

**BEFORE THE FAST-TRACK APPROVALS  
EXPERT PANEL**

**FTAA-2504-1054**

**UNDER** the Fast-track Approvals Act 2024 ("**FTAA**")

**AND**

**IN THE MATTER** of an application for approvals by Carter Group Limited ("**CGL**") in relation to the proposed Ryans Road Industrial Development ("**Application**")

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**MEMORANDUM OF COUNSEL  
ON BEHALF OF AIRWAYS CORPORATION OF NEW ZEALAND**

**23 FEBRUARY 2026**

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**MAY IT PLEASE THE PANEL:****Summary**

1. This memorandum is filed on behalf of Airways Corporation of New Zealand ("**Airways**") in response to the Panel's Minute 9 (dated 2 February 2026) directing Airways (as well as CGL and Christchurch International Airport Limited ("**CIAL**")) to provide advice to the Panel on the following matters:<sup>1</sup>
  - (a) What is the precautionary principle and what does it require of decision-makers?
  - (b) Is the precautionary principle available to consider by an Expert Panel when making a decision on an application under the Fast-track Approvals Act 2024 ("**FTAA**")?
  - (c) How does application of the precautionary principle influence the assessments required under sections 81 and section 85 FTAA?
  - (d) What considerations are relevant to application of the precautionary principle in the circumstances of this case?
2. While Airways and CIAL have elected to prepare separate responses to the above matters, to avoid duplication, Airways has coordinated its response with CIAL.
3. In summary:
  - (a) The "precautionary principle" is a recognised concept developed through case law under the Resource Management Act 1991 ("**RMA**") through the operation of section 104(1)(a) of the RMA and meaning of "effect" (including effects of low probability but high potential impact). The principle requires a decision-maker to adopt precautionary measures in the face of uncertainty with regard to environmental effects. The application of the precautionary principle is at the decision-maker's discretion, and the weight to be given to it depends on the circumstances of each case. The precautionary principle has traditionally been applied in RMA caselaw where there are scientific uncertainties in information before the decision-maker.

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<sup>1</sup> Minute 9 of the Expert Panel dated 2 February 2026, paragraph [23].

- (b) Caselaw under the RMA has established that when assessing the effects of an application under section 104 of the RMA, a decision-maker should take a more precautionary position where the potential impact (ie the significance of the potential effect) is greater. When considering an application for approvals under the FTAA, the Panel must apply section 104 RMA in its consideration of whether to grant or decline consent. In performing its functions under the FTAA, the Panel can therefore apply the precautionary principle as contained in section 104 RMA.
- (c) The Panel should apply the precautionary principle in this case because:
- (i) The potential safety risks on Airways' infrastructure are significant, and even if it could be proven that there is a low probability these safety risks will be realised, they have a high potential impact.
  - (ii) The inadequacy of CGL's aviation safeguarding assessment means there is a high degree of uncertainty as to the extent of aviation safety risks on Airways' infrastructure posed by the Application, and further studies are required before the evidential basis is properly understood.
  - (iii) CGL has not provided the required studies, nor has it provided evidence the studies are not required.
  - (iv) There is now insufficient time within the existing fast track process for this additional information to be provided before the Panel is required to issue its decision, and the uncertainty cannot be addressed through the imposition of conditions.
- (d) Without CGL having sufficiently investigated the aviation safety risks associated with the Application, the potential adverse effects on aviation safety that could occur from the Application (if it were to proceed), as outlined in previous correspondence to the Panel,<sup>2</sup> are adverse impacts that should weigh against the Panel granting the

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<sup>2</sup> Refer to Refer Airways Response, 18 December 2025, Memorandum of Counsel on behalf of Airways, 28 January 2026 and Memorandum of Counsel on behalf of Airways, 16 February 2026.

approval under section 85(3) and (5) of the FTAA. The Panel should decline the Application on this basis.

