed whether the use of a prohibited activity classification as a precautionary approach in respect of mining would be lawful. The reasoning of the Court would also apply to the outdoor release of GMOs. The Court was addressing the situation where a planning authority had insufficient information about a proposed activity and wished to take a precautionary approach, even though it did not rule out the possibility of that activity being permitted in the future. The planning authority was not prohibiting prospecting as an activity.

It discussed the issue as follows:

> [16] The philosophical debate which arose in the Environment Court proceedings was as to whether prohibited activity was an appropriate status where a planning authority did not necessarily rule out an activity, but wished to ensure that a proponent of the activity would need to initiate a plan change. Plan changes require a different and more consultative process than that for applications for resource consent in relation to a discretionary activity or a non- complying activity. In essence, the proponent of a plan change faces a higher hurdle. There is the potential for greater community involvement.

The Court recorded the view that there may be a number of occasions when a precautionary approach could be taken. Two occasions which appear to be relevant are set out at paras [34](a) and (d):

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11 [2008] RMLR 77.

> [34] ...
>
> (a) Where the council takes a precautionary approach. If the local authority has insufficient information about an activity to determine what provision should be made for that activity in the local authority's plan, the most appropriate status for that activity may be prohibited activity. This would allow proper consideration of the likely effects of the activity at a future time during the currency of the plan when a particular proposal makes it necessary to consider the matter, but that can be done in the light of the information then available. He gave an example of a plan in which mining was a prohibited activity, but prospecting was not. The objective of this was to ensure that the decision on whether, and on what terms, mining should be permitted would be made only when the information derived from prospecting about the extent of the mineral resource could be evaluated;
>
> (d) Where it is necessary to allow an expression of social or cultural outcomes or expectations. Prohibited activity status may be appropriate for an activity such as nuclear power generation which is unacceptable given current social, political and cultural attitudes, even if it were possible that those attitudes may change during the term of the plan;

The Court also emphasised that it needed to be apparent that the local authority was not in a position to assess the effects of the activity at the time of establishing the activity status rather than merely giving the activity prohibited status to defer the consideration of the effects until a specific proposal came before it. It held as follows:

> [45] We agree with the Courts below that, if a local authority has sufficient information to undertake the evaluation of an activity which is to be dealt with in its district plan at the time the plan is being formulated, it is not an appropriate use of the prohibited activity classification to defer the undertaking of the evaluation required by the Act until a particular application to undertake the activity occurs. That can be contrasted with the precautionary approach, where the local authority forms the view that it has insufficient information about an aspect of an activity, but further information may become available during the term of the plan.

Field trials which provide for further information are not prohibited and will be discretionary activities. Therefore, information coming from field trials could be used by a proponent for the general release of GMOs in order to initiate a plan change.

The Court of Appeal also held that:

> [36] ... Yet it can be contemplated that a local authority, having undertaken the processes required by the Act, could rationally conclude that prohibited activity status was the most appropriate status in cases falling within the situations described in that paragraph.

In my opinion the evaluation allows the local authorities to make a judgement about using a prohibited activity status which would be consistent with the reasoning of the Court of Appeal.

Discretionary activity

The section 32 evaluation also addresses the benefits, costs and risks of having the alternative of no resource management controls in respect of field trials and leaving it to the HSNO procedures.

There is often the need to obtain consents under different statutory regimes for the same activity. This is not unusual although it will add to the transaction costs of gaining consent for the activity. [12]

The RMA also allows for a consideration of reverse sensitivity issues in relation to other uses and developments involving natural and physical resources in the vicinity of the proposed field trials.

The RMA allows for additional controls to those provided for by the HSNO in order to address environmental risks in respect of field trials. [13] The evaluation addresses the benefits of having the ability to impose bonds, reviews, financial contributions and other adaptive management approaches in respect of field trials. It also covers the benefit of addressing risks in respect of local authority liability issues which may arise out of the outdoor use of GMOs.

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12 For example, consents under the RMA and the Building Act in respect of the same physical resources.

13 Sections 44, 44A, 45, 45A(2).

VI. Conclusion

In my opinion the evaluation meets the mandatory requirements in section 32(3) and (4) of the RMA. The proposed plan provisions give a clear indication of the way the local authorities will manage the risk of potential adverse environmental effects from the release of outdoor GMOs in order to achieve the purpose of the RMA.

The policies and rules designed to achieve the objective of taking a precautionary approach appear to be consistent with the Court of Appeal's reasoning in Coromandel Watchdog of Hauraki Inc v Ministry of Economic Development.

If there is any further information you require please do not hesitate to contact me.

Yours faithfully

Dr R J Somerville QC

cc: Dr Kerry Grundy

73

Submission No 002

Michelle Higgie

From:	gregfullmoon013 [gregfullmoon013@gmail.com]
Sent:	Saturday, 22 March 2014 12:38 p.m.
To:	mx.InfoClass; Brian R. Hanna; Guy Whitaker; Lorrene Te Kanawa; Terry Davey; Phil Brodie; Sue Smith; Allan Goddard
Subject:	Fwd: Trans Pacific Partnership - proposal for all Local Government.
Attachments:	Covering Letter TPP all Local Gov. 20-3-2014 # final.pdf; TPP doc all Local Gov 20-3-2014.pdf

Dear Waitomo District Council,

I write on behalf of the Renewables a Motueka based community based Climate Action group to bring a proposal before your Council in relation to the negotiations being undertaken by our Central Government and 11 other nations to conclude and agreement known as Trans Pacific Partnership (TPP).

The attached cover letter and proposed public interest resolution on TPP are placed before your Council in an endeavour to galvanize community engagement with this secretive process that will likely affect our interests and way NZ conducts its affairs.

We request that you consider placing the attached resolution on the agenda of your Council meeting for formal consideration and endorsement.

We further offer it as an input to your annual planning process as it's effects will likely affect Council decision making.

We are most happy to be contacted for further information on TPP.

Yours most faithfully,

Greg Rzesniowiecki

gregfullmoon013@gmail.com

Submission No 002

20th March 2014
Greg Rzesniowiecki
The Renewables Motueka,
1087 Motueka Valley Highway.
RD1 Motueka
gregfullmoon013@gmail.com

Greetings Mayors, Councillors and CEOs, All NZ Regional Councils and Territorial Local Authorities

Subject: Trans-Pacific Partnership (TPP) negotiations.

We, the Renewables, are ordinary Kiwis living in Motueka . We are active in informing ourselves and others of the consequence of Climate Change and are strongly of the view that action at every level must be taken to mitigate its effect.

Our government is in the process of reorganizing the trade and commerce rules that will operate into the future for the Pacific region of the globe. This negotiation is known as Transpacific Partnership (TPP). We enclose here a proposal for local councils on that treaty negotiation.

Please consider this a submission toward your **Annual Planning** process and as a letter bringing the attached 'public interest' resolution to your Council's attention.

The TPP's 29 chapters are proving difficult to close over the three years of discussions. Resistance to it is growing amongst the public in most of the 12 countries involved. The secrecy surrounding it is particularly controversial. We know enough to believe it is very wide in its scope, entrenching rights of corporations that will affect many aspects of NZ life, from internet use to affordable medications.

This is the reason we write. We aim to arouse your enthusiasm to positively affect our future. You along with all New Zealand Councils and Territorial Authorities and with the people of this land can help to influence the TPP negotiations to achieve a good result. Will you?

We would like you to adopt the public interest position on TPP as expressed in the attached resolution. Auckland, Nelson and Tasman Councils have now adopted versions of it. Wellington, Horizons and Palmerston North Councils have variously addressed parts of the resolution but not adopted the full proposition. We encourage all Local Government's to adopt this and thus declare to Central Government and the other TPP nations and their peoples the ground New Zealand's people stand on.

With the greatest respect

Greg Rzesniowiecki, on behalf of the Renewables.

Notice - Open Letter To all Regional Councils and Territorial Local Authorities .

Dear Mayor, Councillor and CEOs,

Subject: Trans-Pacific Partnership (TPP) Negotiations.

I write on behalf of the Renewables, a Motueka based Climate Action group, who take an active interest in New Zealand's ability to mitigate Climate Change. We have recently focussed on the TPP, Free Trade Agreement negotiations, as we see some of the proposed outcomes affecting New Zealand's ability to manage and legislate appropriately in the public interest. This led to our lobbying Tasman District Council to address the issue;

http://www.stuff.co.nz/nelson-mail/news/9802308/TDC-seeks-positive-benefits-from-TPPA

Summary of Our Presentation.

Please consider this a proposal toward your Annual Planning process; as a letter bringing the attached resolution to your Council's attention; and as tool for the public to gain a level of knowledge about the mysterious TPP and its attendant process.

Auckland, Nelson and Tasman District Councils have carried a resolution that proposes the 'public interest' in the TPP negotiations. This is attached. Other Councils, Wellington, Horizons and Palmerston North, have expressed interest in this resolution.

We have taken the liberty to modify it to include a further concern, biosecurity.

What is TPP?

The TPP is a set of negotiations involving presently 12 nations; Australia, Singapore, Vietnam, Brunei, Malaysia, Japan, Canada, USA, Mexico, Peru and Chile along with NZ. Taiwan and South Korea are possible entrants. The following Wikipedia article gives a history of the TPP;

http://en.wikipedia.org/wiki/Trans-Pacific_Partnership

TPP negotiations have been undertaken in a series of meetings stretching over the preceding 3 years. They are supposed to conclude in the near future. At the most recent Singapore round of Ministers meeting the following statement was issued at its conclusion, Tuesday 10th December 2013;

http://keionline.org/node/1851

We, the Ministers and Heads of Delegation for Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam, have just completed a four-day Ministerial meeting in Singapore where we have made substantial progress toward completing the Trans-Pacific Partnership agreement.

Over the course of this meeting, we identified potential "landing zones" for the majority of key outstanding issues in the text. We will continue to work with flexibility to finalize these text issues as well as market access issues.

For all TPP countries, an ambitious, comprehensive and high-standard agreement that achieves the goals established in Honolulu in 2011 is critical for creating jobs and promoting growth, providing opportunity for our citizens and contributing to regional integration and the strengthening of the multilateral trading system.

Therefore, we have decided to continue our intensive work in the coming weeks toward such an agreement. We will also further our consultations with stakeholders and engage in our respective political processes.

Following additional work by negotiators, we intend to meet again next month.

