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BRIEFING PAPER ON GE INITIATIVE

Background

The investigations on genetic engineering/ genetic modification (GE/GM) undertaken by local authorities in North Auckland/Northland were prompted, in the first instance, by widespread community concerns in Northland over the release of genetically modified organisms (GMOs) to the environment. These concerns have not abated and genetic engineering remains an issue that engenders much comment from the community, on-going lobbying by community groups, and large numbers of submissions on council strategies and policy documents.

For example, submissions on GE were the highest for any single issue during consultation on the Whangarei District Council's (WDC) 2004 Long Term Council Community Plan (LTCCP). This has led to the WDC adopting the following stance towards GE in its LTCCP: *Council will adopt a precautionary approach to the management of biotechnology in general and to GMO land uses in particular. It will continue to investigate ways to maintain the district's environment free of GMOs until outstanding issues such as liability, economic costs and benefits, environmental risks, and cultural effects are resolved.*

This is in line with the position adopted by the Northland Regional Council (NRC) in its LTCCP, which stated: *The Regional Council is a member of a Northland inter-council working group to discuss a common approach to the management of GMOs in Northland. Until this group has completed its work, the Council has decided to support a precautionary approach. This means that there should be no further development and field-testing of transgenic organisms envisaged for agriculture, horticulture, and forestry in Northland until the risk potential has been adequately identified and evaluated and a strict liability regime put in place.*

Similarly, the Kaipara District Council (KDC) adopted in June 2003 the following policy : *That Council adopt the direction of a precautionary approach and limit the release of genetically engineered organisms by District Plan Change, bylaw, requiring notification or a combination of these.* Its LTCCP reaffirmed *support for a precautionary approach* as one of the 'Community Outcomes' identified in the schedules of the Plan. A precautionary approach to GM was also identified in the LTCCP as a method for delivering the vision of the future for the district.

Rodney District Council (RDC) to date has not adopted policies specific to GMO activities although it noted in its summary of submissions on the LTCCP that: *During the next two years the Council will formulate policy and plans on:.... Environmental health, such as genetic engineering, biosecurity and contaminated sites.* RDC has, however, a GM related provision in its draft Trade Waste Bylaw 2004 which prohibits discharges involving GM material from facilities engaging in genetic modification. RDC also promotes its district as 'organic friendly'.

The Far North District Council (FNDC) received a large number of submissions on the District Plan concerning GE, most of them requesting that the district become a GM Free zone. Genetic modification also featured strongly in submissions received on the LTCCP. Most requested that no GMOs be released to the environment, that the district become a GE Free zone, and/or that the FNDC be part of a wider regional exclusion zone. The 2005/2006 FNDC Annual Plan includes the following statement: *FNDC remains committed to exploring the options for controlling GE/GMOs at a local level in collaboration with the local authorities north of Auckland.*

In 2001, Waitakere City Council (WCC) passed a resolution declaring the district *'GE Free in food and field'*. The Council further resolved *to identify the most effective ways*

of advancing Council's aspirations for Waitakere City to be 'GE Free', without compromising medical research or currently permitted activities but discouraging in every way possible any form of field trials. The resolutions followed a range of petitions and presentations to the Council requesting that the district remain GE Free.

Early Initiatives

Following on-going community concern over the issue of GE, as evidenced by numerous submissions to the annual plan process over the period 2000 – 2005, the LTCCP in 2004, and a 7,000 plus signature petition presented to Council in 2001/2002, the WDC organised a Workshop on Genetic Engineering at council premises on 31 October 2003. The workshop was attended by elected representatives and staff from all local authorities in Northland along with RDC, a Member of Parliament, representatives from tangata whenua, the Northland Conservation Board, farming groups, business groups, together with members of the public. A report by the Sustainability Council of New Zealand (*Local Government and GMOs: Issues for WDC)* was presented and discussed at the workshop. The findings of the report included the following:

1. Under the existing legislation, the release of GMOs to the environment may create financial exposure for local government, including the WDC, and the costs involved could be substantial.
2. The economic benefits to the district and region from the commercial release of GMOs appear to be small, whilst the risks could be extremely large.
3. There is considerable uncertainty over the role of local authorities under the Hazardous Substances and New Organisms (HSNO) Act 1996, the Resource Management Act 1991 (RMA) and the Local Government Act 2002 (LGA).

Following the workshop, discussions took place at the WDC Environmental Services Committee meeting on 20 November 2003 and a decision was reached to commission a report from Simon Terry Associates and Dr Royden Somerville QC to explore two broad policy initiatives to address those issues that were continuing to cause anxiety to both the Northland community and their elected representatives. These were:

1. Did local authorities have jurisdiction under the RMA and/or LGA to regulate local GMO land uses over and above regulation imposed at a national level by the Environmental Risk Management Authority (ERMA) under the HSNO Act. If so, what form could this regulation take.

2. Could changes be made to the HSNO Act to allow local authorities to protect their interests, and the interests of their communities, regarding the release of GMOs into the environment.

This report was to be commissioned and financed if possible on a collaborative basis involving all Northland local authorities along with RDC and Local Government New Zealand (LGNZ). Approaches were made to all organisations concerned and all agreed to jointly commission and fund the report and legal opinion. The report and legal opinion cost $25,000 with the WDC, FNDC, KDC, and RDC paying $5,000 each and the NRC and LGNZ paying $2,500 each.

First GE Report and Legal Opinion

The report, based upon the Dr Somerville QC legal opinion, found that the HSNO Act does not preclude management of activities involving GMOs in the environment by local authorities under the RMA or the LGA. In other words, local authorities do have jurisdiction to manage land uses involving GMOs in the environment under the RMA and LGA over and above the regulation prescribed nationally under the HSNO Act.

This view on jurisdiction has not been challenged by the Crown Law Office opinions sought by the Ministry for the Environment (MfE), nor by statements by the Minister for the Environment on behalf of Central Government. All recognise that as the law stands local authorities do have jurisdiction under the RMA and LGA to address community concerns about GMO land uses. There are differing views, however, on whether any local and/or regional regulation under the RMA could be successfully supported by a section 32 analysis.

