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SUBMISSION OF LEGASEA HAWKE'S BAY ON PUBLICLY NOTIFIED APPLICATION BY HAWKE'S BAY REGIONAL COUNCIL (REGIONAL ASSETS SECTION) TO DREDGE THE CLIVE RIVER AND DEPOSIT DREDGE MATERIAL WITHIN THE CMA

INTRODUCTION

1. This is a submission by Legasea Hawke's Bay (**the Submitter**) on an application from Hawke's Bay Regional Council (Regional Assets Section) for resource consents for dredging on the bed of the lower Clive River, including part of the river defined as Coastal Marine Area (**CMA**), and to deposit more than 50,000m³ of dredged material on the foreshore and seabed within the CMA (**Application**).¹
2. Legasea Hawke's Bay are an organisation of concerned recreational fishers determined to protect the marine environment and rebuild our depleted fish stocks in Hawke Bay and the surrounding area. Legasea Hawke's Bay is not a trade competitor for the purposes of section 308B of the Resource Management Act 1991.
3. This submission relates to all parts of the Application. Legasea Hawke's Bay acknowledges the need to dredge the Clive River to provide for the ongoing social, cultural and emotional wellbeing of the people of Hawke's Bay:
 - (a) The lower section of the Clive River has been a popular recreational area for many years. Sports affected by the current state of the river include rowing, waka-ama, canoeing, water skiing, casual boating, swimming and fishing.

¹ Application Number: APP-126155. Authorisation numbers: AUTH-126690-01 AUTH-126691-01 AUTH-126688-01 AUTH-127746-01 AUTH-127752-01 AUTH-126689-01 AUTH-127748-01 AUTH-127749-01 AUTH-127748-01

- (b) As noted in the Application, dredging could enable the return of waka excursions, bringing with this activity increased social and economic benefits.
 - (c) The dredging may also help to alleviate the effects of stagnant weed during times of low flow in the summer. The smell and presence of weed clumps is a major deterrent to river use.
4. While acknowledging these matters, Legasea Hawke's Bay **opposes** the Application in its current form.

REASONS FOR THE SUBMISSION

5. Legasea Hawke's Bay opposes the Application in its current form because:
- (a) It does not accord with the sustainable management purpose of the Resource Management Act 1991 (**RMA**);
 - (b) It does not properly avoid, remedy, or mitigate adverse effects on the environment;
 - (c) It fails to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
 - (d) It is inconsistent with the New Zealand Coastal Policy Statement (**NZCPS**), the Hawkes Bay Regional Policy Statement, the Hawke's Bay Coastal Environment Plan, the Hawke's Bay Regional Resource Management Plan, and other relevant planning documents.
6. Without limiting the generality of these reasons, the specific reasons for Legasea Hawke's Bay's submission are now addressed under the following headings:
- (a) The disposal of dredged material and the cumulative effects on the marine environment and indigenous biodiversity if dredge material is pumped onto the foreshore and disperses into the sea.
 - (b) The disposal of tubeworms removed from bridge structures.
 - (c) The need to have particular regard to the effects of climate change when making decisions.
 - (d) The length of the river to be dredged, and interests of the community and tangata whenua.

Disposal of dredged material - Cumulative effects on the marine environment and indigenous biodiversity

7. As noted above, the Submitter acknowledges the need to dredge the Clive River to provide for the ongoing social, cultural and emotional wellbeing of the people of Hawke's Bay. The issue is how the dredge material is disposed of; onto the foreshore or onto land. Legasea Hawke's Bay opposes the disposal of material dredged from the River to the foreshore and seabed in the CMA.
8. The Submitter notes that the siltation of the River is in part due to works carried out by the Council in 1969. River water flows are lower as a consequence of diverting part of the

River to reduce flooding in Clive, and as result of the 1931 earthquake. While these are historic changes, the Regional Council cannot abrogate its ongoing obligation to mitigate the effects of its past actions, and to do so in a responsible way that minimises effects on the natural environment.