TPP Agenda

Here is the Ministry of Foreign Affairs and Trade (MFAT) overview of the TPP negotiations;

http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/index.php#overview

The TPP negotiators are dealing with many issues broken into 29 chapters. The following link from November 2011 is effectively a press release from Ministers English and Groser identifying the framework agreed between the then 9 participating countries.

http://beehive.govt.nz/release/next-step-trans-pacific-partnership-agreement

And from this, an 8 page background paper gives detail on the 'framework' of TPP and content of the main chapters or subject areas which include; Competition, Cross Border Services and Customs, E-Commerce, Environment, Financial Services, Government Procurement, Intellectual Property, Investment, Labour, Market Access for Goods, Rules of Origin, Sanitary and Phytosanitary Standards, Technical Barriers to Trade, Telecommunications, Textiles and Apparel, Trade Remedies and Tariffs.

The specific content being negotiated is not to be found in any of the releases from Government. This is shrouded in secrecy to the consternation of the interested public and legislators here and in the other negotiating countries.

http://beehive.govt.nz/sites/all/files/TPP_broad_outlines%20.pdf

Many organisations both here and overseas are calling for the release of the detail of the TPP text. The extreme secrecy is one of the controversial issues connected with the TPP.

Treaty negotiations

Treaty negotiations are firmly maintained in the realm of government's executive which in New Zealand is the Cabinet. Clause 7.112 of the Cabinet Manual deals with the ratification of treaties. Parliament is merely informed and gets to enact enabling legislation, however it does this whether or not it endorsed the treaty in question. The closest Parliament gets to the treaty ratification process is through the Foreign Affairs, Defence and Trade Select Committee.

The following is a link to the relevant clauses of the Cabinet Manual;
http://cabinetmanual.cabinetoffice.govt.nz/7.112

There was an attempt to democratise treaty-making in NZ in the early 2000s but the legislation failed to gain its second reading. Government prefers to keep the Treaty making powers entrenched in the executive at this point in history.

TPP Secrecy

The parties to the TPP must initially agree to a memorandum of understanding and any late arrivals must gain agreement from the other parties allowing their entry. The TPP memorandum itself is a secret. The following link is to 'freedom info' who provide insight into the secret memorandum of understanding signed by each participating nation.

http://www.freedominfo.org/2013/11/spotlight-on-trade-talks-after-wikileaks-disclosure/

The parties have apparently agreed that all documents except the final text will be kept secret for four years after the agreement comes into force or the negotiations collapse. This reverses the trend in many recent negotiations to release draft texts and related documents. The existence of this agreement was only discovered through a cover note to the leaked text of the Intellectual Property chapter.

New Zealand is the repository for all these documents and the conduit for all requests for the release

of information, including this Memorandum of Understanding.

An open letter to Prime Minister John Key and Trade Minister Tim Groser from unions, civil liberties, church, public health, development, environmental and trade justice groups has demanded the release of the secrecy document. The Green Party and Mana Movement have both endorsed the call.

The release of the secrecy memorandum was requested by many parties during the Chicago round of negotiations in early October 2011. New Zealand lead negotiator Mark Sinclair has asked for responses from the other countries. As of March 2014 there is no agreement to do so.

http://tppwatch.wordpress.com/2011/10/16/trans-pacific-partnership-papers-remain-secret-for-four-years-after-deal/

Here is the open letter from various USA based organizations to the then USA Trade negotiator Ron Kirk. This is similar to calls from others in TPP nations;

http://www.citizen.org/documents/us-transparency-letter-2011.pdf

TPP Chapters

Now in March 2014 we have the benefit of a few leaked documents; Environment, Intellectual Property and Investor State Disputes - all of which can be accessed at the It's Our Future website http://www.itsourfuture.org.nz/ or direct from Wikileaks

https://wikileaks.org/tpp-sacrificing-the-environment.html.

Intellectual property issues are the desire to extend patent holder rights, restrict internet usage and open access. We are aghast at the suggestion of criminalization of activity associated with usage of material with artistic or intellectual content. Implications for NZ are wide ranging and would affect Council run libraries, Pharmac, and anyone who uses material with artistic or intellectual content.

Investor-state dispute mechanisms provide favourable jurisdictions for Investors where they perceive their profitability is limited by government legislation or action.

Other chapters such as the one dealing with Government Procurement may directly affect Council decision making and resource allocation.

TPP, because of its wide scope, might limit our ability to legislate for a range of community-good outcomes. This was identified by the Renewable's Joanna Santa Barbara a retired doctor in her presentation to TDC (Tasman District Council) on the 6th March, in respect to Plain Packaging of

Tobacco Products legislation passed by New Zealand's Parliament and now on hold, out of fear of an ‘investor-state dispute’ suit as allowed in the TPP.

http://tvnz.co.nz/politics-news/key-admits-plain-cigarette-packaging-may-not-go-ahead-5345464

TPP and Climate Change.

There is very real concern that the TPP may prevent future Governments from legislating to strengthen greenhouse gas emissions reduction targets and climate change mitigation strategies. The investor-state dispute mechanisms allow challenges to legislation where it is claimed to interfere with a corporation’s profits. Philip Morris' case against Australia over plain packaging of Tobacco Products is one such case. There are in excess of 100 globally.

Local Government is given Climate Change guidelines by Central Government within which to set policy and future planning;

http://www.mfe.govt.nz/publications/climate/climate-change-effect-impacts-assessments-may08/page4.html

The following link is the Ministry advice to Local Government.'Responding to the Effects of Climate Change'.

http://www.mfe.govt.nz/publications/climate/preparing-for-climate-change-guide-for-local-govt/html/page3.html

Prof. Jane Kelsey from Auckland University http://www.law.auckland.ac.nz/uoa/os-jane-kelsey has assessed the leaked Environment Chapter as follows:

https://wikileaks.org/tppa-environment-chapter.html Please note that there are links to all the leaked papers at the bottom of her analysis. From her assessment under the subtitle 'Overview';

> *The Environment Chapter addresses matters of conservation, environment, biodiversity, indigenous knowledge and resources, over-fishing and illegal logging, and climate change, among others. It might be expected to provide balance to the commercial interests being advanced in the other chapters, and genuine protections that are consistent with international environmental law.*
>
> *Instead of a 21st century standard of protection, the leaked text shows that the obligations are weak and compliance with them is unenforceable. Contrast that to other chapters that subordinate the environment, natural resources and indigenous*

rights to commercial objectives and business interests. The corporate agenda wins both ways.

At this point perhaps you might allow a few minutes to review this video by Greg Craven where he lays out a very rational approach to reach appropriate decisions in respect to Climate Change mitigation;

https://www.youtube.com/watch?v=zORv8wwiadQ and the following link provides material and discussion on the subsequent book by Craven "What's the Worst That Could Happen? A Rational Response to the Climate Change Debate" from 2009;

http://www.manpollo.org/forums/index.php

To this effect we need agreements and treaties that enable precautionary and proactive action to mitigate Climate Change on a global scale.

TPP and your Council

Tasman Council adopted in March 2014 (with the amendment of point 12 removing the requirement for public consultation during the negotiations) the 12 point public interest resolution originally passed by Auckland Council in December 2012 and Nelson in July of 2013. Other Councils also have dealt with TPP and passed varying positions; Wellington, Palmerston North and Horizons Councils have variously called for transparency in negotiations and that New Zealand's public interest and Sovereignty be maintained.

We believe that NZ's Councils have a major role in representing the public/community interest and TPP potentially could compromise this interest.

The resolution we are requesting New Zealand's Regional Councils and Territorial Local Authorities to adopt is as set out in **Attachment A**.

This position is comprehensive and represents common sense and a position that most New Zealanders would agree with. As such we regard it as the 'public interest' position.

We thank you for your attention.

Attachment A

TPPA resolution for Local Government consideration

That (name of Council) Council encourages the government to conclude negotiations on the Trans-Pacific Partnership and Free Trade Agreements in a way that provides net positive benefits for the (name of local region or city) Region and New Zealand, that is, provided the Partnership and Agreements achieve the following objectives:

i. Continues to allow the (name) Council and other Councils, if they so choose, to adopt procurement policies that provide for a degree of local preference; to choose whether particular services or facilities are provided in house, by council-controlled organisations (CCOs) or by contracting out; or to require higher health and safety, environmental protection, employment rights and conditions, community participation, animal protection or human rights standards than national or international minimum standards;

ii. Maintains good diplomatic and trade relations and partnerships for (local region) and New Zealand with other major trading partners not included in the agreement including with China

iii. Provides substantially increased access for our agriculture exports, particularly those from the (name of) region into the US Market;

iv. Does not undermine PHARMAC, raise the cost of medical treatments and medicines or threaten public health measures, such as tobacco control;

v. Does not give overseas investors or suppliers any greater rights than domestic investors and suppliers such as through introducing Investor-State Dispute Settlement, or reduce our ability to control overseas investment or finance;

vi. Does not expand intellectual property rights and enforcement in excess of current law;

vii. Does not weaken our public services, require privatisation, hinder reversal of privatisations, or increase the commercialization of Government or of (insert name) Council or other local government organisations

viii. Does not reduce our flexibility to support local economic and industry development and encourage good employment and environmental practices and initiatives like the (insert examples), and the Mayor's Taskforce for Jobs which enable marginalised young people to develop their skills and transition into meaningful employment;

ix. Contains enforceable labour clauses requiring adherence to core International Labour Organisation conventions and preventing reduction of labour rights for trade or investment advantage;

x. Contains enforceable environmental clauses preventing reduction of environmental and biosecurity standards for trade or investment advantage;

xi. Has general exemptions to protect human rights, the environment, the Treaty of Waitangi, and New Zealand's economic and financial stability;

xii. Has been negotiated with real public consultation including regular public releases of drafts of the text of the agreement, and ratification being conditional on a full social, environmental, and economic impact assessment including public submissions.

Submission No 003

First Name	Last Name	Address	Phone	Email	Do you want to talk at submission hearing	Submission	Summit a document	Submitted
Emma	**Darke**	489 Owen Road, R D 1, TE KUITI	07 877 7752	curlywurly.emma@gmail.com	No	Hi, I would like the council to consider bringing the Nappy Lady to the area next year to run a Nappy workshop, as she has done in several other areas around New Zealand this year. Unfortunately as you cannot attend workshops if you are not a resident of that area it means Waitomo and King Country rate payers miss out. Waste disposal is an issue for most district councils, which is why many other councils run these workshops annually in conjunction with the Nappy Lady. I certainly feel we could benefit from such a workshop in this region, not only in relation to reducing disposable nappy waste in the regional dumps, but also considering that many local families are struggling financially and using modern cloth nappies (re-usable) may significantly reduce their living expenses. I hope the council will investigate this and give it serious consideration, as I feel it would be greatly beneficial for all our rate payers. Thankyou Emma Darke http://www.thenappylady.co.nz/contact.html	Array	9/04/2014 9:29

Submission No 004

Submission Form

PLEASE COMPLETE ALL DETAILS

For office use only

SUB No. 004

Full Name: SANDRA SQUIER.