The Report also argued that provisions in the District Plan would be the most appropriate mechanism to regulate activities involving GMOs in the environment at a local or regional level. There are a range of approaches to regulating such land uses, including total prohibition, selective prohibition, spatial management areas, or case specific regulation through scrutiny of discretionary or non-complying activities. To successfully impose such regulation a local authority would need to show through a RMA section 32 (cost/benefit) analysis why this regulation was necessary over and above that prescribed nationally under the HSNO Act. The report outlined a number of reasons local authorities could use to legitimise local or regional regulation. These include:

- The desire to set in place a liability regime that would require those releasing GMOs to the environment to pay compensation or provide a bond in case of future harm caused by an ERMA approved release together with proof of financial fitness to pay such compensation;
- Local economic effects, particularly effects on existing land users and marketing advantages in the district or region;
- Ethical-cultural effects on local Maori and other groups or individuals in the district or regional community.

In regard to the LGA, the report found that the LTCCP formulated under the LGA could be legitimately used to set a policy direction and a precautionary approach to managing activities involving GMOs in the environment. However, the use of bylaws under the LGA regulating such land uses would have difficulty surviving legal challenge.

The report also found that amendment of the HSNO Act to allow territorial and regional authorities to set local and/or regional controls over and above those set nationally by ERMA would provide a more direct means to achieving the desired outcomes sought by a community in regard to GMO land uses in its district or region. Such amendments could provide for:

- The ability of local authorities to issue policy statements on GMO land uses under an amended HSNO Act such that ERMA would be required to accommodate those policy statements in its decisions.
- The option to examine individual applications in tandem with ERMA assessments and, if required, to set stricter controls to apply within the local authority boundaries.

However, it is unlikely that the present government will initiate such amendments to the HSNO Act. During submissions on the New Organisms and Other Matters (NOOM) Bill, LGNZ and a large number of local authorities lobbied for such amendments or, at the least, an amendment of the HSNO Act to clarify local government's role in the management of GMO activities in the environment. Central government chose to ignore those requests.

In addition, the FNDC asked the MfE in conjunction with the Crown Law Office to clarify the legal position on liability to both councils and constituents from an ERMA approved release, including damage to individual trading activities, damage to the environment and damage to human health. MfE chose only to ask the Crown Law Office about damage to the environment

(not economic loss nor damage to human health) and they chose not to address harm to constituents - only councils. They also looked only at legal liability and not financial liability. All these other aspects remain unresolved.

The Report concluded with a number of recommendations foremost of which was for the WDC to liaise with other local authorities north of Auckland to discuss the possibility of a common approach to managing activities involving GMOs in the environment at a local and/or regional level under the RMA and LGA. Setting up a regional working party on genetic engineering was suggested as a useful way forward.

The rationale for the collaborative approach was two-fold. Firstly, to lower costs, both for further research and for future District Plan changes if that was the course of action agreed to. Secondly, to ensure regulation by local authorities under the RMA and LGA was effective (and indeed even possible) it would be best coordinated and implemented on a regional basis. Individual district or city councils would face enormous difficulties regulating unilaterally. In fact, the difficulties in implementing, administrating and enforcing such regulation would most likely be insurmountable for individual territorial authorities.

On a regional basis, however, there is a possibility of setting in place some form of management system under the RMA and LGA if that system is agreed to by all local authorities in the region. For example, because of its unique geography, Northland is especially well placed to undertake such a regional approach. Should all territorial authorities north of the Auckland urban centre agree upon a common regulatory system it is possible that this could be successfully implemented, administered and enforced.

The report *(Community Management of GMOs: Issues, Options and Partnership with Government)* was presented to the WDC meeting on 5 May 2004 and, following robust debate, Council passed a resolution *"That the WDC liaise with other Northland councils to discuss a common approach to future action (if any) on the management of land uses involving GMOs in the environment and that this liaison be carried out either by staff members or through a working group consisting of staff and councillor(s)".*

Other councils in the Northland/North Auckland region, including FNDC, KDC, RDC, WCC and NRC passed similar resolutions committing to investigating a common regional approach to any future management of GMO land uses.

Inter-Council Working Party on GE

Subsequently, on 25 June 2004, a meeting of staff representatives from WDC, KDC, RDC, FNDC, WCC, and NRC convened to discuss ways of progressing this issue (at this stage not all councils had elected representatives nominated for participation in the working group). At the meeting a process was agreed upon to advance the project, along with timeframes and costings.

The first stage was the production of a Risk Evaluation and Options Report, which would progress the project to the point where individual councils could select a particular option for addressing community concerns over release of GMOs into the environment. A rough costing for this stage was estimated to be $50,000 to be shared by all participating councils (i.e. approximately $10,000 each).

The focus of the study was to examine in greater depth the risks to local government and their communities in Northland posed by GMO releases to the environment. In brief, the report was to identify specific sources of risk for local government, including environmental risks from releasing GMOs into the environment such as horizontal gene transfer, soil contamination, contamination of indigenous flora and fauna, interference with ecological processes and life supporting functions of ecosystems; economic risks to

existing businesses through contamination by GMOs and loss of markets due to such contamination (or perception of) and loss of clean green image generally; ethical-cultural risks to Maori and other groups/individuals who have ethical-cultural objections to genetic engineering; and financial risks in the form of liability and compensation for damage caused by GMOs in the environment such as GM contamination of non-GM produce, GM soil contamination, environmental damage generally including possible unforeseen 'catastrophic' damage.

Following the analysis of risks, options to address those risks would be examined. These would include all the various mechanisms available under the RMA, ranging from doing nothing to total prohibition and those in between such as scrutiny of individual GMO land uses through the consenting process. The intent was to advance research to the point where decision makers in council could select, in principle, a favoured response option to the risks arising from the outdoor use of GMOs.

The next stage (if it were to proceed) would tend to require agreement by all or most councils on a common approach. (There may be options that would be attractive for individual councils to pursue in the absence of a common approach, but the Working Group is strongly targeting a common approach in the first instance.) If an agreed option was decided upon that involved regulation under the RMA, further work would be required to draw up the necessary District Plan change and complete the supporting section 32 analysis. This stage would also most likely cost in the vicinity of $50,000 (a further $10,000 each council or an amount determined under a United Nations funding approach).

