

P U R E H A W K E S B A Y

**Submission re 2011-2012 Annual Plan
To Hawke's Bay Regional Council
6 May 2011**

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Yes, I would like to make an oral submission as well.

Pure Hawke's Bay represents a growing number of growers and producers who propose a vision for Hawke's Bay: *to be a food producing region of world renown, famous for premium, high quality food, produced sustainably.*

Within that frame, outdoor activities involving genetically modified organisms (GMOs) in food production pose a considerable economic threat to growers individually and to the regional brand that Hawke's Bay growers are working hard to build and capitalize upon. Preserving the region's current status as a GM free food producer under the District Plan would both eliminate the risk and capture the branding and economic opportunities that a GM free producing status offer.

Whangarei District Council has recently voted to regulate outdoor GMO use under the District Plan after considerable investigation, providing a clear path forward for our region.

This submission, consequently, focuses exclusively on the risks that the GM food production issue presents for Hawke's Bay and the suitability of the HBRC's Regional Policy Statement to address these risks.

We are submitting in the Annual Plan process because we want the Regional Council to ensure that adequate funds are allocated for any research and analysis that is required over the coming fiscal year to investigate this proposed addition to the HBRC's Regional Policy Statement.

We welcome the opportunity to make this submission and look forward to discussing this issue further with the Council.

1. The vision: Hawke's Bay as a premium food producing region

We share and support the vision articulated for Hawke's Bay in the Long Term Plan as "the premier land based production region of the South Pacific". In an increasingly competitive world market, Hawke's Bay food producers will need to have clear points of difference and will, we believe, rely increasingly on a regional brand. In that environment, the region's future lies in marketing high-value, niche market products renowned for being produced in a region committed to sustainability/environmental integrity.

In many of our high value export markets, GM free food production is fundamental to market access, not some mere meaningless marketing phrase.

Recognising the importance of keeping our food production GM free is not about being for or against GM. Nor is it about being for or against new technologies. The market reality is stark: GM is simply not wanted by many of our high value markets.

As food producers, we are firmly pro-science and look to new technologies, systems and approaches that help make production more sustainable and are valued in the market place. Remaining GM free in food production does not cut us off from advances in gene science. There are many applications in modern biotechnology that we can draw upon to achieve more sustainable and sophisticated practices.

2. Trend: Continuing pariah status of GM foods in the market place and risks to the region

The market resistance to GM foods that erupted in Europe in the mid-1990s and spread to Asia and the Pacific has not dissipated. Signals from the markets we supply are as strong as ever and they are clear for conventional and organic exporters alike. It is not simply that GM food is rejected by many buyers in our key markets, but that even trace contamination will not be tolerated. More insidious and difficult for us to counter would be perceptions that produce from the Bay would likely be contaminated if any GM food production were to occur here.

This is both a significant risk and a major opportunity. The risk arises as outdoor GM food production in the region would impose economic losses on a wide range of local food producers and damage the region's reputation just as we attempt to build it.

The opportunity is one of branding: Announcing to the world that Hawke's Bay is a GM free food producer would be a cornerstone of our reputation as a place of premium, high quality food, where growers are closely aligned to the values and aspirations of our customers, capturing this value added opportunity for Hawke's Bay agriculture, the local economy and for sustainable employment.

It is not within the scope of this submission to document in detail evidence of market responses to GM foods and trace contamination. Growers in Hawke's Bay already sell to highly sensitive markets, and must meet strict traceability requirements to demonstrate the absence of GM foods in bulk or in trace levels. A recent European Commission

survey is representative of attitudes to GM in the EU:

GM food is still the Achilles' heel of biotechnology. The wider picture is of declining support across many of the EU Member States – on average opponents outnumber supporters by three to one, and in no country is there a majority of supporters.

European Commission, *Europeans and Biotechnology in 2010. Winds of change?*

Eurobarometer, European Directorate-General for Research, October 2010.

We believe the possibility of developers seeking to conduct outdoor experiments or “conditionally release” GMOs in our region is increasing.

The review of the Regional Policy Statement is therefore timely, as we believe definitive action is required to secure the region's GM free food producer status.

3. Reconciling farmer choice with collective needs

As food producers, we respect the right of each farmer/grower to make their own decisions about what approaches best suit their land and production. We value that autonomy highly ourselves.

But GM food production is different because of the way it is perceived in the market place.

Consumers and buyers in our high-value markets not only do not want GM produce, they are highly sensitive to trace levels of GM that can arise from neighbouring GM production. GM contamination incidents in New Zealand involving trace levels of GM in imported seed stocks illustrate the sensitivity of our export markets to even a suspicion of GM presence.

As we noted earlier, it would be extremely difficult for GM free growers in Hawke's Bay to counter perceptions that produce from the Bay was contaminated if *any* GM food production were to occur. To say nothing of the likely reality that contamination *would* occur.

That means that for the foreseeable future, a decision by an individual grower or farmer would affect all food producers and processors in the region. We are all in this together.

4. The role of local government: Jurisdiction with respect to outdoor GMO activities

Regional protection through national regulatory regime not an option

Ideally, national regulation would explicitly allow regions/communities to opt out of GM releases and/or to create GM free food producer zones. That is not an option, however. Over the past ten years, numerous approaches have been made by councils and Local Government New Zealand to Government seeking changes to the national law to provide for this. Both Labour and National Governments have made clear no changes will be made to the Act. That route is therefore closed and in order to preserve the district/region's GM Free food producer status, a response is required under the RMA.