### **Precautionary principle under the RMA**

4. The precautionary principle is a key concept in environmental law. In essence, it requires precautionary measures to be adopted where there is scientific uncertainty and/or a lack of information with regard to environmental damage.<sup>3</sup>
5. The starting point for applying the precautionary principle is section 104(1) of the RMA which requires consent authorities to **have regard to** a range of considerations, including:

- a) **any actual and potential effects on the environment of allowing the activity**; and

- b) when forming an opinion on this, the consenting authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

[emphasis added]

6. Section 3 of the RMA defines "effect" as including "any potential effect of low probability which has a high potential impact."
7. The Environment Court has interpreted effects with a "low probability which has a high potential impact" in section 3(f) of the RMA to broadly encompass precautionary measures. In *Shirley Primary School* the Court held that the precautionary approach is implicit in the RMA.<sup>4</sup> The Court held that "low probability" could mean either low statistical probability (ie a plane crash), or low scientific probability but high potential impact.<sup>5</sup> In other words, a lack of certainty where the probability of an actual or possible impact is unknown.
8. In the RMA context, the Courts have taken a cautious approach to factual uncertainty, where it is clear that harm could be caused. For example, in *Trio Holdings*<sup>6</sup> the Court erred on the side of caution by excluding northern-most

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<sup>3</sup> We note that the courts have referred to both the "precautionary principle" and the "precautionary approach". While there is a slight distinction between these two concepts that has been pointed out in case law, the courts appear to have frequently used these terms interchangeably.

<sup>4</sup> *Shirley Primary School v Telecom Mobile* [1999] NZRMA 66 at [223]. Adopted in *Clifford Bay Marine Farms Ltd v Marlborough District Council* [2003] ELHNZ 398 at [67].

<sup>5</sup> *Shirley Primary School v Telecom Mobile* [1999] NZRMA 66 at [134].

<sup>6</sup> *Trio Holdings v Marlborough District Council* [1997] NZRMA 97.

site from the project area to protect a potential King Shag feeding area (given the rarity of the species), despite there being no clear evidence of the importance of that particular site for the shag's survival.

9. In *Pierau*, the Environment Court considered the precautionary approach within the context of the considerable scientific uncertainty about the potential effect of noise on rare birds.<sup>7</sup> In that case, using the precautionary approach, the Environment Court refused to grant consent for the festivals the applicant was seeking consent for.
10. As to when the precautionary principle is to be applied, the Environment Court has held it is a matter of discretion and the weight to be given to it depends on the circumstances.<sup>8</sup> The Environment Court in *Ngati Kahu* determined that the precautionary approach may be applied in making the judgement where, on the totality of the evidence, it finds that due to scientific uncertainty, exercise of the consent would be likely to cause serious or irreversible harm to the environment.<sup>9</sup>
11. To this point, there is no set threshold for determining the gravity of effect (or severity of damage) that should trigger consideration of the precautionary approach. The Environment Court in *Clifford Bay* held:<sup>10</sup>

[T]here is no single standard of proof for most of the judgments in those two steps [being, determining the probability of occurrence and force of impact] nor does the same standard have to be used for each risk. The standard varies according to the weighing of the potential impact of the effect.
12. Further, in *McIntyre* it was held that the gravity of effects if, despite uncertainty, they were to occur, was a factor to be taken into account.<sup>11</sup> In our submission, this reinforces the position that a precautionary position should be required where effects have a high potential impact, even if there is a low probability they will be realised.
13. In light of the above, case law establishes that the precautionary principle can be applied by decision-makers (in considering the effects of an application

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<sup>7</sup> *Pierau v Auckland Council* [2017] NZEnvC 90.

<sup>8</sup> *McIntyre v Christchurch City Council* [1996] NZRMA 289 at page 104.

<sup>9</sup> *Ngati Kahu Ki Whangaroa Cooperative Soc Ltd v Northland Regional Council* [2001] NZRMA 299, at [161], adopting the approach taken in *Wratten v Tasman District Council* (1998) 4 ELRNZ 148 at page 172.

<sup>10</sup> *Clifford Bay Marine Farms Ltd* (24-9-03) Environment Ct C131/2003, at [69].

<sup>11</sup> *McIntyre v Christchurch City Council* [1996] NZRMA 289 at page 104.

under section 104 of the RMA) where there is uncertainty in the evidence before the decision-maker which could result in (if the resource consent is approved) significant harm to the environment. The application of the precautionary principle under the FTAA is addressed below.