At the end of this second stage, each territorial authority would have a complete plan change and a section 32 report supporting such a plan change. On the other hand, if agreement was not reached by the participating councils at the end of stage 1, or the councils agreed not proceed on the issue, the second stage of the project would not be necessary and no costs would be incurred. In effect, the joint initiative would come to an end.

Specialist expertise was expected to be required with respect to research into: legal issues, planning issues, liability issues, economic issues and regulatory arrangements governing GMOs. There was a consensus that in the absence of objections to the work of Simon Terry Associates (STA) as evidenced in the previous report and any of its content, i.e. evidence of inaccuracies, bias, etc. it was prudent at this stage, given its earlier involvement, to obtain input from STA as to developing the brief for future work.

A proposal was formulated and, along with a process for advancing the project, was included in participating council's agenda items during August and September 2004. An agenda item was presented to the 4 August 2004 WDC meeting. The following resolution was passed:

1. *That the WDC agrees to the approach for advancing investigations into the management of GMOs in the environment as outlined in attachment 1 of this agenda item.*
2. *That the WDC agrees to contribute $10,000 to jointly fund (along with FNDC, KDC, RDC, WCC, and NRC) a Risk Evaluation and Options Report as outlined in attachment 2 of the agenda.*
3. *That the WDC acts as the coordinating agency in commissioning the above report. That is, the WDC will coordinate the commissioning of the report, collect contributions from participating councils and ensure payment to the authors of the report.*
4. *That the WDC nominates one councillor (Cr Lieffering) to sit on the Joint Steering Group and take part in discussions of the Joint Working Party on GMO Management.*

All participating councils, except for the NRC, passed similar resolutions to jointly fund the Risk Evaluation and Options Report. Whilst the NRC supported the commissioning of the Report, it did not contribute financially because at that time the council was attempting to arrange a similar initiative amongst regional authorities. This initiative has since come to a halt.

Second GE Report and Legal Opinion

A consortium, consisting of Mitchell Partnerships and Simon Terry Associates, together with Dr Royden Somerville QC, were provided with a brief and were commissioned to produce the Risks Evaluation and Options Report and accompanying legal analysis. On 8 April 2005 a draft of the Risks and Options Report was presented and discussed at a meeting of the staff representatives on the Joint Working Party on GE. The content of the Report was reviewed and comments and recommended changes noted. Discussions also took place on the need for an independent review of the Report. It was agreed that an independent review would be sought.

Subsequently, changes were made to the Risks and Options Report and the independent review was commissioned and completed. The finalised Report, legal opinion and independent review were then distributed to the members of the Working Party along with a briefing paper. A date was then arranged for a meeting of the full Inter-Council Working Party on GE, including elected representatives. Because of the complexity of the issues covered in the Risks and Options Report, Simon Terry of STA (one of the authors of the Report) was invited to the meeting of the Working Party to give a presentation on the findings of the Report and to answer any questions and clarify any uncertainties that may arise.

The meeting of the full Inter-Council Working Party on GE took place at Forum North, Whangarei District Council on 9 September 2005. Attendees included: Cr Richard Alspach (KDC), Cr Sheryl Mai (WDC), Cr Grahame Powell (RDC), Cr Sue Sheppard (FNDC), Cr Ian Walker (NRC), Kerry Grundy (Team Leader Monitoring, WDC), Glen Mortimer (Policy and Planning Manager, NRC), Brendon Neal (Policy and Planning Manager, KDC), Alison Newell (Environmental Policy Manager, FNDC), Max Smitheram (Senior Policy Advisor, RDC), and Simon Terry (Simon Terry Associates). Kerry Grundy chaired the Meeting.

The following resolutions were adopted at the meeting:

1. That the Working Party on GE receives the report *Community Management of GMOs II: Risks and Response Options;* the legal opinion of Dr Royden Somerville QC; and the independent review of the Risks and Options Report by Karen Cronin.
2. That the Working Party on GE receives Simon Terry's presentation.
3. That the Working Party on GE thanks the WDC for its coordination and administration of the Inter-Council Working Party on GE and the commissioning of the Report, legal opinion and independent review.
4. That the outcomes of this meeting be jointly reported to the participating councils at their November 2005 meetings.
5. That a consistent covering brief be presented to each council (or committee thereof) along with the Risks and Options Report, legal opinion and independent review. That this brief forms the basis of agenda items that can be added to by staff of individual councils if deemed necessary.
6. That this covering brief (and accompanying agenda items) ask the respective councils participating in the Working Party on GE to make a number of determinations, these being:

(i) Whether the council wishes to take a proactive stance and continue with the initiative on GE. In effect, does council consider the risks outlined in the Risks and Options Report sufficient to warrant further action on this issue.

(ii) If so, whether the council wishes to continue on a collaborative basis, i.e. involving all or most of the local authorities on the Northland peninsula, or unilaterally. (Councils may wish to continue only on a collaborative basis and any further action could be made subject to this qualification).

(iii) If a joint approach is agreed upon, whether the council should follow the recommendations in the Risks and Options Report and initiate a consultation programme with its community to determine what level of support exists for the various options in the Report. That this consultation programme, if initiated, be coordinated by the Working Party on GE and be consistent across the Northland peninsula.

(iv) Whether the council needs to make a budgetary commitment to the consultation programme (subject to an agreed upon consultation process).

Staff were directed to provide an outline of a possible consultation programme along with costings. The following outline is only preliminary and the costings indicative. Should there be agreement among councils on the Working Party on GE to proceed with community consultation, a more detailed programme would need to be formulated together with more robust costings. However, the outline below should enable councils to make a decision in principle on whether to proceed in this direction.

Consultation Programme

The aim of the consultation programme would be to gauge the level of community support for the management of GMO land uses by local authorities through provisions in the District Plan at a local and/or regional level in conjunction with regulation by ERMA under the HSNO Act at a national level. Additionally, if community support was shown to exist for local and/or regional management of GMO land uses through provisions in the District Plan, then what form should that management take? In other words, which of the options put forward in the Risks and Options Report is favoured to be instigated through a District Plan change?

