

---

# GM crops

## Where local government picks up

*Communities and their elected representatives face a new resource management issue: the outdoor production of genetically modified (GM) food varieties.*

Until now, local bodies have not generally had to address the outdoor use of genetically modified organisms (GMOs) in their territories. The newness of the technology and a 4-year national moratorium on the commercial release of GMOs meant that no commercial releases of GMOs have been possible. This changed with the lifting of the moratorium in October 2003. The way is now paved for commercial release of GMOs in New Zealand. GM food production, in particular, has the potential to impact upon the local economy, regional brands and the environment: areas for which local bodies have wide-ranging responsibilities.

### A new issue for local government

Councils do not have to be “pro” or “anti” GM to recognise that outdoor GM food production may have *impacts* on the community that local representatives will need to address. It is the *effects* of certain uses of GM that is the issue, not necessarily the technology itself. It is perfectly consistent to support the use of GM in medicine and in agriculture, while holding that, for the time being, outdoor GM food production is not advantageous for the region’s brand or its growers.

In this respect, GM food production is no different from other resource uses that local bodies need to control or manage. This said, GM food production has a particular risk profile that councils will need to consider when deciding how best to protect

their communities’ interests. It is outdoor uses of GMOs that directly align with existing areas for which councils have responsibility.

### GM and GM food production

Most GM work is laboratory-confined. Laboratory-based GM is an increasingly important tool in diagnostics, conservation, medicine, plant breeding and forensics – to name just a few of the areas where GM has increased the potential to assist in meeting both research and commercial objectives.

For local authorities, therefore, a very specific area of GM use – **GM food production** – requires council consideration. GM food varieties present the most imminent and considerable issue for communities at present. This is because by and large, GM food crops are the only GMOs ready for outdoor release. GMO applications for use outdoors in other sectors – such as in forestry – are not likely to be commercially available in the next five years. GM varieties of fibre crops such as cotton are commercially available, but this is not relevant to New Zealand, as it does not grow cotton.

There are two good reasons for councils to consider responses that will protect the local economy from any potential effects of GM:

1. regional marketing and branding opportunities; and
2. deficiencies in the national regulatory regime.

---

## 1. Marketing and branding issues

Regional brands are often powerful marks of distinction for products grown in an area. For consumers, such brands may be synonymous with particular qualities and quality products: the wines of Marlborough and Hawkes Bay, Martinborough and Central Otago; the fruits of the Bay of Plenty, and the grains of the Canterbury plains. Regional brands recognise the common interests of producers in a district or region. They are also a common identity.

Consumer resistance to GM foods is high in many of New Zealand's key export markets. This has made buyers of New Zealand products (supermarkets, food processors and retailers) concerned not only about deliberate use of GMOs in food, but also accidental GM content. The second can occur when food producers who do not intentionally grow or use GM ingredients are inadvertently contaminated by neighbouring growers or as a result of the presence of GM contamination in the supply chain. Many overseas buyers are wary of purchasing products that carry a risk of GM contamination. These risks are reduced, in their eyes, where regions, for example, have committed to GM free food production.

Outdoor GM food production therefore raises the potential for physical contamination which would result in financial losses for local producers, as well as the potential for regional or territorial brand damage. A brand can be degraded as a result of GM food production when products from an area are associated with actual or potential GM contamina-

*"Our agricultural exports make a massive contribution to the economy of this State and no government can afford to let that be put at risk."*

**Western Australian Minister for Agriculture,  
Kim Chance, April 4 2003**

*"The commercialisation of a single GM grain crop may tarnish WA's overall reputation of being a 'clean and green' non-GM producer and thus have implications for the marketability of other WA agricultural products."*

**Western Australian Parliamentary  
Select Committee report, June 2003**

tion. In this case, all producers in that community may be affected if buyers conclude that products from that region carry the risk of contamination. Australian states, most notably Western Australia, have recognised that the reputation as a food producer may be adversely affected by GM food production, and have taken steps to protect their territories' brand (see box).

## 2. Deficiencies in the GM regulatory regime

A central government agency – the Environmental Risk Management Authority – is responsible for considering all applications for the use of GMOs. However, there are gaps in the GM regulatory regime. These expose communities to financial risk and to insufficient precaution being taken as applications are assessed.

There are two key reasons for this:

### I. Councils are just another submitter in the national process

Communities and their elected councils have no special status under the ERMA process, even with respect to applications for release in their territories. In this sense, they are 'just another submitter' as:

- ERMA is not *required* to notify local authorities of applications to release in their areas.

- When considering an application for GMO release, ERMA is not required to consider all the aspects that may be important to a community. At the most simple level, ERMA is not under any obligation to consider such a regional marketing perspective separate from the national interest.

### II. Communities may be left to pick up the tab

The current law leaves communities financially exposed if a GMO release causes harm. This is because those who release GMOs are not liable under HSNO for any damage they cause that is carried out in accordance with an ERMA approval.

A linked problem is that even if legal action can be brought under other ill-suited general law, ERMA is not required to screen the applicant for their ability to meet claims for damages. Thus if the party releasing a GMO has inadequate financial

## Australian states lead the way

Australian states have insisted that outdoor GM food production is not simply a central government issue. They have identified GM food production as a significant issue at the state level, and are leading the way with GM Free production zones.