9. Legasea Hawke's Bay shares the concerns of the independent ecology assessor, Dr. Shane Kelly, who was commissioned to review two reports associated with the Application. Those reviews were reported in August and October 2021. Dr. Kelly's second report conclusions were largely unchanged from the first, namely that:
 - (a) In Dr Kelly's opinion the proposed dredging and disposal activities have the potential to cause substantial adverse ecological effects. Dr Kelly's concerns are exacerbated by the high proportions of fine sediment in the dredge material, and poor sediment quality. He also notes that the predicted depositional footprint and dispersal plumes, although temporary, are: still sizable from a local context; affect an area with high ecological values; and, will potentially compound effects on an environment that is already sediment stressed. In Dr Kelly's opinion, the assessment of benthic effects remains a fundamental issue of concern.
 - (b) Dr Kelly still has reservations about the adequacy and robustness of the ecological assessment. In relation to the reliability of the assessment of effects on fish, in Dr Kelly's opinion, the assessment did not adequately: characterise the fish assemblage in Waitangi Estuary and Clive River; the importance of the proposed dredging and disposal areas for fish; or potential effects on fish.
 - (c) Dr Kelly does not consider the detail provided in the ecological assessments corresponds with the scale and significance of ecological effects that the activity may have on the environment.²
10. Sediment dumping into the nearshore environs is placing sediment in the most dynamic of energy environs. Wave actions and littoral drift will ensure this material is picked up and travel maximum distance from source. These fine sediments can easily overwhelm filter feeding fauna who are unable to escape its suffocating effects. There is also the potential disturbance of spawning aquatic life. If spawning fishes are unable to tolerate the high sediment loads this could significantly impact sustainability of these stocks in this area. These effects are unacceptable.
11. In *Attorney-General v The Trustees of the Motiti Rohe Moana Trust* the Court of Appeal confirmed that regional councils were assigned the primary governance role in maintaining indigenous biodiversity in 2000³. The Court of Appeal also acknowledged that s30(1)(ga) of the RMA protects all forms of indigenous organisms and their ecosystems. The Court went on to explain the broad nature of the RMA objective and New Zealand's obligations under the Convention on Biological Diversity, by saying it protects indigenous biodiversity not just as a resource but for its intrinsic value and for its ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values⁴.

² Clive River dredging application: Review of ecological assessment. Coast & Catchment Environmental Consultants. Dr. Shane Kelly. 20 October 2021.

³ *Attorney-General v The Trustees Of The Motiti Rohe Moana Trust & Ors* [2019] NZCA 532 [4 November 2019] [at 54]

⁴ Convention on Biological Diversity 1993. Preamble.

12. The Court also noted that councils must give effect to the NZCPS that seeks to protect indigenous biodiversity and recognise the cultural relationships of tangata whenua with coastal areas. Under the NZCPS councils are also obliged to take a precautionary approach towards proposed activities⁵ and avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on indigenous ecosystems and habitats, including habitats that are important for recreational, commercial, traditional or cultural purposes⁶.
13. The marine environment is already stressed dealing with two major sewer outfalls and three major river systems all feeding into a small part of the Hawke Bay. In addition, there are already two offshore dump sites for dredged material. If the Clive River dredgings are dumped at sea that means there will be three dumping sites within 10 nautical miles. This is unacceptable.
14. Legasea Hawke's Bay submits that material dredged from the Clive River has mostly come from the land, therefore that material needs to be returned to the land, not pumped out to the foreshore. This view is based on, but not limited to, the following matters:
 - (a) There are risks related to the uncertainty about the immediate and cumulative effects of pumping the dredge material into the coastal marine environment.
 - (b) The Regional Council is not able to mitigate the cumulative effects of pumping the dredge material into the coastal marine environment.
 - (c) Disposal to land is a reasonable and viable alternative to avoid the adverse immediate and cumulative effects of pumping the dredge material into the CMA.
15. The Hawke's Bay Regional Council is an active contributor to the Hawke's Bay Research Roadmap developed by the joint stakeholders in the Hawke's Bay Marine and Coastal Group⁷. It is contradictory for the Regional Council on the one hand to be signing up to and promoting a strategy to address and mitigate the effects of siltation on the marine environment, and on the other hand proposing to dump up to 60,000 cubic metres of contaminated dredge material into the marine environment, particularly in circumstances where there is a viable alternative method to avoid associated adverse effects.
16. It is not an answer to the submitter's concerns to compare the volume of dredged material with volume of sediment that may discharge from the Tukituki River during high flow events. The effects of the Application are cumulative with other discharges of land based sediment. Reducing the discharge of other land based sediments in river flows is the responsibility of the Regional Council and requires significant changes in land use practices which will take considerable time to implement. Avoiding the discharge of sediment to the CMA as a result of the Application is considerably more straightforward.
17. In 10 year's time the Regional Council expects to re-dredge the Clive river and dispose of the dredged material on land as per its recently approved 10 Year Plan. The Regional Council has plans to fund that work over the next decade, including the purchase of land for this specific purpose. The Regional Council is able to use the Public Works Act 1981