The community consultation programme could consist of two approaches. Firstly, a regional telephone survey could be conducted, the results of which could be analysed at both a regional level and also disaggregated enabling analysis at a district/city level. In this way the Working Party on GE would be able to gauge the level of support for local government management of GMO land uses over the whole of the Northland peninsula and also within each individual district or city council boundaries.

This would require a sample size of between 300-400 people for each district/city council, and thus a total sample size for all the Northland peninsula of between 1,500 – 2,000. This would enable statistically valid analyses of the resulting data and meaningful conclusions to be made on the level of community support that existed for the various proposals. Such a poll carried out by a reputable market research company (e.g. DigiPoll or Colmar Brunton) would cost in the vicinity of $25,000 in total. Thus, the cost would be around $5,000 per council if all five territorial authorities in the

Working Party on GE agreed to fund it. This cost would lower slightly if the NRC contributed funds to the initiative.

Secondly, a public notification/submission consultative programme could be undertaken by each district/city council. This could be structured to permit analyses at both regional and district/city levels. The aim of this procedure would be to allow interested parties, both major stakeholders (such as farmer groups, GE Free Northland, business interests, DoC, and other environmental and community groups) and members of the public, together with tangata whenua groups, to present their particular viewpoints on the proposals.

This approach would require publicising the project in local papers and at council offices, libraries, and other community locations and having available for distribution to interested parties documentation on the GE initiative as a whole, and the Risks and Options Report in particular. Submissions would be called for and these submissions analysed to gain the views of different groups within the community. It is envisaged that this consultative procedure could be conducted in-house, by the individual participating councils in the Working Party. The cost of this process is estimated to be in the region of $5,000 - $10,000 per council excluding staff costs.

The two approaches would thus compliment each other. The telephone poll would gauge the level of support in the general community for local/regional management of GMO land uses. It would not favour, or be subject to capture by, any particular interest group but rather would garner response from the overall community or general public (i.e. the 'silent majority'). Telephone polling is structured to obtain a random sample of respondents and thus a response representative of the general public or the community at large.

The notification/submission process, on the other hand, would specifically allow for interest groups (pro-GE, anti-GE and neutral) to express their particular views on the proposals. These groups, representing farmer lobby groups (both conventional and organic), the biotechnology industry, business groups, environmental and community groups, GE Free Northland, DoC, and Maori groups, can be argued to have an interest in the issue perhaps greater than the general public and thus warrant specific targeting for comment. This, of course, would not exclude individual members of the public making submissions, nor having those submissions included in subsequent analyses.

This two-pronged approach, it is felt, would result in a robust and defensible programme of public consultation that would be valuable for both gauging community support for local/regional management of GMO land uses and for supporting any subsequent plan change should one occur as a result of the community consultation. Also, at a total cost of between $10,000 - $15,000 per council it would be a cost effective project and represent good value for money given that the consultation programme would produce results for the whole of the Northland peninsula whilst at the same time be able to be disaggregated at a district/city level. Also, should a District Plan change eventuate, the results of the consultation programme would make a substantial contribution to the required section 32 analysis.

Conclusions

The collaborative approach undertaken by local authorities in the Northland peninsula has been a cautious yet responsible way to proceed with this highly contentious issue. It is an excellent example of local government working together to address common concerns raised by their respective communities. It has received much favourable comment from the local and regional community and is being viewed by the rest of New Zealand with much interest and some anticipation. In other words, our efforts are viewed as innovative and progressive by our communities and councils elsewhere.

It has also been a fiscally responsible approach to adopt. By sharing the costs of research and possible regulation amongst all local authorities in the North Auckland/Northland region, the cost to individual councils and to ratepayers has been minimised. To date, the entire process has cost each individual council around $15,000. This has produced excellent value for money, including two major ground-breaking reports together with associated legal opinions from one of New Zealand's top resource management lawyers. Should councils on the Working Party on GE agree to undertake a community consultation programme to gauge support for local/regional management of GMO land uses this is likely to cost each council a further $10,000.

However, it should be kept in mind, that should these investigations lead to a District Plan change to allow the regulation of GMO land uses, the two reports, the associated legal opinions, and the results of the community consultation programme will constitute a major portion of the section 32 analysis that is required to support a plan change. In other words, there should be no further major expenses in formulating an adequate section 32 analysis. The remaining cost would be in drawing up the plan change itself.

At the end of the day, should there be no agreement upon adopting a common regulatory regime for GMO land uses this money is still money well spent. The councils involved can say to their respective communities that they have fully investigated the issue of GMO land uses in their districts and region and that they have adopted a position (whatever that may be) based upon sound research, full information, responsible procedures, and a collaborative approach with their neighbours.

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STAFF Kerry G

15 August 2005

Cr Ian Walker
R D 1
Kaitaia

Dear Ian

NORTHLAND'S APPROACH TO GMOs

I have taken the time to carefully consider the following information provided by Glenn Mortimer.

- **Simon Terry Associates**
  "Community Management of GMOs II Risk and Response Options"

- **Karen Cronin**
  "Review of GE Issues and Options for Whangarei District Council"

I will try to keep my comments brief.

1. I do not believe that it has been demonstrated that there is "evidenced significant concern with respect to GMO activities". As far as I am aware, a lobby group have actively advocated that GMOs should be locally controlled by the Councils. The Councils have been responding to their concerns. I am not aware of any community survey that has determined the actual level of community concern.

2. The Simon Terry Analysis does not adequately address:

   - The need for Councils to implement controls. Recently the Greens were asked:

     "This time GM is not the big issue but you would still oppose its release into the environment. How far would you take that opposition, to the extent of withdrawing confidence and supply?"

   Their response is interesting:

     "There is no imminent risk of GM release because there are no applications even in the pipeline and no-one that's known to be wanting to be putting anything in, so it seems unlikely that that is going to come up in the next few years. If it does, the Greens will put everything into opposing the release of GMO into our environment."

   There is no demonstrated need for Councils to bring forward controls at this point in time. To put it simply, controls at the local level are not required.

NORTHLAND REGIONAL COUNCIL

3. The Terry report rightly notes that a Section 32 analyses would have to be undertaken.

4. The Cronin peer review clearly recommends that before any move is made, there needs to be more analysism (more money to be spent).