### **Application of the precautionary principle under the FTAA**

14. In our submission, the precautionary principle is available to an expert panel under the FTAA.
15. Under section 81 of the FTAA, a Panel must decide whether to grant or decline the approval(s) sought.<sup>12</sup> In making its decision, a Panel must have regard to various RMA matters including section 104 RMA.<sup>13</sup> By virtue of importing the requirements in section 104 of the RMA and the corresponding definition of "effect" in section 3 (and the position in case law relevant to that), the precautionary principle can, in our submission, be applied to decision-making under the FTAA.
16. Under the FTAA, although the purpose of the FTAA is to be given the greatest weight, panels must not solely rely on the purpose at the expense of other matters such as environmental effects (which must be weighed against the benefits of the proposal).<sup>14</sup>
17. As the Panel will be aware, given the framework of the FTAA differs from that of the standard RMA process (including relevantly to enable projects to be processed in a more timely and cost-effective way than under normal processes), there is a need for applications to "front-foot" the application material. In other words, there is an expectation that the required technical material is submitted at lodgement to enable the Panel to undertake its assessment within the required timeframes. Therefore, where there is a lack of required information, a cautious approach should be taken by the Panel. This is particularly given the inability for panels under the FTAA to issue interim decisions to (for example) address inadequacy of information as in the RMA context, which we expand on below.

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<sup>12</sup> FTAA s81.

<sup>13</sup> Section 85 of the FTAA sets out when a Panel must or may decline approvals, which includes that a Panel *may* decline an approval if the adverse impacts outweigh the project's regional or national benefits. Further to these general requirements, Schedule 5, clause 17(1) of the FTAA contains additional considerations the Panel must take into account when assessing applications that seek approvals in relation to the RMA. This provision requires a panel to take into account considerations under s 104 of the RMA when making a decision under the FTAA.

<sup>14</sup> For example, in Schedule 5, clauses 17(1)(b) and (c).

18. There are examples of the principle already having been applied by expert panels under the FTAA. For example, very recently, the expert panel for the Taranaki VTM project released its draft decision declining the project (and subsequently, the applicant has withdrawn its application). The panel discussed the precautionary approach in its assessment of potential harm to kororā/little blue penguins and fairy prion. In that case, the panel found there was insufficient information available on the status of bird species in the area as the appropriate studies had not been undertaken. Because of these information gaps, the panel applied the precautionary approach and found there was a credible prospect of material harm.<sup>15</sup>
19. Accordingly, the precautionary principle is clearly available to the panel and has already been applied by expert panels under the FTAA.

### **Relevance of the precautionary principle for this Application**

20. In our submission, the aviation safety risks associated with the Application and inadequacy of the safeguarding assessment provided by CGL mean the precautionary principle should be directly engaged here.
21. The Application is located very close to Christchurch Airport, with the proposal being approximately 180m away from the closest Airways infrastructure at Christchurch Airport.
22. The potential safety risks on Airways' infrastructure from development occurring in proximity to it (and interfering with its operation) are significant and serious:
- (a) Interference with the Airways navigation equipment can result in erroneous or lost signals which can critically compromise flight safety. In particular, flights into Christchurch using the Instrument Landing System ("ILS") will experience unnecessary undulations in flightpath as they come into land. Flights require a stabilised approach when flying the ILS and "scalping" creates artificial undulations that may result in the requirement for unnecessary missed approaches (meaning the flight is unable to land).<sup>16</sup>
  - (b) If the navigation equipment is interfered with and compromised, the lives of passengers and communities are put at significant risk.

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<sup>15</sup> Draft Decision of the Expert Panel on the Taranaki VTM application under the Fast-track Approvals Act, at [1229].

<sup>16</sup> Airways Response, 18 December 2025 at [3.3].

- (c) Airways has statutory obligations under the Civil Aviation Act 2023<sup>17</sup> to ensure there are no safety issues associated with the Air Traffic Control services to all aircraft throughout New Zealand.
  - (d) If there is any prospect of lives being at risk, it follows in practice that aviation services would at worst, need to be cease until the risk can be addressed. This would have significant impacts for one of New Zealand's busiest airports, both economically and directly on people and communities. For example, it could result in economic loss from international airlines retracting from Christchurch because of the unreliability of services.
23. Based on the information before the Panel, it is our submission that there remains a high degree of uncertainty as to the extent to which these risks may arise as a result of the present Application. Even if there is a low probability of these safety risks will be realised, the potential impact is significant and therefore caution is required.
24. As has been made explicit by Airways in previous correspondence<sup>18</sup> to the Panel, the aviation safeguarding assessment provided by CGL (to determine the impact of their proposed development on navigation facilities) has not demonstrated that the Application has adequately addressed aviation safety risks. The Panel already has the responses from both Airways and CIAL to the safeguarding assessment, provided on 18 December 2025. For the avoidance of doubt, the Airways position is (which has not changed since 18 December 2025):
- (a) those assessments were an initial step, and further studies are required before the evidential basis on aviation safety risks can be properly understood. The safeguarding assessment clearly showed the development will significantly impact air navigation facilities;
  - (b) the recommended mitigations in the assessment are only based on desktop theory, requiring additional independent engineering assessments and validations (in consultation with Airways), which has not been done. The further technical work forms a standard part of the process for an application of this nature and is work that can

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<sup>17</sup> Civil Aviation Rule Parts 171 and 172 (expositions dated 27 Nov 2025).