Organisation (if applicable): TE KUITI SPCA.

Address for correspondence: P.O. Box 324.

Email Address: tetaua@paradise.net.nz.

Phone No. 027 378 5077 Fax No. .....

I wish to present my written submission verbally to a public Council hearing? Hearings will be held on 22nd May 2014.
If you do not tick a box we will assume that you do not wish to be heard.

☑ Yes ☐ No

S. E. Squier Date: 24/4/14

Signature *(of person making submission or person authorised to sign on behalf of person making submission)*

SUBMISSIONS CLOSE: 5pm, Thursday 8th May 2014

Council would like your views on the draft Annual Plan 2014/15:

TE KUITI SPCA WOULD LIKE TO SUBMIT THE FOLLOWING:

1) HUMANE EUTHANASIA OF DOGS IN WAITOMO DISTRICT COUNCIL BY METHAN INJECTION NOT SHOT.

2) THE MICROCHIPPING OF ALL DOGS RETURNED TO OWNERS FROM THE POUND.

3) CONSIDERATION GIVEN TO THE IMPROVEMENT OF THE TEMPERATURE IN THE POUND. EXTREME HEAT & COLD.

Michelle Higgie

From: Gerri Pomeroy [Gerri.Pomeroy@ccsdisabilityaction.org.nz]
Sent: Friday, 25 April 2014 11:05 a.m.
To: Consultation
Subject: Submission to Draft 2014 Exceptions Annual Plan
Attachments: Waitomo 2014 Annual Plan submission.doc

Hi,

Please find our submission to your draft 2014/ 2015 Exceptions Annual Plan attached,

Warm regards
Gerri

Gerri Pomeroy
Access Coordinator
CCS Disability Action Waikato

0800 227 2255

Tel: (07) 853-9761 (extension 7717)
Fax: (07) 853 9765
Mob: 027 496 3353

Email: gerri.pomeroy@ccsdisabilityaction.org.nz

www.ccsdisabilityaction.org.nz

TE HUNGA HAUA MO NGA TANGATA KATOA

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TE HUNGA HAUA MAURI MO NGA TANGATA KATOA

Submission to

Waitomo District Council

Draft Exceptions 2014/ 2015 Annual Plan

CCS Disability Action
PO Box 272
Waikato Mail Centre
Hamilton 3240

Enquiries to;

Gerri Pomeroy
E: gerri.pomeroy@ccsdisabilityaction.org.nz
P: 07 853 9761
M: 0274963353

Or
Roger Loveless
E: roger.loveless@ccsdisabilityaction.org.nz
P: 07 853 9761
M: 021 823 120

In partnership with the 'Access for All' disability stakeholder group

We would like to speak to our submission

Recommendations

- Develop a policy framework that includes planning for disabled people's inclusion in everyday community life
    - Development of an inclusion or disability policy
    - Development of an associated action plan that ensures that all council activities include assessment of disabled people's ability to participate
    - Consider appointment of a Waitomo District Council Inclusion/ Disability Advisor
    - Data Collection
        - Measure total pedestrian activity and the subset of people using visible mobility aids' presence at destinations and along pedestrian routes. This will provide objective information to monitor and evaluate people's **actual** ability to use existing transport infrastructure to reach the services and facilities they require to live within their community.

- District Plan, and other planning tools, review to consider zoning and disabled people's ability to find accessible housing in all residential zones and their ability to easily, safely and independently access shopping, work, educational and recreational opportunities

- Public buildings to progressively become accessible to everyone
    - Building(Earthquake-prone Buildings) Amendment Bill
    - Our population is ageing, by late 2013 more than 20% of New Zealanders will be aged over 65 (Statistics NZ, 2012)
    - Caregivers with children in buggies benefit from universally accessible public buildings and infrastructure
    - Disabled people can participate in, and contribute to society

- Public Safety
    - People with disabilities are often the most vulnerable when confronted with anti social behavior.

- Parks, Reserves and Playgrounds
    - Accessible connections, playground surfaces, signage and toilets

- Accessibility Audits
    - Develop a program of accessibility audits for rural townships and settlements to inform road/ transportation maintenance programmes and ensure that everyone can access local facilities and services
    - Accessible pedestrian routes to all public buildings, facilities and open space entrances from car parks, including mobility parks, drop off points and the surrounding pedestrian network
    - For pedestrian facilities we recommend;
        - 1% crossfall on all pedestrian routes
        - Level platform to be provided directly adjacent to the kerb ramp at all street crossing opportunities
        - Dish channels at all street crossing opportunities, without raised pedestrian beds
        - Kerb cut/ ramp slopes of 1:14

- Public and community transport services
    - All transport service solutions should endeavor to provide access for everyone, including those with disabilities

- Parking
    - Mobility Parks highlighted blue
    - Kerb cuts provided at 10 minute parking spaces to enable everyone to have safe access to the footpath

About us

CCS Disability Action is one of the largest disability services providers in New Zealand. We have been advocating for people with disabilities since 1935. Today, our organisation has a strong disabled leadership and human rights focus.

CCS Disability Action has a National Office and regional management structure, and provides services nationally from sixteen incorporated societies to more than 4,000 people of all ages and with a range of impairments.

Introduction

Individuals have impairments, physical, sensory, neurological, psychiatric, intellectual or another type of impairment. Disability occurs when one group of people create barriers by designing a world only for their way of living, taking no account of the impairments other people have.

Underpinning the New Zealand Disability Strategy is a vision of a fully inclusive society. New Zealand will be inclusive when people with impairments can say they live in, 'a society that highly values our lives and continually enhances our full participation'. Collaborative relationships between central, regional and local government and the disability community are central to ensuring this vision becomes reality.

The Statistics New Zealand 2006 Disability Survey states that an estimated 660,300 New Zealanders reported having a disability, representing 17% of the total population (Statistics New Zealand, 2006). Disability information from the most recent Census is expected to be available in June 2014.

Accessibility issues affect everyone at some time in their life. We all experience different levels of mobility; sometimes due to temporary causes

such as injury, pregnancy or sickness. 45% of people aged over 65 self-identified with some degree of disability in the last census (Statistics New Zealand, 2006).

Article 9 of the UN Convention on the Rights of People with Disabilities requires that 'States Parties shall take appropriate measures to ensure to people with disabilities, **access, on an equal basis with others**, to the physical environment, transportation, information and communications, communications technologies and systems, and other facilities and services open or provided to the public, both in urban and rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia (a) Buildings, roads, transportation...' (Convention on the Rights of Persons with Disabilities) The Convention was ratified by New Zealand on 26th September 2008.

Disabled people frequently face significant barriers accessing community facilities and services, work opportunities, transport systems and services in order to participate in society. Local, regional and central government agencies have the potential to significantly influence quality of life for society including those living with impairment.

Policy Framework

Disabled people are community members who live with a range of impairments. We wish to be involved in our communities, participate in everyday community activities and contribute to society. As well as developing inclusion or disability policies which identify strategies to ensure disabled people are included in mainstream planning processes, and action plans for implementation, it is vital that associated measures or indicators are developed that demonstrate effectiveness of these policies.

We would also suggest that council consider the appointment of a staff member with specific responsibility for consideration of disabled people's

issues within the wider context of council's responsibility to it's community. Disabled people live with impairments that are often also encountered by people as they age. Designing facilities and services so that they are universally accessible ensures that older people and caregivers with young children in buggies can also easily access them.

CCS Disability Action, in collaboration with TDG, is developing a methodology which counts the subset of pedestrians who use visible mobility aids. Currently data is collected for vehicles on virtually every road in NZ but little data is collected on pedestrians. There is a lot of work to be done but if we can begin to collect information on how people who use mobility aids such as guide dogs, canes, walkers, wheelchairs etc move around their communities and access the facilities they require, this will assist detailed planning within communities.

It will also ensure that disabled people's ability to actually use the transport system, including accessible pedestrian routes, is able to be monitored and evaluated. This monitoring will enable improvements to be made where required so that access barriers are progressively removed.

http://www.ccsdisabilityaction.org.nz/component/search/?searchword=measuring%20accessible%20journeys&ordering=newest&searchphrase=all&limit=20

District Plans

Disabled people frequently require modified homes to have maximum independence however it is frequently difficult to find suitable existing homes. We support planning processes that encourage the construction of accessible homes in all categories of housing within communities. Developers and builders may not immediately recognize the value of building homes that are accessible, local authorities have an important role to play in this area. Aged people also benefit from homes that have wider doorways, level entry

showers and extra space to accommodate mobility aids such as walkers and mobility scooters.

http://www.ccsdisabilityaction.org.nz/

Public Buildings

While access to new public buildings must meet current standards, there are many older buildings with significant barriers to access, sometimes to the point of them being completely inaccessible. Older shops with steps at their entrances are still being used and there are many office blocks with no lift access to upper floors. Councils can encourage removal of these barriers by providing suitable advice, perhaps unsolicited, to building owners on ways to remove barriers. We suggest:

- Ensuring that a percentage of staff involved with compliance issues have Barrier Free Trust certification.
- Council buildings be upgraded to modern access standards as exemplars to the wider community.
- Consultation channels with the disability sector be developed that allow access concerns to be identified and appropriate action taken. CCS Disability Action's experience is that many access issues are resolved quickly once brought to the attention of building owners.
- There is an opportunity to improve access by stricter enforcement of emergency evacuation provisions for places of public assembly.

CCS Disability Action believes that all people benefit from improved accessibility not just those living with permanent disability.

The Building (Earthquake- Prone Buildings) Amendment Bill, Section 133AX, at Select Committee stage will allow local authorities to grant a building consent for earthquake strengthening alterations, without requiring Building Act 2004, Section 112 access or fire upgrades.

The current test of what is reasonably practicable prevents excessive costs for building upgrades. Also, we understand that building owners have a choice of either the Building Code or NZS:4121:2001 as their compliance document. We suggest that the Ministry of Business, Innovation and Employment (MBIE) provides improved information on access requirements and guidance on the reasonably practicable test. This action could address many of the concerns recently raised by building owners and local authorities.