Given the potential costs that Councils face and the lack of a demonstrated need, I do not believe that it would be prudent to move forward at this point in time.

The Terry report does however identify some possible deficiencies in the National Regulatory Regime. These should be taken up with ERMA.

Kindest regards

Mark C Farnsworth
Chairman

Copies to: Cr Peter Jensen
Chief Executive Officer
Manager Planning and Policy

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DRAFT STATEMENT OF INTENT
GENETICALLY MODIFIED ORGANISMS

Waitakere has been the Eco City for twelve years and now the vision is, that in the near future, Waitakere will be known internationally as a sustainable city that:

- Celebrates and sustains its people
- Has a strong sustainable economic base
- Honours its environment; and
- Builds on its cultures and heritage.

Within the vision for the City, as stated in the Long Term Council Community Plan 2006-2016, are the concepts that:

"We are home to lots of innovative economic activities, providing local, quality work and development opportunities for our people. Environmentally responsible businesses are supported and successful."

And further:

"People are able and willing to be part of city issues, and feel that they can make a difference. There are high levels of community involvement, people respect each other's views and are proud to support the Treaty of Waitangi."

One of the nine strategic platforms of Council is for a Strong Innovative Economy. This platform is about promoting local enterprise, jobs and economic growth in high quality town centres designed for the task. It includes promoting research and development; identification of and development of business clusters (organics, film etc.); working with businesses to improve the environment; increasing the city's profile as a good place to do business; working with other councils to develop the regional economy; maintaining our environmental advantages; and providing the basis for sustainable economic growth.

On initial prompting from representatives of the newly emerging organics business cluster in both Waitakere City and Rodney District, Waitakere City Council declared the city GE-Free in field and food in November 2001 (2635/2001). The City has confined its reservations regarding genetic engineering to the use of GM products in food and the use of GM plants and animals in the environment (agriculture and horticulture).

With the lifting of the moratorium on the release of genetically modified organisms since 2002, the concern for the organics industry is not only maintaining their organic certification but also to be able to ensure they can provide their customers with products that are also GM-free.

Waitakere City Council will exercise its rights under Section 53 (4) of the Hazardous Substances and New Organisms Act 1996, and require to be notified of any applications for the release (in the field) of genetically modified organisms that may affect Waitakere City. In particular, the Council will be concerned with growing of any crops that may have an adverse environmental or economic effect on the organics industry, or on the environmental advantage that Waitakere City currently enjoys.

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647961

28 October 2005

Darryl Griffin
For your action
please
Email 1/11/05

Harry O'Rourke
CEO
Waitakere City Council
Private Bag 93 109
Henderson
WAITAKERE CITY

Dear Harry

AUCKLAND REGIONAL PHYSICAL ACTIVITY AND SPORTS STRATEGY – STRATEGIC PARTNERS GROUP – REQUEST FOR REPRESENTATIVE

Following the request from the Auckland Regional Physical Activity and Sports Trust (ARPAST), I am pleased to advise that Manukau City Council has endorsed Colin Dale to the role of sponsor. The next step associated with the strategy implementation process (see attachment) is the formation of a Strategic Partners Group[3] (SPG). This Group will consist of:

- Elected member representatives (Councillors) from the Territorial Local Authorities;
- The Chief Executive Officers (or nominee) of the Regional Sports Trust;
- The Chief Executive Officers (or nominee) of Sport and Recreation New Zealand and the Ministry of Health (regional level).

Therefore on behalf of Colin, I now call for nominations to this SPG. I ask you to consider the nomination of your representative to this exciting project and that an alternate be named as well. It would be ideal if your representative had some knowledge of either the Sport or Recreation industry and be able to attend a quarterly meeting of up to 3 hours duration.

As part of informing your representative as to the activities of this Group, please also be advised that the first meeting will be held:

Date	Wednesday 23 November 2005
Time	12.30pm-2.00pm
Venue	Eden Park, Gate E, Reimers Avenue, Kingsland Auckland

[3] Details are highlighted within the Memorandum of Understanding between each of the regions Local Authorities, Regional Sports Trusts, SPARC and Ministry of Health.

Direct Dial: (09) 262 5235
Direct Facsimile: (09) 262 8954
EMail Address: lauton@manukau.govt.nz

A43

Reference: SAM\L-CEO'sPltclRfncGrp-Oct

Please RSVP to Caroline Henty at Sport Auckland on telephone (09) 815 4721 by 11 November 2005. If you require further information regarding the Strategic Partners Group, then please contact Sam Noon on telephone (09) 262-8900 extension 8694 or Simon Peterson telephone (09) 815 4710.

I look forward to the attendance of your nominated representative at the meeting on the 23 November 2005.

Yours sincerely

Leigh Auton
CEO DESIGNATE

Encl.

cc *Ian Murray, Rodney District Council*
Lavinia Jacobsen, Counties Manukau Sport
Louis Rattray, Waitakere City Council
Sam Noon, Manukau City Council
Joy Hames, Papakura District Council
Sue Dennehy, North Shore City Council
Debbie Curgenven, SPARC
Kerri Crawford, Franklin District Council
Richard Hutchenson, Auckland City Council
Jane Aickin, ARC
Sarah Dunning, Sport North Harbour
Lynette Adams, Sport Waitakere
Simon Peterson, Sport Auckland

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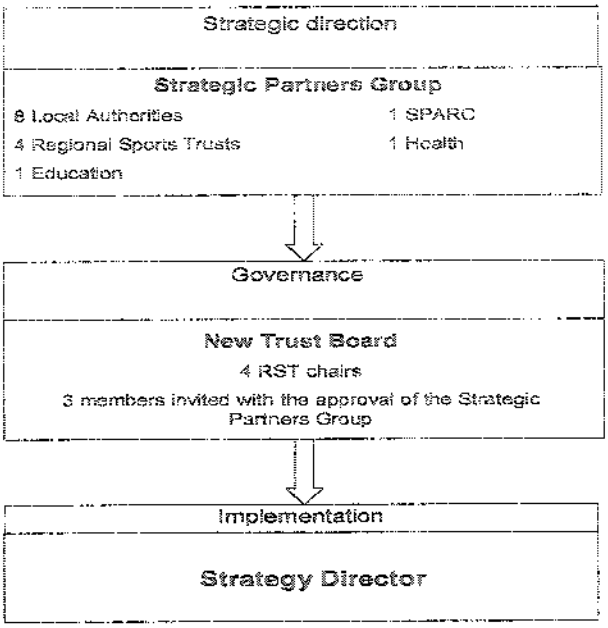
A44

