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**")

LEGAL SUBMISSIONS
ON BEHALF OF AIRWAYS CORPORATION OF NEW ZEALAND

12 MARCH 2026

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MAY IT PLEASE THE PANEL:

Summary

1. These legal submissions are filed on behalf of Airways Corporation of New Zealand ("**Airways**") in response to Minute 13 where the Panel requested legal submissions and technical information from Airways in response to the material filed by CGL (in response to Minute 9) ("**CGL Package**").[1] Airways appreciates the opportunity to respond to the CGL Package given it introduces extensive new evidence at a very late stage of the process on aviation safety matters which are of critical importance to it.

2. In the significantly constrained timeframe Airways has been given to respond (only four working days as compared to the weeks and months CGL had to prepare its further evidence and submissions) Airways has not been able to comprehensively review and respond to all of the new information in the CGL Package. Accordingly, Airways' evidence has had to focus on material issues and similarly, these legal submissions focus on what we consider to be a core issue for the Panel to make its decision to grant or decline the Application under s81(1) of the FTAA. That is, whether the Panel has sufficient information on aviation safety effects to grant the Application.

3. Adequate information is a basic and fundamental requirement of reasonable decision-making and necessary for the Panel to make an informed decision on the aviation safety effects of the Application. In the context of an application which seeks to establish in proximity to nationally and regionally significant infrastructure and where the consequences of getting the conclusion on those effects wrong is serious harm, it is our submission that the Panel must proceed with caution in considering the question on the adequacy of the information before it.

4. For the reasons outlined in previous memoranda[2] and below, it is our submission that the Panel does not have sufficient information to be satisfied that the Application will not adversely impact the safe and efficient operation of Airways' navigation infrastructure – the initial safeguarding assessment provided by CGL is only an initial desktop assessment and subsequent work is required to verify assumptions in the real world. This work is critical to ensure (preventable) aviation accidents do not occur. Further, Airways' evidence is that the evidence submitted as part of the CGL Package contains inaccuracies

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1 Minute 13 dated 6 March 2026 at [11(a)] and [11(b)].
2 Memorandum of Counsel on behalf of Airways, 23 February 2026, at [3(d)].

that cannot be relied on by the Panel to draw conclusions on aviation safety effects. The initial safeguarding assessment (and evidence provided by CGL) cannot, in our submission, be considered an adequate basis on which the Panel can grant the Application.

5. The deficiency of information is the key adverse impact that weighs against granting the consent under s85(3) of the FTAA. In our submission, this impact (and the inconsistencies with planning instruments, such as the National Policy Statement of Infrastructure ("**NPS-I**")) is sufficiently significant to be out of proportion to the benefits of the Application such that it warrants decline of the Application.

Evidence

6. Mr Robert Grimm, Manager National Operations and Maintenance at Airways, has prepared a statement of evidence dated 12 March 2026 which addresses the technical information in response to the CGL Package and further memorandum provided by Mr McPherson of Cyrrus dated 5 March 2026.

The Panel does not have adequate information on aviation safety effects

Caselaw on adequacy of information

7. The requirement for a decision maker to reach its decision on the basis of "adequate information" has primarily been considered in the Resource Management Act 1991 ("**RMA**") context in judicial review decisions of notification and substantive decisions to grant resource consent.

8. The starting point is *Westfield (New Zealand) Ltd v North Shore City Council*.[3] There, the Supreme Court held that consideration of whether a consent authority had adequate information is a prior step to any consideration of whether the decision was reasonably open to the consent authority.[4]

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3 *Westfield (New Zealand) Ltd v North Shore City Council* [2005] NZSC 17 [2005] 2 NZLR 597. While the reasoning in this case was, in part, based on the language and purpose of the then s 93 of the RMA (which was the predecessor to ss 95A–95G), the courts have continued to apply *Westfield* for over 16 years since s 93 was replaced by the current notification provisions (see for example *Gabler v Queenstown Lakes District Council* [2017] NZHC 2086, (2017) 20 ELRNZ 76 at [66]).

4 At [147]–[148].

9. Since *Westfield*, the courts have applied the adequate information requirement to decision-making on granting resource consents, acknowledging it is a basic requirement of reasonable and procedurally fair decision making.[5] The High Court has held:[6]

> […] a decision to notify a resource consent, and to grant a consent itself, must nevertheless be reached on the basis of adequate and reliable information. As Glazebrook and Arnold JJ observed in *Auckland Council v Wendco (NZ) Ltd, "*sound public administration permits nothing less."