Local authority ability to act confirmed

It is undisputed that local authorities can regulate outdoor GMO use in their territories through the RMA. Written exchange between Environment Minister Nick Smith and these councils confirms local authority to act.¹

Over the last seven years, an inter-council working party formed by seven councils in the Auckland and Northland regions has done extensive research into how best to protect their communities and economy from outdoor GMO activities. This includes legal opinion by Dr Royden Sommerville QC regarding the options available to local authorities under the RMA.

The policy analysis commissioned by the Northland region councils has:

- Confirmed local authorities – in particular, district councils – can regulate GM land uses in addition to national regulation.
- Identified the RMA as superior to the Local Government Act for managing the risks associated with GM land uses.
- Examined the risks for local government from outdoor GM activities approved at the national level.
- Canvassed regulatory options for managing such activities locally, under the RMA.

This is set out and discussed at length in the following reports commissioned by Whangarei District Council in conjunction with Far North District Council, Kaipara District Council, Rodney District Council and Waitakere District Council:

Interim Opinion on Land Use Controls and GMOs. 2004, Dr Royden Somerville QC

Community Management of GMOs: Issues, Options and Partnership with Government. 2004. Simon Terry Associates

Opinion on Land Use Controls and GMOs. 2005. Legal opinion by Dr Royden Somerville QC

Community Management of GMOs II: Risks and Response Options. 2005. Mitchell Partnerships and Simon Terry Associates

Review of GE Issues and Options Report for Whangarei District Council. 2005. Independent review of the Mitchell Partnerships/Simon Terry Associates report by Dr Karen Cronin, Victoria University

Community Management of GMOs III: Recommended Response Option. 2010. Mitchell Partnerships and Simon Terry Associates

¹ Minister for the Environment, Nick Smith. Letter to the Inter-council Working Party on GMO Risk Evaluation and Management Options. August 15 2010.

On the basis of that investigation, **Whangarei District Council recently voted unanimously to regulate outdoor GMO activities under the District Plan.** The Council has indicated that prohibition of commercial and conditional releases is likely.²

The Hawke's Bay Regional Council and territorial authorities we will be approaching will therefore not be starting empty-handed, but can draw upon this work as a foundation.

5. Scope of the policy required: outdoor commercial and experimental GM food activities

The outcome we believe that is the best for the region, is to preserve Hawke's Bay status as a GM free food producer. The Council will need to investigate the best options for achieving that. However that is achieved, we are looking to the Council to introduce prescriptive language into its Regional Policy Statement that enshrines the Bay's status as a GM free food producer for a period of ten years. This policy would ensure that the outdoor use of living GM food and feed varieties did not occur in the region and would provide a regionally integrated policy framework such that territorial authorities would be bound to implement in their district plans.

Further, we submit that the HBRC should examine its ability to classify GMOs as 'contaminants.' The release of these into the environment would then be directly regulated by the Regional Council.

We wish to be clear about the parameters of the policy we believe the Regional Council should set. **Our focus is outdoor experimental activities involving GM food and feed crops and commercial GM food production.** It does not include laboratory-based research activities involving GMOs, nor does it cover medical applications that might be available and used in the community.

Outdoor field trials of experimental GM food lines: Breaches of containment have been all too frequent in field trials approved by ERMA, the national regulator. The most recent of these has revealed deficiencies in the regulatory regime that leave growers and the wider community exposed. A MAF-commissioned review of a breach from a Plant and Food experiment found fault in the ERMA process and in MAF monitoring. There is a lack of proper accountability from the operators. Further, gaps in the liability regime under HSNO leave open the possibility that local authorities would be liable for clean up of an activity that adhered to ERMA-set controls but still resulted in contamination.

We understand that some may hold out hope for future GMOs and believe that research should continue. Even accepting that this might be the case, field trials to develop these can be conducted in other regions of New Zealand that are not seeking to build their brand and global reputation as we are here in Hawke's Bay. Conditions in the Bay are not

² Whangarei District Council, *Whangarei vote unanimous on way forward for GE*. News release. April 13 2011.

unique to New Zealand and there is no particular value added, or need to experiment with GMOs in the Bay to establish their agronomic suitability here.

Duration: Markets might become more receptive to GM food and feed products, but for the foreseeable future, GM free food and feed production offers the best opportunity for our producers, the region's brand and economy.

In ten years, this issue can be revisited if there is reason to review the region's GM free producer status.

Interim Commitment: While this matter is under review for inclusion in the Regional Policy Statement, we want the Regional Council to adopt a precautionary approach. If any application for GM field trials or use in Hawke's Bay is made, the Regional Council will commit to submitting to ERMA on the matter, after seeking input from relevant stakeholders, including Pure Hawke's Bay.

We request that the Regional Council agrees to address the status of GMOs as a subject of regulation in the Regional Policy Statement and ensures the funding to do so. From our perspective, the sooner this is done, the better, in the interests of a full public discussion of the issues.

Of course, Pure Hawke's Bay expects to be represented in any process, informal or formal, the Council sets forth to examine the GMO issue.

John Bostock

Will MacFarlane

Scott Lawson

A handwritten signature in blue ink, appearing to read "S. Lawson".