When asked, MBIE said they did not have any evidence that the cost of removing access barriers are a significant barrier to earthquake strengthening beyond submissions to the Canterbury Earthquake Royal Commissions and the MBIE consultation.
(The OIA request is available on request)

The first draft of NZS:4121 was released in 1969 in response to pressure from access advocates. It would be a major disappointment for the disability community to have their fundamental right to participation removed.by the proposed legislation.

http://www.ccsdisabilityaction.org.nz/component/search/?searchword=measuring%20accessible%20journeys&ordering=newest&searchphrase=all&limit=20

We request that toilet ugrades in the Waitomo district and public buildings include universally accessible design criteria in plan development and construction.

Public Safety.

People with disabilities are among the most vulnerable people when confronted with anti social behavior.

- We support restrictions relating to the sale of alcohol and psychoactive substances in our communities. We submit that council must provide

adequate resources to monitor and enforce any related policies it chooses to adopt.

- We support the use of security cameras in areas of concern.
- We support the introduction of safer speed zones in residential areas.
- We support upgrading of street lighting such that those dependent on public transport and footpaths have adequately illuminated and safe routes to and from their destinations.
- We believe that councils should either facilitate, or if necessary provide, opportunities for youth to engage with their communities through suitable pre-employment and training initiatives that give them a sense of purpose. This is also particularly important to young people with impairments as they find it particularly difficult to find employment.

Parks and Reserves

Access to our parks and reserves is an important part of daily living. However there are some barriers to their use by disabled people, and others, which can often be resolved quite economically. As with footpaths beside our roads, it is important to provide kerb cuts for wheelchair users to access walkways and other facilities. We request that Waitomo District council ensure that walkways include universally accessible design features.

The SNZ HB 5828.2:2006: Supervised Early Childhood Facilities - Playground Equipment and Surfacing Handbook allows use of loose fill surface material, which needs to be contained. Unfortunately both the timber walls and the material itself create barriers to many persons with mobility issues entering play areas, denying them the opportunity to supervise children in their care. This is an issue we have taken up with Standards NZ who cannot change the handbook without additional funding. We submit that the use of loose fill surfaces be discontinued, in favour of the other surface alternatives and that where loose fill material has been used, a programme be instituted to replace it with a universally accessible safety surface.

Good signage can significantly enhance the experience of users, especially visitors from other areas. We submit that signage and other information be made available in various formats so that people with vision impairment, and others, have equal access to the information. QR codes that can be read by smart phones can provide spoken commentary and hazardous vehicle crossings can be defined by tactile pavers in the same way as used for normal roads.

A significant deterrent for disabled people's enjoyment of parks and reserves is lack of provision of clean and accessible toilet facilities. Such facilities can also double as facilities for young parents and their babies. We realize these can attract anti social behavior but this can be improved by good design and monitored quite cheaply with the use of modern security cameras.

Accessibility Audits

CCS Disability Action, in partnership with professional access consultants Taylored Accessibility Solutions, are now able to provide accessibility audits to local authorities. Street accessibility audits provide an opportunity to systematically assess how people with impairments, disabled and elderly, are able move around a community or rural settlement. Beginning with a workshop with the local community, then a technical assessment, the audit identifies barriers and recommends improvements that will enable residents and visitors to easily and safely access services and facilities. The level of detail provided can inform maintenance and long term improvement programmes. A copy of a street accessibility audit done for Waipa District Council is on the CCS Disability Action website;

http://www.ccsdisabilityaction.org.nz/component/search/?searchword=measuring%20accessible%20journeys&ordering=newest&searchphrase=all&limit=20

Disabled people need to have accessible routes all the way to their destination. If one part of the route is inaccessible, the whole route is

inaccessible. Pedestrian route development and adequate maintenance is critical to ensuring that communities remain vibrant, and are a crucial element of community infrastructure.

At the risk of being repetitive we have included the following section from previous submissions, as it is so important to enabling disabled people's participation.

"The NZTA Pedestrian Planning Guide recommends a footpath crossfall of 2% to 4%. Crossfall is the sideways slope of the footpath. Some crossfall is required for drainage, but excessive crossfall requires people using wheelchairs and walking frames to use extra energy to resist the sideways forces and maintain a straight line of travel.

We suggest a best practice maximum crossfall of 1% for most pedestrian routes, particularly those which are heavily used. This would guarantee that most people can independently use them. Traditionally, crossfall is used to enable drainage, however, the primary role of pedestrian infrastructure is to enable people to get around their community. Drainage should be a secondary consideration to access.. A crossfall of 1% will enable people to retain control of their walking frames with less effort and also users of manual wheelchairs with impaired arm and shoulder function to move around independently without risk of their mobility aid rolling over the gutter and into the roadway. If water can't be managed with a minimal crossfall on pedestrian routes it should be managed with channels and grates outside the accessible route. Steeper crossfalls, require manual wheelchair users to push their whole body weight with one arm and increase the risk of injury to users of wheeled mobility aids in rainy weather as handles and push rims become slippery and hand grip is easily lost for a second. This can be sufficient to permit the disabled person and their aid to fall over the gutter and into the road.

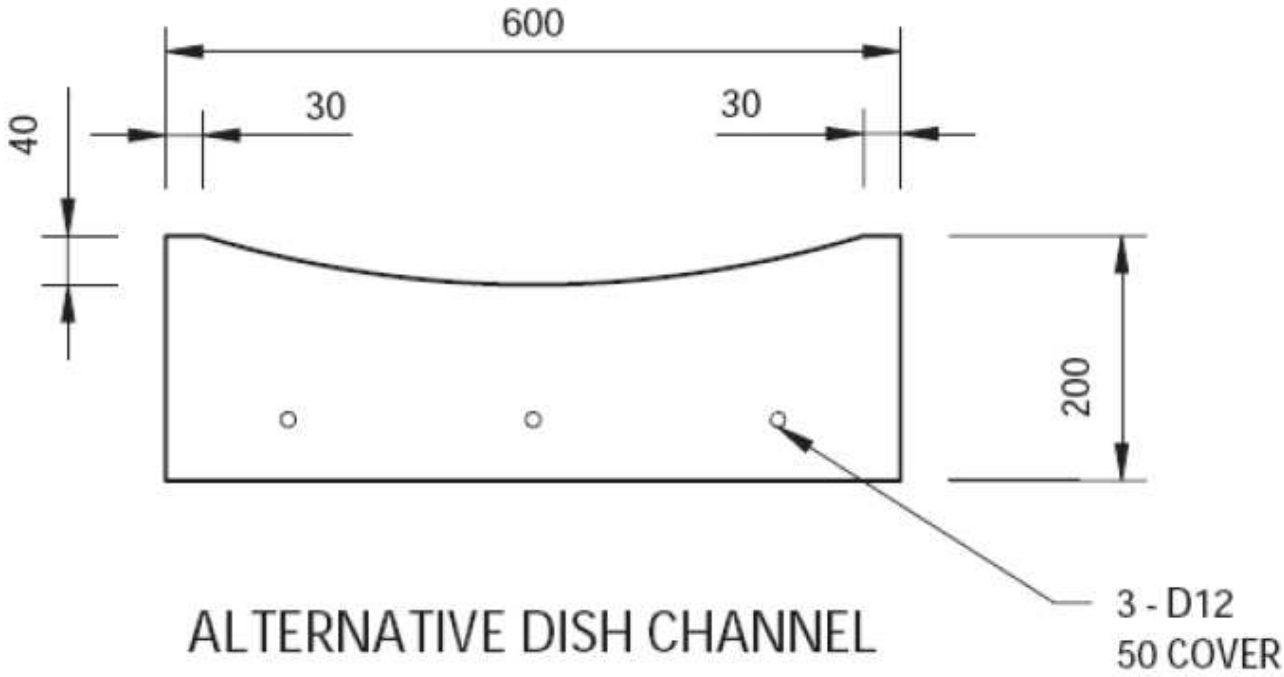
We recommend that pedestrian crossings are raised to be level with the footpath. A crossing designed in this way means that disabled pedestrians have a flat level journey to cross the road and can do so safely and quickly with no engineered hazards such as kerbs to negotiate. Raised pedestrian beds are safer for people with disabilities and ‘wheeled pedestrians’ and they have the added advantage of slowing vehicular traffic. Currently, many courtesy crossings are designed in this manner.

Clear sightlines into all traffic of at least 50m should be maintained for the seated ‘wheeled pedestrian’

Appropriately positioned and well designed kerb ramps and dish channels are essential to enable people using wheeled mobility aids to safely cross streets and reach their intended destination. Kerb ramps and dish channels should be provided at all crossing opportunities that do not have raised pedestrian beds, such as street corners, mid block on long streets and on both sides of the road at safe crossing points near bus stops so that ‘wheeled passengers’ can safely cross streets without the need for lengthy detours. A flat area should be provided directly adjacent to the kerb ramp, and within reach of the push button at signalised crossing points if present, so that disabled people using wheeled mobility aids can wait safely, until a crossing opportunity arises.

Kerb ramps should have a best practice slope of 1:14 so that as many disabled people as possible are able to use them safely and independently. The general rule is, the steeper the slope, the fewer people that can independently and safely use it.

We suggest that a dish channel is used to provide the connection between the kerb ramp and the road when road crossing opportunities are not provided on raised pedestrian beds.



We do not recommend ‘v’ shaped kerb cuts as they require a three step manoeuvre for the ‘wheeled pedestrian’ to negotiate them. Crossing the road entails a careful, often slow, approach to the first ‘v’ kerb cut, resting rear wheels in the bottom of the ‘v’ with the wheelchair user’s legs in the path of vehicular traffic, then a slow push up the slope created by the road camber, quickly crossing the crown of the road and then slowing while still in the path of vehicular traffic to tackle the ‘v’ shaped kerb cut on the opposite side of the road. Attempts to take the kerb at speed can end in disaster if the (typically small) front wheels of manual & power chairs hit the edge of a kerb and abruptly stop the wheelchair.

We suggest ‘at grade’ pedestrian refuges at all road crossing opportunities as this is one less set of engineered barriers to negotiate when crossing the road

Foliage on any plantings should be no more than 30 cm in height to provide maximum visibility for, and of, the wheeled pedestrian.

Road surfacing material should be milled at the connection between the dish channel and the road so that vertical faces, which could potentially tip wheelchairs and other wheeled mobility aids, are minimised if not totally removed. Vertical faces pose a serious risk to people with mobility needs, particularly wheeled pedestrians. They are a trip hazard to people walking and pose a serious risk of 'tipover' to the 'wheeled pedestrian' because if they aren't approached correctly they bring a 'wheeled pedestrian' to an extremely abrupt halt, especially when tackled at speed."