Reference: SAM\L-CEO'sPltclRfncGrp-Oct

Auckland Regional Physical Activity and Sports Strategy Structure



Strategic Partners Group Function

- Provide strategic guidance for the implementation component of the Strategy
- Provide the strategy director with a link to appropriate resources of the founding partners
- Provide advice to the Board members of the ARPAS Trust relating to the implementation projects of the strategy
- Ensure communication with their TLA / RST / Ministry of Health (MOH) on the 'status' of the strategy
- Ensure ongoing communication to their existing stakeholder groups for effective reporting and alignment
- Sponsor the SPG meetings (through one of the TLA's) and will call quarterly meetings for the Strategic Partners Group (via the Strategy Director)
- Provide strategic direction, overall governance, a link back to founding stakeholders and ensure collaboration at the highest level.
- Decisions will be made on a consensus model. Should consensus not be reached, decisions will be made on a majority vote.

SUPPLEMENT TO A MEETING OF THE FINANCE AND OPERATIONAL PERFORMANCE COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON MONDAY, 7 NOVEMBER 2005, COMMENCING AT 9.30 AM

17 USE OF ADDITIONAL SURPLUS FOR THE YEAR ENDED 30 JUNE 2005

PURPOSE OF THE REPORT

The purpose of this report is to present options to the Finance and Operational Performance Committee for the use of the additional year end surplus of $1.73 million.

BACKGROUND

The Committee, at its meeting held on 10 October 2005, received the draft Annual Report 2004/2005 and recommended to the Council that it be approved. At that time it was reported that there was an additional year end surplus of approximately $2 million. That amount was a preliminary estimate and now that the Annual Report has been completed, the actual additional surplus is $1.73 million. The Committee requested that a report on possible uses of the surplus be referred to the November meeting of the Committee. Discussion by the Committee included additional funding for town centres maintenance, youth events, and the allocation of funds to the forthcoming Long Term Council Community Plan 2006/2016.

ITEMS FOR CONSIDERATION FOR THE USE OF THE ADDITIONAL SURPLUS FOR THE YEAR ENDED 30 JUNE 2005

A number of areas for additional expenditure in the 2005/2006 year are proposed in this report. Staff will be in attendance to answer questions from the Committee. The Committee may wish to recommend those items identified for Council consideration and add further items. Any unallocated surplus can be used to either repay debt or be used to offset the rate requirement in 2006/2007. The surplus amount available is $1.73 million.

The following items are brought to the Committee's attention for funding in the 2005/2006 year. Commentary on each item is provided within this report:

Legal Contingency	500,000
Pandemic Influenza Planning and Contingency	100,000
Old New Lynn Hotel	50,000
Lopdel House Society additional grant	80,000
New Lynn Underground	300,000
Town Centres Maintenance	200,000
Facilities Manger (New Civic Centre)	50,000
Titirangi Music Festival	5,000
Trash to Fashion	30,000
Community Assistance Fund	18,000
Ground Stability Renewals (slips)	34,000
Utility Box Project	26,000
Urban Ex 06 Youth Event	30,000
School Travel Plans	77,000
Growth and Transport Integration Programme	100,000
Waitakere Ranges and Foothills Protection Project	50.000
Total	**$1,650,000**

A46

Legal Contingency

As previously advised, the Council has had three major court proceedings issued against it in the beginning of the 2005/2006 financial year. There are two proceedings relating to the validity of the Waste Bylaw and a set of proceedings at this stage comprising two (with more to come) claims seeking the return of the Harbourview land under the Public Works Act.

While Council budgets for legal contingency and significant legal costs in respect of its regulatory activities in each year, these budgets will not be sufficient to withstand one, let alone three, significant High Court proceedings. It is therefore recommended that $500,000 of the available surplus be allocated in the 2005/2006 financial year to cover contingent costs relating to these proceedings. It is further advised that an additional budget provision may be required in the 2006/2007 year in respect of these proceedings. However, any budget that is not spent from that proposed to be allocated in the 2005/2006 year would be able to be carried forward.

Pandemic Influenza Planning and Contingency

Councillors will be aware of the significant recent media and public attention given to cases of Avian Influenza and the related potential for an Influenza Pandemic. Such a pandemic would have the potential for high infection and mortality rates, and significant societal disruption. This would likely include impacts on the workforce and on some services and activities people currently take for granted. A full report and workshop on the threat from an influenza pandemic is being arranged for Councillors and will take place in either late November or early December 2005.

Planning and preparation work for an influenza pandemic has been taking place at national, regional and local levels. While this work is being led by the Health sector, the Government has initiated a multi-sector, multi-agency approach across 11 different workstreams. Local Government is involved in this approach both in the infrastructure workstream, as a provider of essential services, and in the Community/Welfare workstream in its Civil Defence Emergency Management capacity.

In this context, Council has two key areas of focus: firstly, keeping essential services such as water supply, sewerage and transport networks operating, potentially in the face of major work force disruption; and secondly, dealing with emergency management and community and welfare impacts from any pandemic outbreak. This second area might include operating or supporting a Civil Defence Emergency Management headquarters and response, disposing of large numbers of dead through the Cemetery and Crematorium, and operating welfare facilities and services, potentially including augmentation/support of health resources.

Planning work on these issues is underway. Business continuity plans are being reviewed, new contingency planning developed, and Civil Defence preparations undertaken. However, this work is largely not budgeted in the Annual Plan, as the threat emerged subsequent to the Annual Plan process. Expenditure that is likely to be required in this area includes:

- Purchase of safety equipment and supplies for essential employees (including masks, protective clothing and equipment, protective drugs (if available), emergency rations);
- Planning and resource consent costs for mass grave sites and the expanded operation of the Crematorium (preliminary work has commenced);
- Actual construction of a mass grave site (if required);

- Provision of additional support for essential personnel and contractors to enable operation of key services (e.g. security at key installations/facilities, quarantined accommodation);
- Other items of necessary expenditure that may emerge as planning progresses.

