

Minute 15 of the Non -Freshwater Hearing Panel as to Timetable for consideration of NPS IB 2023

1. By Memorandum dated 13 July 2023 counsel for the ORC has suggested a timetable to enable consideration by ORC, submitters and the Hearing Panel of the implications of the National Policy Statement for Indigenous Biodiversity (NPS IB) which was promulgated by Gazette Notice on Friday 7 July, 2023.
2. That Memorandum helpfully observes that:
 - i. Clause 4.1 of the NPS IB directs every local authority to give effect to it “*as soon as reasonably practical*”.
 - ii. Some submissions in the non freshwater process provide scope for the NPS IB to implement the NPS IB at least in part.
 - iii. The NPS IB has provisions of particular relevance to the subject matter of the PORPS.
3. The Memorandum signalled an intention by ORC and its counsel to analyse the NPS IB and the ‘*extent to which it must be given effect to in making recommendations on submissions*’. It then concluded with a suggested timetable commencing with that analysis by ORC being lodged on 8 September, 2023 and providing for responses which would conclude on 6 October, 2023.

Integration Issue

4. The Hearing Panel is mindful of its obligations under clause 3.4 of the NPS IB which provides:

3.4 Integrated Approach

(1) Local authorities must manage indigenous biodiversity and the effects on it from subdivision, use and development in an integrated way, which means:

(a) recognising the interconnectedness of the whole environment and the interactions between the terrestrial environment, freshwater, and the coastal marine area; and

(b) providing for the coordinated management and control of subdivision, use and development, as it affects indigenous biodiversity across administrative boundaries; and

(c) working towards aligning strategies and other planning tools required or provided for in legislation that are relevant to indigenous biodiversity.

The Panel emphasis sub-clause (a) of that provision.

5. That provision of course echoes the same integration approach in principle that is found in s.30 (1)(a) of the RMA:

(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

6. The non freshwater hearing panel's view is that notwithstanding the procedural restrictions it is having to proceed under of considering non-freshwater issues only, the overall Regional Policy Statement which flows from that process must be integrated with the freshwater part of the RPS process to meet the statutory directions referred to above. The fact that the same Hearing Panel members have now been appointed eases that integration process.
7. However, the integration of a new statutory instrument such as the NPS IB requires a recognition that it will need to be considered in both the freshwater and non-freshwater processes. As a matter of timing now, given the date of its promulgation, it is the freshwater hearings where it will first arise for consideration. Setting a date for ORC analysis that post-dates those hearings will be most unhelpful in achieving an efficient outcome for ORC, submitters and the two Hearing Panels.
8. Moreover the extended concluding dates proposed for responses will impact unhelpfully for timely report writing by the two Hearing Panels.
9. In our view it is most useful and indeed necessary for efficiency and to avoid later repetitive hearings on the NPS IB, for ORC to lodge its analysis as to freshwater implications prior to the freshwater hearings, so that submitters have the opportunity of response in their presentations at the freshwater hearings. The Hearings Panel in fixing hearing dates after 26 July, 2023 will ensure that ORC will have an opportunity of some days to be able to respond in closing on the freshwater issues. In the Panel's view it is almost certain that engagement with the NPS IB at the freshwater hearings is likely to address most aspects of the NPS IB which are relevant to the non-freshwater issues also.
10. To the limited extent that non-freshwater issues remain extant we accept a timetable is needed to allow for input from ORC and submitters on the implications of the NPS IB solely on non-freshwater issues, but it can be much more truncated, as those issues are most likely to be very limited in scope by that time.

Timetable for non-freshwater hearing process

11. The indicative time table proposed by the Panel for the implications of the NPS IB on the non-freshwater process will be:
 - 11.1 ORC to provide by 8 September, 2023 its evidence and supporting submissions solely on those aspects of the implications of the NPS IB for non freshwater issues.
 - 11.2 Submitters to have right to respond solely on those aspects of the implications of the NPS IB for non freshwater issues by 15 September, 2023.
 - 11.3 ORC to have opportunity of final response on those limited issues by 22 September, 2023.
12. At present the non freshwater Panel's intention would be that those issues will be addressed on the papers with no further hearing required.