Public and community transport services

As we have stated in previous submissions, disabled people typically have less independent access to private motor vehicles than non-disabled people. An estimated 6,100 disabled adults had modifications made to a private motor vehicle so that they could drive it. An estimated 3,900 disabled adults had a private motor vehicle modified so they could travel in it as a passenger (Office of Disability Issues and Statistics New Zealand, 2009). This is a small percentage of the estimated 660,300 individuals living with disability in New Zealand. As a community this makes disabled people particularly reliant on accessible pedestrian routes, community transport solutions and public transport. It is vital that people who do not have independent access to a private vehicle, including disabled people, are provided for in community and public transport services.

Parking

Mobility Parking spaces should be spread evenly through shopping hubs and be near destination facilities and services. We recommend crossfalls no greater than 1% or 1:100. This is particularly important in locations where prevailing winds affect wheelchair assembly from the driver's seat. Strong winds can blow the car door shut making unassisted wheelchair assembly very difficult if not impossible.

Consideration should be given to the possibility of including kerb cuts in short stay parking spaces (ie 10 minute parking) so the footpath is safely accessible to everyone who wishes to use the parking space.

The rationale behind the bright BLUE paintwork on Mobility parking spaces is that the car park space itself stands out, as do users. Reductions in abuse by those not eligible to park in these areas has been significant and enforcement teams at the most recent National Parking Conference commented on this successful initiative and its immediate positive impacts.

We administer the Mobility Parking Scheme for 114, 953 users nationally. We are now able to provide reports, on request, detailing the number of Mobility Permit holders in particular townships and cities. We envisage that that this will be useful to local authorities as it will provide an indicator of those with mobility impairment living in a local community.

For further information contact Jan Smith at;
jan.smith@ccsdisabilityaction.org.nz

Conclusion

CCS Disability Action supports the right of disabled people to have good lives. As disabled people increasingly express the desire to live as independently as possible, participate in, and contribute to, their community it is vital that local authorities and their partners recognise the vital role they have in enabling this to happen. Planning processes and operational activities should be able to demonstrate that all community members requirements are considered and catered for.

Thank you for considering our submission

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Submission No 006

Democrats for social credit
PO Box 5164, Waikiwi, Invercargill 9843 Ph 0064 3 215 7170
Email: democrats@democrats.org.nz Website: www.democrats.org.nz

Sub No 006

2014

Submission to draft annual plan 2014-2015

2014 being an election year, the Democrats for Social Credit Party wishes to remind councillors of their duty to both challenge and influence central government policy.

We respectfully ask you to support and lobby for the following proposals:

1. Local body access to nil-interest credit-lines and loans from our sovereign bank, the Reserve Bank of New Zealand. These for essential capital works, thus relieving ratepayers of unsustainable debt-servicing to the private financial sector. The RBNZ is already equipped to provide such facilities as proven by the multi-billion dollar arrangement made in recent years for the major banks.

2. Remove the GST from rates.

3. Support the "Robin Hood" Tax campaign now gathering momentum globally. The levying of a minuscule tax on money and share market transactions would allow Government to provide funding for more public amenities without further need to raise rates, taxes and charges.

4. Support the campaign demanding complete transparency as to the TPPA (Trans Pacific Partnership Agreement) negotiations.

5. Stop fluoridation where still practised and resist pressure to continue or initiate fluoridation. This is primarily an individual rights matter, apart from the fluoride compounds used being pollutants.

6. Advocate the Single Transferable Vote (STV) system for all Local Government.

We look forward to making a verbal presentation when required.

Heather Marion Smith
Local Government Spokesman, Democrats for Social Credit
heathermsmith24@gmail.com Ph 06 867 6668

Stephnie de Ruyter
Leader, Democrats for Social Credit
stephnie.deruyter@democrats.org.nz Ph 027 442 4434

Michelle Higgie

From: Anke Nieschmidt [anke.nieschmidt@enviroschools.org.nz]
Sent: Wednesday, 7 May 2014 12:12 p.m.
To: Consultation
Subject: submission to draft annual plan
Attachments: WaitomoDC Submission.pdf

Kia ora
Please find attached a submission from The Enviroschools Foundation to the Waitomo District Council's draft annual plan.

Many thanks
Anke

Anke Nieschmidt
Enviroschools Programme Coordination and Projects
The Enviroschools Foundation
Lockwood House, 293 Grey Street, Hamilton East
PO Box 4445, Hamilton 3247
P: + 64 7 959 7321 extn 30
F: + 64 7 959 7326
M +64 (0)21 032 2474
W: http://www.enviroschools.org.nz

Submission to Waitomo District Council Draft Annual Plan, 2014-15

Name: The Enviroschools Foundation **Contact person:** Kristen Price, Operations Manager

Postal Address: PO Box 4445, Hamilton, 3247 **Physical Address:** Lockwood House, 293 Grey Street, Hamilton

Phone: 07 959 7321 **Email:** kristen.price@enviroschools.org.nz **Fax:** 07 959 7326

We DO NOT wish to speak to this submission

Recognising your long-term support for the Enviroschools Programme

We would like to acknowledge Waitomo District Council (WDC) for supporting young people in your region to be part of the Enviroschools network since 2002.

There is a network of 5 enviroschools in your district (28% of all schools), that are part of a wider network of 175 enviroschools in your region. The actions of students, teachers, families and community members from your local enviroschools contribute to a wide range of positive outcomes for communities and ecosystems in Waikato.

This submission encourages WDC to maintain its involvement in Enviroschools along with the other regional partner agencies, which are Waikato Regional Council, Hamilton City Council, all District Councils in the region - Waikato, Thames-Coromandel, Waipa, Matamata-Piako, Hauraki, Taupo, South Waikato, as well as Veolia Water and Kindergartens Waikato.

Enviroschools - a tool for councils that enables long-term change in communities

Enviroschools is a nationwide programme where schools act as a hub for behaviour change in the community. It is managed nationally by The Enviroschools Foundation, a charitable trust, and implemented regionally through partnerships with Councils. Enviroschools is an integrated, holistic and action-based programme through which students develop skills, knowledge and confidence by planning, designing and carrying out sustainability projects. Over a period of years, changes are made to the grounds and buildings, operation, management and curriculum of the school as part of the Enviroschools process.

The Enviroschools Programme is active in over 900 schools and early childhood centres nationwide – representing 30% of the school sector and 3% of the early childhood sector, and a combined reach of over 250,000 young people and their families. It was originally developed in the late 1990's by councils in Waikato as a non-regulatory tool and is now widely recognised as a best-practice programme. Enviroschools has been adopted as a tool by 48 councils, including most of the larger councils and over 60% of the total sector.

Through Enviroschools, school communities work with a trained facilitator in a long-term relationship to plan, design and take action. Enviroschools empowers young people as they learn through real-life environmental projects in schools and communities. It is specifically designed to build in young people the motivation and skills to take effective action on issues that matter to them and to their community.

Rather than Enviroschools Facilitators delivering educational material to students, Enviroschools adopts more of a 'train the trainer' approach and supports school staff (teachers, caretakers and office staff) to develop their own understanding of environmental issues and effective ways to engage students in being part of the solution.

The proven delivery model for the Enviroschools Programme in a region is based on a partnership between the regional council and territorial authorities, with additional involvement from community agencies and support from the national Enviroschools team employed by The Enviroschools Foundation. This model has been adopted in Waikato.

The beneficial outcomes of the Enviroschools Programme are relevant for Councils

The Enviroschools Programme was designed to support outcomes that are within the responsibility of Local Government; hence it has relevance for a range of council obligations under the Local Government Act, the Resource Management Act (RMA), and the Waste Minimisation Act 2008 (WMA). The programme offers:

- **Education as an enabler of long-term change:** Enviroschools is based on an Action-Learning cycle that empowers young people as they learn through real-life environmental projects in their schools and communities. This approach builds in young people the motivation and skills to take effective action on the issues that matter to them and to their community.
- **A way to address the drivers of infrastructure costs:** By supporting teachers and students to explore environmental issues in a deep way over time, Enviroschools aims to address the root causes of issues such as waste creation, high levels of water consumption and increasing pressure on storm-water and sewerage systems.
- **Holistic Approach:** Enviroschools joins the dots between environmental health, effective learning, physical health, cultural and spiritual connections, and mental wellbeing for our young people.
- **Developing peer role models and future leaders:** Through Enviroschools children and young people have opportunities to develop their capacity and confidence as leaders, planners and decision makers. These life skills are developed in a context that considers the environment, people and economy.
- **Value added and efficient model:** The Enviroschools Foundation is a national hub, with regional implementation of programmes. This model creates efficiencies by facilitating regional innovation and by sharing resources and successes between agencies.

The range of beneficial outcomes from the Enviroschools Programme include:

Environmental Reduced waste to landfills Reduced energy and water consumption Protected, healthy waterways Increased use of public transport, walking and cycling Enhanced biodiversity	**Educational** Knowledge and understanding of environmental issues and ecological concepts 'Action Competence' – developing in children the skills and abilities to go from an idea to action Students engaged in learning by real-life projects – suits a range of learning styles
Economic Financial savings for schools Reduced pressure on infrastructure such as water reticulation, storm-water and landfills Students running entrepreneurial enterprises Links between schools and businesses Increased interest in local sustainable products	**Social and Community** Increased community awareness and participation in local issues Youth leadership amongst peers and in the wider community Reduced truancy, bullying and vandalism Sense of place and heritage
Physical and Mental Health Healthier eating habits through school and community gardens Successfully implementing real-life projects builds self esteem and confidence for children and young people	**Cultural** Valuing of Māori perspectives and knowledge Respect for diversity of people and cultures

In summary, the Enviroschools Programme is an extremely cost effective way for Waitomo District Council to deliver good quality local infrastructure and public services, in a partnership with other local agencies.

First Name	Last Name	Address	Phone	Email	Do you want to talk at	Submission	Summit a document	Submitted
Sarah	**Nathan**	131 Alexandra st, Hamilton	021 2792338	sarah@creativewaikato.co.nz	No	Creative Waikato wishes to commend and encorage the work that is planned to create a community hub as part of the Te Kuiti Railway Buildings revitalisation. In 2014 Creative Waikato has commissioned a research project which will result in a Waikato Creative Infrastructure Plan. The purpose of the plan is the answer the question "what creative infrastructure does the region need to support its community over the next 30 years?". The study and subsequent recommendations will be at a national, regional and sub-regional level and are likely to include concepts that will require cross-boundary collaboration. However these recommendation will address larger regional facilities. The smaller, flexible community based spaces are critical for communities to gather, create, tell stories and celebrate unique identities. All these things are essential to a community's well-being. So again, we praise you for your commitment to this project and know that your community will flourish from this investment. Kind regards Sarah Nathan CEO Creative Waikato	Array	30/04/2014 15:27

Michelle Higgie

From: Monica Louis [monica@artdoc.co.nz]
Sent: Wednesday, 7 May 2014 2:40 p.m.
To: Consultation
Cc: Dede Downs
Subject: Support for Sports Waikato Submission
Attachments: Dede support letter 001.jpg

Cc Dede Downs

To whom it concerns

Please find attached a letter of support to keep Dede Downs posted as Sport Waikato Coordinator for the Waitomo District.