⁵ New Zealand Coastal Policy Statement 2010. Policy 3.

⁶ NZCPS. Policy 11.

⁷ Hawke's Bay Marine & Coastal Group Research Roadmap. HB Marine & Coastal Group. 2018.

to acquire interests in land for such purposes (e.g. fee simple or lease) at fair market values.

18. The Regional Council must consider other funding sources and make provision for the on-land disposal of dredge material under the current application. Dredge material could be repurposed and on-sold to defray costs. Technology is developing at a remarkable rate, this could provide an opportunity for a partnership between the Regional Council, iwi and the community to develop a composting or infill supply source for the local construction or farming communities.
19. Land based disposal is a reasonable and viable alternative that must be adopted here instead of disposal to the CMA.

Disposal of tubeworms removed from bridge structures

20. Legasea Hawke's Bay acknowledge the Australian tubeworm infestation on the SH2 bridge is well established, to the extent that masses are impeding the use of some sections of the Clive River at the waterline. Legasea Hawke's Bay supports the Regional Council's proposal to remove the infestation.
21. Legasea Hawke's Bay opposes the disposal of Australian tubeworm to the CMA. The risks associated with the removal of tubeworm material using the dredge and disposing of it on the foreshore means tubeworm material could potentially infest other areas up the coast including the Esk River. There is an unacceptable risk of this occurring and the Regional Council is obliged to avoid these risks.
22. All tubeworm removals should be disposed of to landfill rather than into the marine environment, to mitigate the above risks. Legasea Hawke's Bay also supports Dr Kelly's recommendation that if consent is granted, consent conditions require removal is done in winter to minimise the chance of a spawning event.

Taking account of climate change when making decisions

23. One of the biggest challenges looming on the horizon is climate change and the unknown effects it will have on inshore marine ecosystems. RMA, Part 2, s7(i) requires that the Hawke's Bay Regional Council, when exercising its powers, must have *particular regard*⁸ to the effects of climate change.
24. Given the uncertainty associated with the cumulative effects of pumping dredged material onto the foreshore and out to sea, we cannot see how the Hawke's Bay Regional Council can approve the current resource consent application.

The length of the river to be dredged and the interests of the community and Tangata Whenua

25. Legasea Hawke's Bay acknowledges that it is for Tangata Whenua to express their cultural relationships and interests. In making the following submissions, Legasea Hawke's Bay does not suggest that it speaks for Tangata Whenua. However, Legasea

⁸ The requirement to have 'particular regard' has been considered during many Court cases. In 2008 the Court of Appeal concluded (CA163/07 [2008] NZCA 160 [90-99]) that having 'particular regard' "*has a meaning that involves a greater obligation on the decision-maker than the requirement to have "regard" to a consideration. Parliament must have intended that the former imported a more onerous obligation than the latter*".