In order to have funding available to meet these costs, it is proposed that $100,000 of the additional surplus be allocated to a Pandemic Influenza Planning and Contingency Budget, to be held in the Emergency Management area of the Council.

Old New Lynn Hotel

For a number of years the Council has been in negotiation to purchase the Old New Lynn Hotel. Acquisition is still subject to the final deliberation of the Environment Court, however, the Council has handed over an initial component of the purchase price. The property has been long derelict, especially after fire damage in 1999, and a programme of restoration needs to be organised.

An amount of $50,000 is sought to make the property presentable, assist in some of the health and safety aspects of ownership, and commence a structural survey, project development plan and a conservation plan.

Until the structural and conservation reports are completed, it is not known how much this building will cost to repair.

Lopdell House Society Additional Grant

The Committee, at its last meeting held on 10 October 2005, considered in the confidential section of the agenda a matter relating to rent arrears. Additional grant funding to the Society was discussed and an amount of $80,000 was recommended to Council for approval. The source of funds was to be considered as part of the use of the additional year end surplus.

New Lynn Underground

The requirement on Council to engage with the regional transport agencies as well as Central Government, other Councils and all of their consultants, has indicated a much larger scope of work over the 2005/2006 financial year than previously anticipated.

It is now clear that unless Waitakere City can articulate its vision for New Lynn and the rail development in terms of each of the stakeholder parties' respective objectives, and provide ongoing detailed technical, strategic and political input to the project, an underground station has little chance of success. For example, Council staff have led the traffic modelling process for the New Lynn component of the project to date. This has meant a high level of engagement with the detailed design assumptions in relation to that model that otherwise would not have been achieved.

The Auckland Regional Transport Authority (ARTA) has indicated the next key milestone will be in March/April 2006, when the decision for a preferred station option is planned. This means that the next five months will be crucial in participating in the process to influence that outcome, and that is likely to require additional resource.

There will be some external assistance required to cover areas of importance to Waitakere City that may not be viewed as a priority to Auckland Regional Transport Authority or others. For example, 3D modelling to demonstrate the effect of station configuration on perceived safety and access, a social and economic impacts report, and direct community consultation and communication.

Because the scale and nature of the required work is not known at this point, it is recommended that funding of $300,000 be allocated as a "contingency fund", where a business case is provided to the Chief Executive Officer for each project component as required.

Town Centres Maintenance

The Committee requested that Town Centres Maintenance be considered for further funding in the 2005/2006 year. At the Tenders Subcommittee meeting held on 14 October 2005, the contract for Town Centres and Toilets - Response and Renewal was awarded. The Tenders Subcommittee has approved the scope of the contract to include further works subject to additional funding. An amount of $200,000 is considered adequate to provided enhanced response capability.

Facilities Manager (New Civic Centre)

An amount of $50,000 is sought to enable the early appointment of a Facilities Manager at the new Civic Centre. This amount will cover recruitment cost and 6 months salary. The appointment will ensure the smooth operation of the new Civic Centre when it opens and avoid any issues arising from utilising the new technology.

Titirangi Music Festival

This festival was supported by Council in the 2004/2005 Annual Plan by a grant of $5,000. A further sum of $10,000 has been included in the 2005/2006 Annual plan to support the delivery of the festival for 2006.

The festival was held in April this year in Titirangi and produced approximately 40 separate performances and workshops over a week-long period. The Living Works Trust was formed specifically for this purpose. The event attracted a wide audience from Waitakere City and the region and was regarded as a critical success. The inaugural event incurred a deficit of $4,275 as a result of the ambitious scale of the festival and the number of programmed events. Despite good overall management of the project and good ticket sales, the deficit occurred. A further grant to off-set the current deficit would allow the Trust to go forward unencumbered.

Trash to Fashion

The Trash to Fashion® Awards has become a flagship event for Waitakere City. This is the 10th year of delivery of this event, which has grown to have regional and national profile.

The originators of the concept, Keep Waitakere Beautiful, are co-presenters and the 'silent partners' to the project. They apply annually to the Portage and Waitakere Licensing Trusts and meet budget requirements from this major grant. In 2004 the Trusts increased their grant to $60,000 and took naming rights to the event.

This project combines art, performance and fashion along with an environmental message. It engages communities from across all demographics and has a very strong involvement with schools and, latterly, school curricula.

The Council allocates $90,000 from the Annual Plan and other revenue is sourced from sponsorships and ticket sales.

In 2004 the event was relocated to the Trusts Stadium. This raised the profile and quality of the project but increased the costs of the production substantially due to the scale of the production elements required to mount the performances. This, along with lower than predicted ticket sales, resulted in a loss of approximately $30,000. Given that the venue was, at this stage, largely unknown to the event-going audience and the timing of the production was confined by the Stadium to early December, 2004 can be regarded as a 'loss leader' to some degree.

This year Keep Waitakere Beautiful applied to the Trusts for an increase of $30,000 to $90,000 on the basis that further cost increases were expected after the experience of mounting the production in the new venue. This application was declined, but continuation of the $60,000 grant was approved. A recent application to the Trusts to reconsider this decision has been declined.

Despite an increase in private sector sponsorship, it has now become apparent that there is still a budget shortfall of $30,000 for the 2005 project. The budget has been rigorously analysed to reduce spending, but no further cuts can be made without significantly reducing the delivery of the event. To do this will risk losing a regional and local audience which regards Trash to Fashion as a City flagship event.

This event is now committed to delivery in the Trusts Stadium. There is no other venue which can safely hold the cast and audience numbers involved. The venue has also contributed to lifting the profile of the event to a very professional standard.