Losing her would be a sad loss for the district .

Due to the short time frame, we have scanned and attached our signed letter of support

Kind regards

Maurice & Monica Louis

Benneydale
5 May 2014

From
Maurice & Monica Louis
TimberTrail Sleepout & ArtDoc
Ellis Road – Benneydale

To
Mayor Brian Hanna and
Waitomo District Council
Queens street – Te Kuiti

Dear Mayor Hanna and councelers

With this letter we would like to nominate for Dede Downs to continue in her role as Sport Waikato Coordinator for the Waitomo District.

In the 10 years we have been in Benneydale, Dede has been here every year either initiating or supporting activities for the children and families in Benneydale.

She was a part of the Benneydale fun day during the 5 years this was put on and for the past 2 years she has supported and stimulated the badminton in the Benneydale Hall.

There isn't anyone in Benneydale who wouldn't have benefited from Dede's drive to get us all active.

She has been the one person to bring Sport Waikato and their team to work in the community to get people up and active and by doing that has been helping to create a community spirit.

Losing her would be a sad loss for the district and especially for communities like Benneydale who depend on her dedication, drive and commitment.

With this letter we'd like to support Sport Waikato when they present their submission to council.
Kind regards

Maurice & Monica Louis

maurice louis

monica louis

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Submission No 010

Michelle Higgie

From: Linda Plenderleith [glplendy@xtra.co.nz]
Sent: Wednesday, 7 May 2014 6:21 p.m.
To: Consultation
Subject: Dede Downs, Sport Waikato, Waitomo District Co-ordinator

I have been invited by Dede to support her role in our/ YOUR community !! I can't believe anybody is questioning her dedication , as anybody with half an eye can see how valuable this lady is in our /YOUR community. If I am not mistaken, the Mayor Brian Hanna congratulated Dede at last years Sports Award Dinner on her dedication to her job!!! I have taken a small interest this year , in the functioning of the NKCJ Football organisation and to date have attended 3 of their evening meetings. Dede has been at each of these , none of which closed before 8.30pm. This is just one activity !! She has already completed her days work !! Where does her dedication fail? Shouldn't she be at home with her family ? I have doubts whether this organisation would still be operating if it were not for her energy and enthusiasm. No doubt you are aware through the Waitomo News article some weeks ago submitted by Dede that 400 children were catered for in this particular sport last season and in spite of that article , the response to the next NKCJF meeting was not any better supported by parents OF THE CHILDREN INVOLVED. She was also instrumental in attempting to keep the Athletics club running. This activity failed as a result of poor interest of parents and others in the community , not Dedes , I was there !! Obviously these were also evening meetings. I have no doubt she has had evening meetings with the Miniball group, the Hockey people and others. She also attempted to get Community Tennis up and running. I have never seen any Councillor at any of these meetings or activities I am involved with, including the Journey Church holiday programmes !!! This

is YOUR community too eh? Where do your interests lie in YOUR volunteering community? Where does her commitment end ? It is a constant struggle to keep community activities running successfully because of parental non-involvement. Why don't you volunteer to spend some time with Dede and her team at SPORT WAIKATO ?

Graeme Plenderleith. (ex HoD PE Dept. TKHS and Community volunteer)

Submission No 011

Michelle Higgie

From: Peter Voyce [p.voyce@xtra.co.nz]
Sent: Wednesday, 7 May 2014 10:43 p.m.
To: Consultation
Subject: Supporting letter Dede Downs

The Waitomo District Council
To whom it may concern

This letter is to support the continued employment of our Sports Co- ordinator Mrs Dede Downs. As Principal of Aria Primary School I have always found Dede to be supportive of any sporting initiatives we have undertaken, including involvement with local sports clubs outside of the school that our students are involved in.

Dede offers timely advice and assistance if required and is always keen to promote participation in sports.

Recently we (year 2-3 class) decided to take a class of students to cycle part of the Pureora cycle trail. Dede assisted with our lead up by sourcing a coach to assist us in preparing our cyclists. This was part of the Bike- Wise initiative.

Dede's passionate contribution towards our Waitomo District Sports Awards evening is well beyond the call of duty. The 2014 event was bigger and brighter than ever before and it was great to see and hear Dede's efforts being acknowledged publicly.

Our school places a significant emphasis on sporting and other physical activity and we (all staff) know that Dede is only a phone call away should we want advice or support.

I would be very pleased to have Dede continue in her District Co-ordinator's role into the future. Please don't hesitate to contact me should you want clarification of anything I have said or further information.

Pam Voyce
Principal Aria School

Sent from my iPad

Michelle Higgie

From:	Mike Maguire [MikeM@sportwaikato.org.nz]
Sent:	Thursday, 8 May 2014 11:20 a.m.
To:	Consultation
Subject:	Sport Waiakto submission to the annual Plan
Attachments:	Submission to Waitomo District Council 2014 - 2015.pdf

Please find attached Sport Waikato's submission to the annual plan

Thank you

Mike Maguire

Mike Maguire
General Manager
sportwaikato I p 07 858 5388 I f 07 858 5389 I m 027 444 7865

Reward a Waikato **Sport Maker** by nominating them **now!**

Click on the link below to nominate a local Sport Maker. Someone who volunteers their time and effort for sport in the Waikato region. All nominees go in the draw for the chance to receive some awesome sporting gear!

https://www.surveymonkey.com/s/Sportmakernomination

Submission to Waitomo District Annual Plan

Sport Waikato would like to acknowledge and thank the Waitomo District Council for their ongoing commitment to supporting sport and recreation.

We would request that the Waitomo District Council continue to fund the salary and overheads of the District Coordinator's role in Waitomo for $73,434 plus GST until 30 June 2015

We are committed to ensuring the District Coordinator position works at a level that impacts on the Council objectives and community outcomes.

We have responded to the Waitomo District Councils request by reviewing and refocussing the role. We have worked to develop a more planned and proactive approach around projects and reporting on progress of these.

The District coordinator is working with community groups in Te Kuiti, Piopio, Aria, Bennydale and Taharoa on projects, developing new projects, and providing ongoing services across the District to make our communities better places to live through sport, physical activity and recreation.

While some projects are nearing fruition such as the KC Junior Hockey project which has resulted in a complete overhaul, many have made good progress but are not complete such as the NKC Junior Football and others are just getting underway such as the user groups of the Piopio Domain.

Some new projects that are on the radar include:

- Work with organizations around recruiting more volunteers targeting groups such as Waitomo Miniball around succession training.
- Work with Stephen Cox around the Caves to Coast Road cycle event
- Work with Piopio College to establish a sports Council and a Swimming Pool Trust to manage the facility
- Extending on the success of the NKC Junior Hockey and sharing the model and / or investigating setting up an administration center / governing group to manage North King Country junior sport.

We have had great commitment and engagement of community with the projects worked on and good feedback from the work being done to make groups and clubs successful and meet the needs of local communities. Our work has been valued by Waitomo residents.

If our request for the continuance of funding for the Waitomo District Coordinators role is successful we would be keen to work with our relationship manager at the Waitomo to jointly develop the schedule of services. This process has been a great help in putting a structure around our work in the Waitomo District.

We would like to build on the work that has been achieved which will contribute to the health and wellbeing of both residents and ratepayers through achieving the following outcomes:

Participation

Coordinating opportunities to reduce barriers, increasing use of use of Council parks, reserves, facilities and the natural environment the district offers

Community development

Building capable and sustainable organisations, ensuring the volunteer base remains strong and improving local collaboration to strengthen the delivery of community sport, recreation and physical activity

Quality of life

Providing a vibrant, healthy and happy place where people want to live and visit

Improved information and promotion

Increasing awareness of all sport, recreation and physical activity opportunities

Creating Pride in the community

Promoting the celebration and success in all aspects of sport and recreation.

Sport Waikato values the relationship we have with Waitomo District Council to contribute to Council's objectives and outcomes. These benefit the residents and ratepayers, contributing to making Waitomo a great place to live work and play.

We are keen to work more strategically with the Waitomo District Council and other key local partners, growing opportunities to participate in sport, recreation and physical activity options within the Waitomo district.

Sport Waikato would also like to thank Waitomo District Council for the development and maintenance of sports fields and facilities. The Waikato Regional Facility Plan that is being developed will provide valuable information that will enhance good decision making around facility development in the future. Sport Waikato has always and will always value the relationship with Waitomo District Council to contribute to council's objectives and outcomes.

We would like to speak to this submission and answer any questions council might have.

Matthew Cooper
Sport Waikato Chief executive

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Submission No 013

Michelle Higgie

From: Hilary Walker [HWalker@fedfarm.org.nz]
Sent: Thursday, 8 May 2014 11:39 a.m.
To: Consultation
Subject: FFNZ submission on draft annual plan
Attachments: Federated Farmers submission to WDC draft AP 2014.docx

Good morning

Please find attached Federated Farmers submission to the draft annual plan

Kind regards,

HILARY WALKER
REGIONAL POLICY ADVISOR

Federated Farmers of New Zealand
Box 447, Hamilton, New Zealand

P 07 858 0815
F 07 838 2960
E hwalker@fedfarm.org.nz

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Submission No 013

SUBMISSION

TELEPHONE 0800 327 646 I **WEBSITE** WWW.FEDFARM.ORG.NZ

FEDERATED FARMERS OF NEW ZEALAND

To: Waitomo District Council
PO Box 404
Te Kuiti 3941.

Submission on: **Draft Annual Plan 2014-15**

Date: 5 May 2014

Submission by: Waitomo Branch of Waikato Federated Farmers

CHRIS IRONS
WAITOMO BRANCH CHAIR
Federated Farmers of New Zealand
P 07 876 7473
M 027 461 6980
C.Irons@xtra.co.nz

Address for service:

HILARY WALKER
REGIONAL POLICY ADVISOR
Federated Farmers of New Zealand
PO Box 447, Hamilton 3240
P 0274 360560
F 07 838 2960
hwalker@fedfarm.org.nz

We wish to be heard in support of our submission.