Hawke's Bay considers that there are important cultural matters raised by the Application which need to be brought to the attention of decision makers. These matters are also of shared interest for the community.

26. RMA section 6(c) requires decision makers to recognise and provide for matters of national importance including the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.
27. New Zealand Coastal Policy Statement (NZCPS) Policy 2 also requires councils to take into account any relevant iwi resource management or other plan. Ngāti Hori is a hapū of Ngāti Kahungunu ki Heretaunga. Ngāti Hori ki Kohupatiki are kaitiaki of the lower Karamu Stream and have a close historic and traditional relationship with the Karamu and the former course of the Ngaruroro River. The Ngaruroro River was a part of daily life for Ngāti Hori ki Kohupatiki, providing an abundant source of mahinga kai, wild food such as fish, waterfowl and plants. Kohupatiki Marae is situated on the Clive River bank.
28. Legasea Hawke's Bay submits that the Hawke's Bay Regional Council has a statutory obligation to recognise and provide for the repeated preference of the Kohupatiki Marae, to extend the dredging area as far as their marae (another 3kms), or to the rail bridge 600m beyond the marae. Ngāti Hori has plainly stated its priorities in freshwater, as follows:
 - (a) Achieving sufficient water flow;
 - (b) Improving water quality;
 - (c) Protection and restoration of traditional riparian vegetation; and
 - (d) Protection and restoration of fish and fish habitat.⁹
29. The Marae representatives are disappointed the Regional Council has chosen not to extend the dredging area and have therefore chosen not to support the application¹⁰. However, they are magnanimous in recognising the recreational value of the proposed work so they have decided they will not object to the proposal.
30. The Marae representatives have also made it clear they want the dredge material disposed of on land rather than out to sea, but also recognise the extra cost to the community if that material is disposed of on land.
31. Kohupatiki Marae is historically known and celebrated for its association with patiki, black flounder (*Rhombosolea retiaria*). Degradation of the river has had a detrimental effect on the connection between tangata whenua and the life of the river.
32. Fishing is a popular activity at the mouth of the Clive River and in the neighbouring Ngaruroro River. Snapper and kahawai used to be prolific in these areas. Not so now. Sedimentation and water quality has obviously had an effect on the river and marine environment. As noted above, the changes to the Clive River are as a result of past actions of the Regional Council in diverting the Ngaruroro River. In the absence of any effort to remedy the past, the Regional Council must at least acknowledge the profound impact

⁹ Ngāti Hori Freshwater Resources Management Plan. Operation Patiki. 2009/12.

¹⁰ Clive River Dredging Resource Consent Application. Hawke's Bay Regional Council, Regional Asset Manager. Revised & Updated September 2021.

these changes have had on the cultural, social and individual wellbeing of people of Kohupatiki Marae.

Decision sought from the Hawke's Bay Regional Council

33. Legasea Hawke's Bay seeks the following decision from the Hawke's Bay Regional Council as consent authority:
- (a) Conditions of consent are imposed requiring the dredge material from the river be disposed of on land and not onto the foreshore or other parts of the CMA.
 - (b) Conditions of consent are imposed requiring that the tubeworms attached to the bridge are removed mechanically, during winter only, and disposed of on land and not into the marine environment.
 - (c) The Hawke's Bay Regional Council provides for the social, cultural, recreational and environmental wellbeing of the people of Hawke Bay by dredging the Clive River.
 - (d) The Hawke's Bay Regional Council provides for the interests of tangata whenua by extending the dredge operation upriver to the Kohupatiki marae.
 - (e) Such further or other conditions of consent as would address the reasons for the submission addressed above.
34. Legasea Hawke's Bay wishes to be heard in support of its submission. If others make a similar submission, Legasea Hawke's Bay will consider presenting a joint case with them at the hearing. Legasea Hawke's Bay wish to attend any pre-hearing meeting that may be convened.

Dated 6 December 2021

John Stewart

On behalf of **Legasea Hawke's Bay**