BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

IN THE MATTER	of the Resource Management Act 1991 (**the Act**)
AND	of an appeal under Clause 14 of the First Schedule to the Act in relation to the Proposed Regional Plan for Northland
BETWEEN	WHANGAREI DISTRICT COUNCIL AND FAR NORTH DISTRICT COUNCIL (ENV-2019-AKL-000177) Appellants
AND	NORTHLAND REGIONAL COUNCIL Respondent

Environment Judge J A Smith sitting alone under s 279 of the Act
IN CHAMBERS at Auckland

CONSENT ORDER

[A] Under s 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) The appeal is allowed in accordance with **Annexure A** to this order.

(2) The appeal is otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to the appeal by the Appellants against the decision of the Respondent to exclude provisions providing for the release of genetically modified organisms (**GMOs**) into the coastal marine area in the Proposed Regional Plan (**PRP**).

[2] The parties have now agreed that the appeal can be resolved by amending the provisions governing GMOs in the PRP.

[3] The amendments introduce an objective, policies, rules and definitions to the PRP relating to the management of GMOs in the coastal marine area (**CMA**). In summary:

(a) The proposed objective seeks to protect the CMA from adverse effects associated with the use of GMOs.

(b) The proposed policies implement the objective by adopting a precautionary approach, encouraging adaptive management, directing that affects be avoided, requiring bonds as a condition of resource consents and requiring a risk management plan for field trials.

(c) The proposed rules continue this approach. The following activities are enabled as permitted activities in the CMA:

- research and trials within contained laboratories;
- medical applications (including vaccines); and
- veterinary applications (including vaccines), provided that applications of viable GMO vaccines are supervised by a veterinarian.

(d) Resource consent is required as a discretionary activity to use GMOs in field trials or to use veterinary vaccines in a way that does not comply with the permitted activity standards.

(e) Any GMO release, field trial or use of viable vaccine that is not a permitted or discretionary activity is prohibited.

[4] The parties submit that the agreed provisions will achieve the sustainable management purpose of the Act and give effect to the New Zealand Coastal Policy Statement and Regional Policy Statement for Northland (**RPS**). In particular, the provisions give effect to RPS Policy 6.1.2, which requires that a precautionary approach is adopted towards introducing GMOs to the environment.

[5] Furthermore, the agreed provisions are consistent with the provisions for the management of GMOs on land in Northland under the Whangārei and Far North District Plans, as well as with the approach in Auckland under the Auckland Unitary Plan. The agreed provisions also support the implementation of PRP Policy D.1.1(4), which requires an assessment of adverse effects on tangata whenua or their taonga when genetic engineering or GMOs are used.

[6] In making this order the Court has read and considered the memorandum of the parties dated 31 July 2020.

[7] The following people and organisations gave notice of their intention to become parties under s 274 of the Act, and have signed the memorandum of the parties dated 31 July 2020:

(a) GE Free NZ (Northland) Incorporated;

(b) GE Free NZ In Food & Environment Inc;

(c) Soil & Health Association of New Zealand Inc;

(d) Physicians & Scientists for Global Responsibility Charitable Trust (NZ);

(e) Patuharakeke Te Iwi Trust Board;

(f) Dr. Mere Kepa;

(g) Dr. Benjamin Pittman;

(h) Trina Upperton;

(i) Carl Mather;

(j) Rolf Mueller Glodde;

(k) Inge Bremmer;

(l) Hona Edwards;

(m) Rueben Taipari;

(n) Mary McDonald;

(o) Richard van Alphen;

(p) Far North Organic Growers & Producers Society Inc;

(q) Ursula Eisenmann;

(r) Erwin Eisenmann;

(s) Auckland GE Free Coalition;

(t) Martin Robinson (Kerikeri Organics);

(u) David Lourie;

(v) Mary Wilson;

(w) Shushila Ajani;

(x) Richard Alspach.

[8] The Court is making this order under s 279(1)(b) of the Act; such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

(a) All parties to the proceedings have executed the memorandum requesting this order;

(b) All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

[9] Therefore the Court orders, by consent, that the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.

[10] The order resolves the appeal as it relates to genetic engineering and genetically modified organisms.

[11] The appeal is otherwise dismissed.

[12] There is no order as to costs.

DATED at Auckland this 5th day of August 2020

J A Smith
Environment Judge

Annexure A

Annexure A

Annexure A

1. Include the following definitions in Part B of the Plan:

Genetically Modified Organism (GMO)	Unless expressly provided otherwise by regulations, any organism in which any of the genes or other genetic material: (a) have been modified by in vitro techniques; or (b) are inherited or otherwise derived, through any number of replications, from any genes or other genetic material which has been modified by in vitro techniques. This does not apply to genetically modified products that are not viable and are no longer genetically modified organisms, or products that are dominantly non-genetically modified but contain non-viable genetically modified ingredients, such as processed foods.
Genetically Modified Organism Field Trials	The carrying on of outdoor trials, on the effects of the organism under conditions similar to those of the environment into which the organism is likely to be released, but from which the organism, or any heritable material arising from it, could be retrieved or destroyed at the end of the trials.
Genetically modified organism release	To allow the organism to move within New Zealand free of any restrictions other than those imposed in accordance with the Biosecurity Act 1993 or the Conservation Act 1987. A Release may be without conditions (s34, HSNO Act) or subject to conditions set out s38A of the HSNO Act.
Genetically Modified Veterinary Vaccine	A veterinary vaccine that is a genetically modified organism as defined in this Plan.
Genetically modified medical applications	The manufacture, trialling or use of viable and/or non-viable genetically modified organisms for medical purposes recognised as medicines under the Medicines Act 1981 and approved as safe to use by the Ministry of Health, including Environmental Protection Authority approved releases, except for the outdoor cultivation of pharmaceutical producing organisms.
Viable Genetically Modified Veterinary Vaccine	A genetically modified veterinary vaccine that could survive or replicate in the environment or be transmitted from the inoculated recipient.

2. Include the following new section in Part C of the Plan:

C.1.9 Genetically Modified Organisms

C.1.9.1 Genetically modified organisms in the coastal marine area – permitted activities

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

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

The RMA activities this rule covers:

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

C.1.9.2 Genetically modified organism field trials - discretionary activity

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

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

Notification:

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

The RMA activities this rule covers:

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

C.1.9.3 Viable genetically modified veterinary vaccines - discretionary activity

The use of any viable genetically modified veterinary vaccine that is not a permitted activity under rule *C.1.9.1 Genetically modified organisms in the Coastal Marine Area – permitted activities*, is a discretionary activity, provided:

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

Notification:

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

The RMA activities this rule covers:

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

C.1.9.4 GMO releases – prohibited activity

Any:

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

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

The RMA activities this rule covers:

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

3. Include the following new section in Part D of the Plan:

D.5.30 Precautionary approach to assessing and managing genetically modified organisms

Adopt a precautionary approach to assessing and managing the:

1. Risks;
2. Uncertainty and lack of information; and
3. Significance, scale and nature of potential adverse effects.

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

D.5.31 Adaptive approach to the management of genetically modified organism

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

D.5.32 Avoiding adverse effects of genetically modified organism field trials

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

D.5.33 Liability for adverse effects from genetically modified organism activities

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

D.5.34 Bonds for genetically modified organism activities

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

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

D.5.35 Risk management plan for genetically modified organism field trials

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

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

4. Include the following provision in Part F of the Plan:

F.1.14 Use of genetic engineering and the release of genetically modified organisms

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