1. INTRODUCTION

- Federated Farmers appreciates the opportunity to comment on the Draft Annual Plan 2014/15
- We would like the opportunity to speak to Council about our submission
- Federated Farmers nationally is focused on the equity and transparency of rate setting, and the overall cost of local government to agriculture and ratepayers
- We acknowledge any other submissions from individual members of Federated Farmers

2. GENERAL COMMENT

Federated Farmers has a strong interest in the effective performance of local government. As an organisation that submits on over 60 annual plans or Long Term Plans each year, our members and staff have a good understanding of the challenges faced by councils in meeting the growing legislative requirements of recent years - while saddled with an archaic system of property value rates where landowners are disproportionally charged higher on behalf of the whole community.

Rates are one of the most significant, fixed expenses for our farming businesses. A rural property in Waitomo will pay on average 3.5 times the amount of rates that other ratepayers do and yet do not derive any special or particular benefit. The affordability of rates is a significant issue for farm businesses, given that in a large part they are allocated on the basis of property value as opposed to income. Waitomo's current rating mix which does not make full use the Uniform Annual General Charge (UAGC) allocation and thus over relies on the general rate contribution does not help to alleviate this problem.

Federated Farmers consistently supports use of the UAGC to ensure a more equitable contribution from ratepayers across the region and has previously supported and encouraged Waitomo to use this instrument greater. Federated Farmers is disappointed that not only have council not taken the opportunity over the last few years to increase the UAGC but has in fact this year reduced it down to 21% (page61).

Federated Farmers does acknowledge that council is proposing a prudent draft annual plan with a smaller overall increase in total rates than indicated in the Long Term Plan (LTP). It is pleasing to once again see the council concentrating on its efficiency and effectiveness, and prioritising spending. Further the ethos of collaboration which Waitomo has embraced is also fully supported as it should help to reduce costs and we are encouraged by the shared services initiatives.

We know council is not making any significant changes to the Revenue and Financing Policies within this exceptions report however urge Waitomo District Council (WDC) to seriously consider the recommendations in this submission as the policies are reviewed during the review of the Long Term

Plan over this coming year. The recommendations identify how the financing polices can be improved for the benefit of rural ratepayers to enhance existing principles of fairness and equity

3. SPECIFIC FEEDBACK

3.1 District Economic Development Board

Federated Farmers continues to support the proposal to delay the establishment of this board until the outcomes of the Waikato Mayoral Forum Economic Development Strategy are known and can be used to inform any future decision making in this area.

We continue to have an active interest in this issue and will be particularly interested in the funding stream if and when the proposal gets to that stage.

Recommendation:

- That the Council adopts the proposal to delay the establishment of a District Economic Development Board

3.2 Transparency

Transparency of rate funding sources and spending is extremely important to Federated Farmers and it is usual for us to make a comment about it when given the opportunity.

Once again we wish to congratulate WDC for the high level of transparency displayed in the draft annual plan.

The tables on pages 67 and 68 displays good transparency when reporting the percentage of rate increases that will be experienced for the example properties. Federated Farmers becomes concerned when councils around the country report percentage of rates increases as an average. Averages can be deceiving as the percentage of rise and the dollar impact can be hugely variant for different types of properties, with rural properties often shouldering the majority. The table clearly shows the total dollar increase and percentage for each individual property, which allows readers to compare rates increases for the example properties throughout the district.

Recommendation:

- That the Annual Plan and summary document continues to include example rates for a wide range of properties which enables readers to compare rates and understand how rates are allocated.

3.3 Solid Waste Management

Federated Farmers notes that council has a focus over this year to continue waste reduction initiatives and review facilities to identify hazards and safety issues (page 30). We would like council to include a

review of the services as they apply to rural and commercial businesses to ensure operating hours are appropriate and facilitating. Further, the current range of recycling options could be extended to better accommodate electronic equipment recycling and batteries for example. One suggestion is to dedicate a few shipping containers for these items which means they are available to use at a time convenient to the disposer and should reduce the likelihood they end up in the landfill or illegally dumped.

Recommendations:

- That council look to include a review of the solid waste management services as they apply to rural and commercial businesses. A targeted survey could provide useful information.

- That council look at different options to improve the rate of electronic and battery recycling

3.4 Rural Stormwater Services

Whilst Federated Farmers accepts the cost per property is not significant, in the interests of transparency we do query this charge and seek clarification on what the $53,000 is used. In our opinion a good road design should address a lot of rural stormwater issues and whilst we accept work could be required to reduce the erosion impact of culverts directing runoff onto pasture we don't see evidence of that either. Further the comment on page 34 indicates that all rural drainage asses are included under the Roads and Footpath activity. One would assume that means it is also funded under that category.

Recommendation:

- That council outlines the specific rural stormwater services which require funding of $53,000.

3.5 Roading

FFNZ has taken keen interest in the NZTA's review of the FAR because of the vital role roading plays in enabling primary production in New Zealand, and the significant contributions farmers and rural road users make to the national roading network through road user charges, fuel taxes, licensing and registration fees, and local government rates.

The Federation lodged a comprehensive submission aiming to ensure that the allocation of funding for New Zealand's roading network is efficient, effective and aligned with sound principles. We are particularly interested in ensuring that New Zealand's road funding regime contributes to the needs of all New Zealanders by enabling the vitally important primary sectors and related rural communities to function effectively.

Roading is also important from a social perspective, connecting rural people to neighbours and communities that are relatively distant compared to more urban centres, and connecting isolated rural communities to education, social and emergency services and other basic needs. Those roads are not exclusive to farmers and anyone including tourists, cyclists and Dept of Conservation staff can use them at any time, as well as the businesses based in urban areas that service farmers.

Most farmers consider the main item of benefit from council for farmers is the roading infrastructure.

We make these comments as we are concerned at the effect reduced subsidised funding will have on the district's roading infrastructure and urge council to prioritise the roading work which is currently subsidised before any changes are made. Within this context the position outlined on page 50 which seems to suggest that subsidised roading maintenance and capital expenditure programme is being reduced does not make sense to us.

Recommendations:

- Federated Farmers strongly encourages WDC to proactively engage with central government to ensure decision makers are well aware of the significant and detrimental impact changes to funding mechanisms could have on roading infrastructure in the district.
- Federated Farmers is happy to lend our support and expertise in this matter to council to ensure the best outcomes are achieved.
- Prioritise the roading work which currently receives NZTA subsidies.

4. FUNDING POLICIES

4.1 Uniform Annual General Charge

UAGC's are a fair way for Council's to rate for services that provide an equal or indistinguishable amount of benefit across ratepayer groups. Especially when compared to a general rate calculated by capital value which results in groups such as farmers paying more for an activity which they are unlikely to use more than any other group in a community.

Where a Council is aware that they have not reached their maximum 30% UAGC allowance and choose not to rectify the situation then they are actively choosing to disadvantage groups such as the farming community.

Broadly speaking we believe the Council has a good understanding and makes appropriate use of uniform charges. However we will reiterate our concerns that Council's interpretation and focus on 'affordability' stifles the opportunity to more fully utilise this funding tool.

We think that the assumption that the value of a property indicates the ability to pay is incorrect. This is especially highlighted where the low land value of industrial or commercial properties is looked at, as land value does not indicate use of council services or ability to pay, or that the main value of this type of property is in the improvements and assets. Likewise a high property value, such as a farm, does not directly co-relate to income or ability to pay, or the demand for council services.

Low-income ratepayers can already receive assistance from the central government's Rates Rebate Scheme. The government has revised this scheme to increase its accessibility from July 2012 by increasing the maximum income threshold, and also increased the maximum rebate amount. We accept that the changes didn't result in significant increases but they are tracking upwards at least. The Council does not need to disproportionately gather rates from a particular sector of the community in order to shelter others from costs.

Federated Farmers appreciates the level of transparency in the draft annual plan with regards to the council's philosophy towards the use of the UAGC funding method and how it is calculated.

Recommendations:

- That the Annual and Long Term Plans continue to include detailed information on the UAGC.
- That Council continues to explore ways to achieve maximum use of the UAGC funding mechanism.

4.2 Targeted rates

Federated Farmers applauds the Council's extensive use of targeted rates as a funding mechanism for a range of activities. Funding these services on a user-pays basis means that there is a direct link between benefits and funding sources.

The great strength of targeted rates, whatever their basis, is the fact that they are transparent by appearing as a separate line item on the rates demand and being reported separately from activities funded by the all purpose general rate. This makes it easier to compare the cost of the service to a farm as compared to an urban business or residential property.

Recommendation:

- That the Council continues to make good use of targeted rates to fund services which have a high level of direct and identifiable benefit.

4.3 Rates Increases

We acknowledge that council is exercising restraint in expenditure and urge them to continue to do so. We also acknowledge that council is sequencing and prioritising essential services first and this is strongly supported. Federated Farmers is very pleased council is adopting a pragmatic approach with regards to adopting a rolling review approach of the district plan and delaying the establishment of the economic board until there is a better understanding of any further RMA reforms and other related project work is completed. We believe this will enhance the efficiency and effectiveness of those projects in due course.

Rates increases for rural properties are projected to average 3.5 % (page68). This is twice the rate of inflation which for the whole of 2013 was approximately 1.6%[1] and double the increase which urban properties face. Whilst we appreciate council has worked hard to keep the increases lower than those projected in the LTP it would be remiss of us not to remind council that year on year rates increases which are much greater than the rate of inflation are unsustainable for rural communities.

Recommendations:

- That the Council continues to keep rate increases as low as possible, by continuing its intention to maintain existing service levels, strive towards operational efficiency and adhere to sound asset management practices.

- That council identifies why the rural percentage increases are twice that of their urban counterparts.

- That should council not accept our points re UAGC useage above that in the very least they raise the self imposed $650 UAGC cap by the rate of inflation each year and thus even out effect on the general rate.

4.4 District Development Rate

Over the last few years Federated Farmers has outlined our concerns with the District Development funding split. The feedback we have from Council is that our concerns will be considered during the review of the Revenue and Financing Policy. The subsequent decision to decrease the percentage paid by commercial and industrial businesses and increase the percentage taken from the general rate means that this is still an issue for us.

The funding stream is a 60% general, 20% commercial and industrial business, and 20%rural business split. The use of a targeted rate policy is supported however we do not accept rural businesses should be included and do not support the high proportion of general rate used especially when there is room in the UAGC funding cap for a UAGC contribution to made. It is difficult to understand or identify how rural businesses benefit from the services and activities outlined more than any other member of the community. It is also difficult to understand how a rural business receives 3 times the benefit for this activity than a business based in Te Kuiti does.

