

**Resource Consent Application**  
**Eastern Bays Shared Pathway**  
**WGN190301 & RM190194**

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**Minute 1 of Hearing Panel**

1. The Panel has received legal opinion from Counsel for the Applicant in relation to the interpretation of the NZCPS in particular Policy 11a which relates to the avoidance of effects of threatened or at risk indigenous species.
2. The position of the Applicants Counsel as we understand it is that the word 'avoid' maybe taken to include minor, less than minor or transitory adverse effects. This has also effectively been mirrored in the PNRP policy 39A. We consider that the interpretation of this matter is key consideration and have therefore decided to seek our own legal advice. Accordingly we have asked DLA Piper (legal Counsel for the consenting authority) a response to the following questions:
  - a) In relation to Policy 11a of the NZCPS, is there case law that distinguishes it from the King Salmon application of policies 13 and 15 of the NZCPS?
  - b) If not, does the King Salmon decision (or any other case law) provide guidance on how Policy 11a is to be applied: that is, what does "avoid" mean? Specifically, does King Salmon (or any other subsequent case law) provide a gateway to considering whether "avoid" adverse effects can enable us to consider accepting "minor", "less than minor" or "transitory" effects in relation to the application of Policy 11(a) NZCPS, as well as Policy 39A(a) PNRP?
  - c) Further, can minor or less than minor adverse effects be balanced against the positive effects of a proposal under Policy 11(a) NZCPS, as well as Policy 39A(a) PNRP?
  - d) Can we be satisfied that the planning policy framework of the current NZCPS (now 10 years old) and the PNRP is such that it is not necessary for us to revert to Part 2 RMA in our consideration? In other words, can we reconcile the adverse effects of a proposal with its positive effects under Part 2 of RMA?
3. We expect to be advised as to when this opinion would be received by the close or adjournment of the hearing on Thursday 17 December.



**Robert Schofield**

Chair, Hearing Panel