<sup>18</sup> See for example the Airways Corporation of New Zealand Response dated 18 December 2025, Memorandum of Counsel on behalf of Airways, dated 28 January 2026 and Memorandum of Counsel, dated 16 February 2026.

reasonably be expected to have been undertaken prior to lodgement of the Application; and

- (c) the mitigation measures in the safeguarding assessment also highlight that Airways would be required to undertake operational changes or accept potential degradation in performance of navigational infrastructure to accommodate for CGL's development (if it were to proceed) to minimise the risk to aviation services and consequential impacts on communities. This is unacceptable to Airways – it is for CGL (as the applicant) to demonstrate its development can be safely undertaken, not to shift the burden to a reactively to Airways.

- 25. As the Panel has outlined in Minute 7, both Airways (and CIAL) have serious concerns regarding the adequacy of consultation by CGL, and the sufficiency of CGL's safeguarding assessment. These concerns remain.
- 26. At this stage of the process, there is insufficient time for this additional information to be provided before the Panel is required to issue its decision. In other words, in a similar way to the scientific uncertainty experienced in some of the leading Environment Court decisions on the precautionary approach,<sup>19</sup> in this case, the Panel will not have this critical information by the time its decision is made.
- 27. In the context of applications under the RMA where there is insufficient information/uncertainty, there can be the option for interim decisions to be issued to allow applicants to undertake the necessary further work (and where relevant, work with other parties) before a final decision is then issued. For example, in a series of decisions relating to Queenstown Airport, the Environment Court declined to grant an approval on the basis that Queenstown Airport had not undertaken an aeronautical study to allow it to sufficiently understand the safety concerns relating to the application. The Court issued an interim decision to allow Queenstown Airport to respond to these safety concerns and undertake an aeronautical study.<sup>20</sup>
- 28. Unlike the position under the RMA, there is no ability for the Panel under the FTAA to issue an interim decision to require that additional work is undertaken, nor is there sufficient time (now) for CGL to suspend the process to undertake the necessary engagement and work to address the uncertainties around the

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<sup>19</sup> For example, in *Shirley Primary School v Telecom Mobile* [1999] NZRMA 66 and *Pierau v Auckland Council* [2017] NZEnvC 90.

<sup>20</sup> *Re Queenstown Airport Corporation Ltd* [2015] NZEnvC 222, at [270].

extent of aviation safety risk with the Application. It has been previously made clear by Airways that the further work is likely to take upwards of 6-9 months.<sup>21</sup>

29. The correct approach in such circumstances is, in our submission, to apply the precautionary principle as has been applied by other expert panels under the FTAA. We have outlined above an example of this in the recent draft decision issued by the expert panel for the Taranaki VTM project, where the panel applied the precautionary approach due to information gaps and found there was a credible prospect of material harm. In our submission, this is analogous to the current Application.
30. In our submission, the precautionary principle should be applied by the Panel in its assessment of the Application and its potential impacts on aviation safety (the consequences of which, we remind the Panel, are serious).
31. We acknowledge that the Applicant is due to submit its "complete final package" including conditions on the same day that this memorandum is filed. Notwithstanding that Airways has not been able to review the proposed conditions at the time of preparing this memorandum, it is important to reiterate to the Panel that this is not a situation where conditions can adequately address these critical potential aviation safety risks.<sup>22</sup>
32. In our submission, the potential aviation safety risks and the unknown consequences that result from the inadequacy of CGL's aviation safeguarding assessment are clearly "impacts" that weigh against a decision to grant the approvals.
33. The Panel should decline the Application under section 85(3) of the FTAA on this basis.

**DATED** 23 February 2026



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<sup>21</sup> Memorandum of Counsel on behalf of Airways, 28 January 2026 at [9].

<sup>22</sup> Refer Airways Response, 18 December 2025 at [3.6] and Memorandum of Counsel on behalf of Airways, 28 January 2026 at [8], [11] and [12].