The federal government has approved two GM canola varieties. Yet none will be grown in the country for the foreseeable future: producer associations such as the Australian Wheat Board and the Australian Barley Board (single desk traders in the country's wheat and grain) have worked with state governments to ensure that GM canola is not being grown in their territories.

Six of the eight state governments in Australia have moved to introduce legislation to prohibit GM food production or to have greater control over what GM releases do occur.

### Australian states act on gm food production

Six Australian states have introduced legislation on GM food production in their territories.

- **Western Australia:** all GM food production banned until 2006
- **Victoria:** GM canola banned until 2008
- **South Australia:** GM food production must meet stringent standards on contamination
- **New South Wales:** No commercial GM food releases allowed unless approved by the Minister
- **Tasmania:** All GM food production banned until 2006
- **Australian Capital Territories:** No GM food releases unless authorized by the Minister (Bill before state parliament)

resources to cover damage claims, then the burden tends to fall on local government.

A further important reason for developing a community response to outdoor GM use is to ensure that a precautionary approach is adopted for such activities. ERMA is not required to take a precautionary approach in its assessments of an application.

Under the HSNO Act governing GMO release, ERMA is simply required to "take into account the need for caution". As ERMA itself has stated, "The wording in the Act is very permissive, such that the Authority would be acting lawfully in deciding that caution was not warranted".

The precautionary principle was devised essentially as a response to analysis of the long-run effects of certain substances and organisms that had demonstrated alarming adverse effects that were unforeseen when first approved. There should be no question that this be applied when considering application for release of GMOs.

## Options for community management of outdoor GM activities

The Royal Commission on Genetic Modification agreed that local bodies may wish to take an active interest in whether and to what extent outdoor GM activities are conducted in their territories. It foresaw the creation of GM exclusion zones as one response councils might develop. The Commission did not, however, explore how this might be done. Instead it indicated that work would need to be undertaken to identify response options.

Until recently, there was some uncertainty about whether local government's powers extended to GM releases. Several local bodies (including Waitakere District Council, Nelson City Council, Napier City Council and Buller District Council) made symbolic GM Free declarations. Other councils, while concerned about GM, were waiting on central government to amend and improve the GM regime. Ultimately, the amendments to the Act governing GM releases did not address sufficiently the concerns of local authorities, a number of whom supported a joint submission by Local Government New Zealand.

### RMA provides tools for communities

Four district councils in the Northland area and Local Government New Zealand commissioned a report on local government options to address GM releases. A legal opinion by leading QC, Dr Royden Somerville, confirms that **local government does**

---

## Options under the RMA

The RMA allows for a range of responses, from rules through to financial instruments. Regions and districts can therefore approach GM food production in a variety of ways. The following are examples of policies and outcomes open to councils:

### 1. Policies and rules to prevent releases of GMOs for outdoor food production

Certain kinds of GM releases – such as commercial GM food releases – could be prohibited, while other forms of release, such as field trials, might be allowed.

### 2. Policies and rules that allow certain kinds of GM release to occur, but impose stricter conditions than those set by ERMA.

Communities could make bonds a condition for proceeding with any form of release, to provide funds for compensation if harm results. These could apply for experimental trials right through to commercial production. Such a requirement could be placed on developers in addition to other conditions set by ERMA.

have jurisdiction to regulate on GMO releases. They can control or manage GMOs using the RMA.

The **Resource Management Act (RMA)** is the most targeted legal instrument for managing outdoor use of GM activities. Other options include introducing policies through a **Long Term Council Community Plan (LTCCP)** under the Local Government Act.

The RMA provides a great deal of flexibility as to the approach Councils can take in regulating the use of GMOs. **Not all categories of GMO use need to be regulated with the same degree of precaution.** Some could be controlled while others were not. Councils could also put in place a **liabil-**

**ity regime under the RMA** that requires those involved in outdoor GMO use to pay compensation for any harm resulting from their activities.

### Next steps: Local body working group formed to consider options

A working group of Northland district councils has formed and is currently developing terms of reference for a further stage of study. The resulting report is expected to produce detailed recommendations on how local government can set controls to respond to the risks arising from outdoor use of GMOs, should they chose to.

August 2004

---

## Further resources on community management of GMO use

**Community Management of GMOs. Issues, Options, and Partnerships with Government.** Simon Terry Associates, 2004. [http://www.lgnz.co.nz/library/files/store\\_003/Community\\_Mgmt\\_Of\\_GMOs.pdf](http://www.lgnz.co.nz/library/files/store_003/Community_Mgmt_Of_GMOs.pdf)

**Frequently Asked Questions about GM, GM Foods and Managing GM in the Community.** Sustainability Council, 2004, <http://www.sustainabilitynz.org>



**Sustainability Council of New Zealand** • P.O. Box 24304 • Wellington  
Tel: 04-9133655 • Fax: 04-9133760 • Email: [council@sustainabilitynz.org](mailto:council@sustainabilitynz.org) • [www.sustainabilitynz.org](http://www.sustainabilitynz.org)