Integration of process with freshwater hearing process

13. Attached to this Minute as an Appendix is a copy of a contemporaneous Minute 7 issued by the freshwater Hearing Panel which relates to the process intended for submissions on the NPS IB in that process.

Leave to file Memoranda

14. Given the onrush of the freshwater hearings and the suddenness of the NPS IB promulgation, there has not been opportunity to seek response from submitters or ORC on the Panel's approach.
15. While not encouraged, if there are some genuine pressing reasons why the Panel's proposed indicative timetable on these issues will not work, leave is reserved for a succinct Memorandum to be filed suggesting any reasonably practical alternative.
16. Any such Memorandum must be lodged by 5 p.m. 26 July, 2023 which is the date by which any requests for cross-examination in the freshwater process must be made. After that date the freshwater hearing panel will be able to fix final hearing times. At that stage the indicative timetables for the NPS IB in both processes can be confirmed if no pressing reasons to amend them are received.

Dated 21 July, 2023

Ron Crosby
Chair
Non Freshwater Hearings Panel

APPENDIX

FRESHWATER HEARING PANEL MINUTE 7

Minute 7 of the Freshwater Hearing Panel as to Timetable for consideration of NPS IB 2023

1. Attached to this Minute is a copy of Minute 15 issued by the non-freshwater Hearings Panel which should be read first as the introductory background to this Minute.
2. As stated in that Minute 15 by the non-freshwater Hearings Panel, in our view it is most useful and indeed necessary for efficiency and to avoid later repetitive hearings on the NPS IB, for ORC to lodge its analysis as to freshwater implications prior to the freshwater hearings, so that submitters have the opportunity of response in their presentations at the freshwater hearings. The Hearings Panel in fixing hearing dates after 26 July, 2023 for that process will ensure that ORC will have an opportunity of some days to be able to respond in closing on the freshwater issues. (The panel notes that in Minute One 26 July was an error described as a Monday. 26 July is a Wednesday.)
3. At present the previously indicative dates set for the hearings of the freshwater issues commence on Monday 28 August, 2023 and are expected to last two weeks. Those dates will be re-considered by the freshwater Hearings Panel after 26 July, 2023 when it knows the extent, if any, of requests for cross-examination which must be lodged by that date. A definitive hearing timetable for the freshwater hearing process will then be issued.

Timetable for freshwater hearing process

4. The indicative time table as to the implications of the NPS IB on freshwater issues proposed by the Panel for the freshwater process will be:
 - 4.1 ORC to provide by Friday 11 August, 2023, its evidence and supporting submissions on the implications of the NPS IB for freshwater issues.
 - 4.2 Submitters to have right to respond on those aspects of the implications of the NPS IB for freshwater by Friday 18 August, 2023.
 - 4.3 ORC to have opportunity of final response on those issues as part of its reply on freshwater issues – the date for which will be fixed after 26 July, 2023.

Leave to file Memoranda

5. Given the onrush of the freshwater hearings and the suddenness of the NPS IB promulgation, there has not been opportunity to seek response from submitters or ORC on the Panel's approach.
6. While not encouraged, if there are some genuine pressing reasons why the the Panel's proposed indicative timetable on these issues will not work, leave is reserved for a succinct Memorandum to be filed suggesting any reasonably practical alternative.

7. Any such Memorandum must be lodged by 5 p.m. 26 July, 2023. After that date the freshwater Hearing Panel will be able to fix final hearing times. At that stage the indicative timetables for the NPS IB in both processes can be confirmed if no pressing reasons to amend them are received.

Dated 21 July, 2023

Ron Crosby
Chair
Freshwater Hearings Panel