A differential applied to Te Kuiti commercial businesses to increase their contribution could help to address this imbalance and is considerably more appropriate than the current funding mechanisms.

Recommendation:

- That in reviewing the Revenue and Financing Policy for the next LTP council adjusts the funding split to better target the businesses and communities that benefit. It is appropriate in the interests of redressing the inequity created by the property based rating system to make use of the remaining portion of the UAGC cap to part fund this activity. This will reduce the reliance

[1] http://www.focus-economics.com/en/economy/charts/New_Zealand/Inflation

on the general rate. Further, it would be more appropriate to apply a differential to Te Kuiti Commercial properties to ensure their contribution is increased and thus better reflect the benefit received.

4.5 Differentials

Federated Farmers understands that council is unlikely to introduce a rural differential via this draft exceptions annual plan process. However we bring the matter before the council this year as we urge Council to consider this option during the review of the Revenue and Financing policies for the upcoming Long Term Plan review. Federated Farmers remains supportive of Council rating on capital value rather than land value, however, we are concerned that the general rate which is charged purely on a capital value basis without a differential, creates inequitable outcomes.

Without a differential, there is no recognition that different property types benefit from Council services in differing amounts. Also, there is no recognition that properties with higher values do not benefit more from Council services than properties with lower values.

As there is no differential, farms will pay significantly more than residential or commercial properties for activities such as liquor licencing, community partnerships, emergency management, tourism and recreation. Farms clearly do not receive a benefit which is proportional to the general rates they pay from these activities and therefore a differential should be applied. Further, large commercial businesses such as supermarkets or pulp mills, which might have similar rateable values as farms, pay the same roading rates as farms when they and their customers and delivery trucks make disproportionately heavy use of the roading network. These business types could also be subject to differentials that acknowledge their use and dependence on the Council roading network.

Differentials are widely used around New Zealand to offset the impact of valuation based rating, including New Plymouth and Wanganui District Councils.

Where Council is concerned that the effects of introducing differentials would be regressive and impact upon lower capital value properties, Federated Farmers submits that the rates remissions scheme, alongside the broader central government welfare system, remain the most robust and efficient methods of income redistribution, with the ability to target each concern on a case by case basis in a way that is not possible using the blunt property value basis afforded by rates. Council is not in a position to assess who is most able to afford its rates. Central government via tax and welfare policies retains all responsibility for income redistribution; this is not a role for councils.

Recommendation:

- That council introduce a substantial differential for rural properties to offset the unfairly high proportion of general rates paid by rural properties

The Waitomo Branch of Waikato Federated Farmers thanks the Waitomo District Council for considering our submission to the Draft Annual Plan 2014-15

Federated Farmers is a not-for-profit primary sector policy and advocacy organisation that represents the majority of farming businesses in New Zealand. Federated Farmers has a long and proud history of representing the interests of New Zealand's farmers.

The Federation aims to add value to its members' farming businesses. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;
- Our members' families and their staff have access to services essential to the needs of the rural community; and
- Our members adopt responsible management and environmental practices.

This submission is representative of member views and reflect the fact that local government rating and spending policies impact on our member's daily lives as farmers and members of local communities.

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FEDERATED FARMERS OF NEW ZEALAND

125

Submission No 014

Michelle Higgie

From: Office Kinohaku School [office@kinohaku.school.nz]
Sent: Friday, 9 May 2014 9:04 a.m.
To: Consultation
Subject: Dede Downs
Attachments: Letter Dede Downs.doc

Good morning

Attached is a letter our club would like to forward to you in support of Dede and the important role she plays in our community.

Kind regards

Paula Woods
Treasurer
Coast Rugby Football & Sports Club Inc

Submission No 014

7 May 2014

Waitomo District Council
Te Kuiti

To whom it may concern,

I write in support of our district sports coordinator, Dede Downs and the important role she plays in our community.

Admittedly, as the recently retired secretary to Coast Rugby Football and Sports Club, I have taken Dede's services for granted and have not paid homage and thanks to her in the past. I have never felt like this was needed or necessary with Dede. At times we would laugh late into the night about "still working" because this was more like a friendship and passion as opposed to a job. It's that rapport that makes Dede so approachable and easy to receive.

Our club is made up of all ages young and old covering a variety of sports. Last year we worked together to implement new sports and education into our community. Tennis and touch taster programmes. Dede has willingly delivered other sporting support professionals out to Taharoa to educate our senior sportsmen and women. Her continuous support and willingness to go over and above has built confidence in our club and community. That confidence extended our clubs presence into sports awards winning Waitomo District Club of the year 2012 and Administrator of the Year 2013. Awards we would never have felt worthy of even trying for in the past.

District Coordinator Dede Downs is an asset to our remote community of Taharoa, Kinohaku, TeAnga, Marokopa and Piripiri, Coast! We are very limited by way of sporting opportunities and the short and tall of this all, is Dede can deliver what many take for granted in town. It is her personality, her wairua, her presence that links us to outside sporting opportunities. We locate ourselves on the Coast and our community's work force of primarily mining & farming contribute hugely to this district. To continue to do this we need to maintain that link that caters for our children's sporting experience and that link that motivates our community.

Thank you to all those that allow Dede to activate our community and cater to our needs.

Yours Sincerely,

Meads Hepi
Representative
Coast Rugby Football & Sports Club

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Submission No 015

Michelle Higgie

From: Irene Straker [irenes@stjohn.org.nz]
Sent: Thursday, 8 May 2014 4:50 p.m.
To: Consultation
Subject: Dede Downs
Attachments: Dede Downs.docx

To whom it may concern.
Attached is a letter of support and recognition from St John Te Kuiti in regards to our appreciation of Dede and her role in the community. I would appreciate your confirmation of receipt of this letter
Kind regards

Irene Straker - Station Manager
St John Te Kuiti - Waitomo, Central Region.
2a Jennings street
Te Kuiti 3910
T 07 8788799
F 07 8785931
M 021 828911
E irene.straker@stjohn.org.nz

St John
first to care

St John
2a Jennings Street
Te Kuiti 3910
8 May 2014.

Re: Dede Downs – Waitomo Sports Co-ordinator

To whom it may concern

This is a letter of support to acknowledge the strength and dedication that Dede brings to her role. It is imperative in our roles as “helping others” that we are fit and well, therefore it is impressive to my staff and I that Dede recognises this and includes us in all sporting events that can assist us in staying fit and well.
Such activities have been

- Aquacise swimming
- Community biking events including out at Pureora
- Waitomo Golf events
- Business house bowling
- Rejuvenation of Croquet
- School athletic days
- Business house tennis
- Sit and be fit

It would be poor of me not to mention the amount of time Dede puts into the TeKuiti Sports awards for the Waitomo District Council which I believe has a greater attendance than most of our neighbouring towns. Her network of sporting contacts is second to none and with this support letter we wish to recognise her people skills, professionalism and knowledge in her role. I wish to thank Dede for looking after all people in her catchment both young and old that benefit from her hard work ethic to keep us all moving and doing some form of exercise.
I am happy to be contacted if required regarding this support letter

Yours sincerely
Irene L Straker
Station Manager
Email: Irene.straker@stjohn.org.nz
Mobile: 021 828 911

The Mayor
Waitomo District Council
Queen Street
PO Box 404
Te Kuiti

Vaimoli and Oferia Fetalaiga
35 Seddon Street
Te Kuiti

Re; submission to council supporting Dede Downs position as Sport Waikato, Waitomo District Co-ordinator

To Whom It May Concern:

We are writing this letter in support for the position that Dede Downs holds as a Co-ordinator for Sport Waikato, Waitomo District.

Dede Downs is a lady who goes over and beyond her position as co-ordinator for sport Waikato. We have gotten to know this wonderful lady who just doesn't do her job as a job, she does it with the intentions of her heart. This lady also has a heart especially for the Samoan people in our community. She doesn't work from 9 – 5 like most of us do, she works into her family time which many of us won't do, it shows her dedication to helping the Samoan people feel part of the Waitomo community.

She gets the Samoan people involved in social netball, winter volleyball and even the youth and kid's events that happen on a yearly basis.

Mr Mayor we feel that you haven't gotten off your backside and made the Samoans feel welcome in our district, and that's why most of them venture to other areas of the world. The only person in this district who really gives a damn about us Samoans is Dede Downs.

You don't know what this lady does behind the scenes she is a well respected person in the Samoan people's heart. She has also guided some of the Samoan people to have a winter volleyball Committee. She has always put our needs in front of her own.

She has also invited a few of the Samoans to the sports awards every year and with the hard work that Dede puts into those awards, she deserves more than just recognition and thanks. She deserves a write up on how long she has been in this job and maybe a mayor award in the paper to show not just us Samoan people in the community how grateful we are to her but the whole waitomo community for the work this lady goes through.

O Fetalaiga 09/05/14

LATE Submission No 016

The Mayor
Waitomo District Council
Queen Street
PO Box 404
Te Kuiti

Mika and Jessica Leauanae
4 Haines Terrace
Te Kuiti

Re; submission to council supporting Dede Downs position as Sport Waikato, Waitomo District Co-ordinator

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J. H. Leauanae 09/05/14

LATE Submission No 018

The Mayor
Waitomo District Council
Queen Street
PO Box 404
Te Kuiti

Uili and Paepae Ioane
107 Esplanade Road
Te Kuiti

Re; submission to council supporting Dede Downs position as Sport Waikato, Waitomo District Co-ordinator

To Whom It May Concern:

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09/05/14

LATE Submission No 019

The Mayor
Waitomo District Council
Queen Street
PO Box 404
Te Kuiti

Mose and Mele Samoa
26 Cato Terrace
Te Kuiti

Re; submission to council supporting Dede Downs position as Sport Waikato, Waitomo District Co-ordinator

To Whom It May Concern:

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Mose. Samoa. 09/05/14
Pisi'a. Samoa. 09/05/14

LATE Submission No 020

The Mayor
Waitomo District Council
Queen Street
PO Box 404
Te Kuiti

Faitalia Sooialo
3 Walker Road
Te Kuiti

Re; submission to council supporting Dede Downs position as Sport Waikato, Waitomo District Co-ordinator

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09/05/14

LATE Submission No 021

The Mayor
Waitomo District Council
Queen Street
PO Box 404
Te Kuiti

Lealali and Steka Tapusoa
100B Williams Street
Te Kuiti

Re; submission to council supporting Dede Downs position as Sport Waikato, Waitomo District Co-ordinator

To Whom It May Concern:

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09/05/14