Costs have increased across the board for this year's production. This is largely due to a more realistic basis for quotes from all production contractors after the 2004 experience. The hire of the Stadium has likewise increased from $18,000 to $24,000 (community rates). Ticket prices have been increased slightly for this year (to adults $22 and children $10). There is a deliberate policy of keeping ticket prices low to support access for all members of the community. This current ticket cost is seen to be the upper limit to protect that access. (By comparison, the World of Wearable Art Awards has ticket prices ranging from $65 to $100 plus.)

The current budget is predicated on ticket sales of two-thirds of the stadium capacity. It would be unwise to allow more than this, despite the fact that the venue and the event are better known to the public than last year.

The Trash to Fashion® Awards has grown to a point where the cost of delivery of the event in the Trusts Stadium exceeds the allocated budget and achieved sponsorship. An additional amount of $30,000 is sought to fund the event this year.

Community Assistance Fund

Included within this agenda is a report on the allocation of the Community Assistance Fund. An amount of $32,000 was provided in the 2005/2006 Annual Plan. At the time of budget allocation it was uncertain as to whether the amount provided would be adequate to fund the requests from eligible organisations to receive assistance. The Fund is oversubscribed by $18,000 and the Fund could be supplemented from the year end surplus.

Ground Stability Renewals (slips)

The Ground Stability Renewals budget provides for the clearance of slips and repair. It is likely that the Fund will not be sufficient to cover any major slips that could occur for the rest of the year. A recent slip at 440 Scenic Drive has substantially used available funds. A sum of $34,000 is sought and if the funds are not required during the remainder of the financial year, then they can be returned through the Long Term Council Community Plan process.

ASO

Utility Box Project

This project proposes a series of 'arts utility boxes' in three of the smaller village centres in Glen Eden, Ranui and Green Bay. It is based on similar projects undertaken in other cities; notably the project completed in Auckland City's Ponsonby area. There is currently no budget to implement this project.

There is an ongoing problem of tagging and other forms of vandalism on the utility boxes owned by Telecom, Vector and Council. In other areas, such as Ponsonby, this has been largely eliminated by turning these utility boxes into individual artworks using the skills of local artists to paint images that are site specific to the local area.

Such projects require a well-designed community collaborative process which engages local businesses and residents. Each area needs to have work that is recognisable and meaningful in some way; whether it is by reference to history, cultural affiliation, local scenery [flora and fauna] or other identifying themes.

This proposal is viable only if good consultative processes are followed and quality work is commissioned using robust materials. The budget proposed is based on the successful work completed by Auckland City Council. The areas chosen for this work have been selected on the basis that they are small village centres where there has not been significant arts spending in recent years.

The 'arts utility boxes' project has proved to be a community arts initiative that has been successful elsewhere and has the potential to contribute to beautifying three of the City's smaller centres. An amount of $26,000 is sought.

Urban Ex 06 Youth Event

Waitakere City has the opportunity to host Urban Ex '06 (in early December 2006). The expo will be a feature of "what's hot and new" for today's youth. Totally interactive and event focused, Urban X will consist of three days of music, fashion, arts, culture, sport, future career and advancement seminars, technology, and health and well-being.

In March this year, event management company Strategic Sports New Zealand Limited, in conjunction with Youth Research Company 18 Tracker Limited, conducted a comprehensive survey designed to ascertain the feasibility of creating for the first time an expo completely focused at young New Zealanders. From the research undertaken it seems that young Aucklanders feel under catered for when considering entertainment options and activities. To ensure the expo doesn't become "boring and unhip", an events advisory committee has been formed and is responsible for providing advice and planning assistance to ensure that Urban Ex is 'created by young Aucklanders for young Aucklanders'.

Waitakere City is being asked to provide $30,000 to secure the event which will be held in the Trusts Stadium. Event organisers have a preference to host Urban Ex in Waitakere City due to the high youth population and Waitakere City's go forward attitude and commitment to young people.

This potential event gives Council an opportunity to introduce new and exciting opportunities to Waitakere Youth, along with the opportunity to integrate existing youth programmes and initiatives into the Expo.

School Travel Pans

In 2003/2004 the Council received grant funding from the Road Safety Trust of $93,000 for School Travel plans. At 30 June 2005 there was a remaining balance of $77,000. That balance should have been made available for the completion of the project in 2005/2006 rather than being included in the preliminary surplus for 2004/2005 used to reduce the rate requirement. ASI

Waitakere Ranges and Foothills Protection Project

The budget for 2005/2006 did not anticipate the re-notification of the draft bill. This became a necessity in July 2005. An additional amount of $50,000 is required to ensure that the bill is re-notified and introduced to Parliament this year.

Growth and Transport Integration Programme

The Growth and Transport Integration Programme requires an additional $100,000 for social infrastructure planning, urban design and project management as set out below:

Social infrastructure planning to underpin plan changes for Northern Strategic Growth Area and New Lynn

- To assure we are providing for the social wellbeing of residents by determining appropriate levels of provision for social/health services, childcare, schools, etc;
- To ensure physical infrastructure such as road linkages supports social wellbeing.

Urban Design

Concept planning work has recently been initiated for both Hobsonville Marine Precinct and the Housing New Zealand land. There is ongoing work required to ensure that the future for Westgate is in a form that will satisfy the Auckland Regional Council and the Auckland Regional Transport Authority, as well as Transit New Zealand. The New Lynn District Plan changes also require additional work.

Project Management

The Growth and Transport Integration Programme was originally set up with strong project management disciplines, but the current resources are spread over a number of competing projects such as the ranges protection and the Long Term Council Community Plan.

CONCLUSION

After completion of the annual audit for the year ended 30 June 2005, an additional surplus of $1.73 million is available for allocation to specific projects, debt repayment or as an offset to the rate requirement in 2006/2007. A number of items for consideration by the Committee have been identified within this report for additional funding or new funding. The Committee needs to determine the allocation of the additional year end surplus and recommend to Council the use of that surplus. Funds unallocated could be directed to debt repayment or used as an offset to the rate requirement for 2006/2007.

RECOMMENDATIONS

1. That the Use of Additional Surplus for the Year Ended 30 June 2005 report be received.

2. That the Finance and Operational Performance Committee recommend to Council how the additional surplus for the Year Ended 30 June 2005 be utilised.

Report prepared by: Andrew Pollock, Director: Finance.