10. The High Court in *Northcote Mainstreet v North Shore City Council* held that the material must be reliable to pass the test of adequacy, and must be sufficient to properly inform decision makers.[7] The High Court considered that while it is impossible to prescribe any all-embracing test of adequacy:[8]

> […] if the object of the test is to ensure that consent authorities reach their decisions on an informed basis, the measure of the information provided in any given case will be whether or not it is sufficient to properly inform the consent authority regarding the particular issues raised by the application in question.

11. The High Court also held that the scope of the material will need to properly advise the consent authority regarding the nature and context of the application and the issues that it raises from a planning perspective.[9] The Supreme Court has also held "some" information is not necessarily "adequate" information.[10]

12. In *RJ Davidson Family Trust v Marlborough District Council*, the Environment Court considered that there is an obligation to supply information of adequate quality and sufficient detail to enable grant of consent if no other information is put forward.[11] The Court also considered that the onus is on the person

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5 *Ennor v Auckland Council* [2018] NZHC 2598, [2019] NZRMA 150 at [31].

6 *Mills v Far North District Council* [2018] NZHC 2082 at [142], referencing Supreme Court case *Auckland Council v Wendco (NZ) Ltd* [2017] NZSC 113, [2017] 1 NZLR 1008 at [84].

7 *Northcote Mainstreet Inc v North Shore City Council [*2006*]* NZRMA 137 (HC) at [108] and [109].

8 *Northcote Mainstreet Inc v North Shore City Council [*2006*]* NZRMA 137 (HC) at [107] and [108].

9 *Northcote Mainstreet Inc v North Shore City Council [*2006*]* NZRMA 137 (HC) at [109].

10 *Westfield (New Zealand) Ltd v North Shore City Council* [2005] NZSC 17 [2005] 2 NZLR *597* at [148].

11 *RJ Davidson Family Trust* v *Marlborough District Council* [2016] NZEnvC 81 at [29], upheld on appeal in *RJ Davidson Family Trust* v *Marlborough District Council* [2017] NZHC 52. It is noted that this case was in the context of the RMA provision s104(6) which enables a decision-maker to decline an application for resource consent on the grounds that it has not provided adequate information for the Panel to determine the application. Under the FTAA, s104 of the RMA is a relevant consideration for the Panel's decision on the application.

requesting consent to supply enough information to the decision maker for it to be able to grant consent.[12] The Court went on to state:[13]

> […] This suggests an applicant should put forward adequate information for the consent authority to be able to identify the relevant stressors and their effects.

13. The consequence of failing to provide adequate information in a consenting process is significant. Under the RMA, a decision-maker may decline an application for resource consent on the grounds that it has not provided adequate information for the Panel to determine the application.[14] Under the FTAA, the Panel can decline an application under section 85(3) of the FTAA if one or more adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits and as set out below. Insufficient information in itself is an adverse impact that weighs against the grant of an application.

14. It is our submission that the case law principles above must apply in the context of a decision under the FTAA. That is, the Panel must have sufficient information before it to be able to determine the effects of the Application.[15]

15. The onus is first and foremost on CGL, as the applicant, to provide adequate information and in a front-loaded regime like the FTAA, it is our submission that this should be provided at the time of lodgement. In the context of the required aviation safety assessments, that has unfortunately not occurred here and CGL has attempted to plug the gaps in a piecemeal way over the course of the application process. For the reasons set out below, this has meant the Panel now finds itself in a position where it has insufficient information to determine the Application.

The Application contains inadequate information on aviation safety effects

16. Mr Grimm's evidence clearly sets out for the Panel the standard steps (from an Airways perspective) for an aviation safety assessment to be followed where development is proposed close to Airways' infrastructure.[16] His evidence confirms these processes are important checks to provide confidence that safety is maintained at all times.[17] The aviation safeguarding

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12 *RJ Davidson Family Trust* v *Marlborough District Council* [2016] NZEnvC 81 at [25].
13 At [27].
14 RMA, section 104(6).
15 FTAA, Schedule 5, clause 17(1)(b) the Panel to take into account Part 6 of the RMA (resource consents) which requires the Panel (among other things) to have regard to the actual and potential effects on the environment.
16 Evidence of Mr Grimm, 12 March 2026 at Section 3.
17 Evidence of Mr Grimm, 12 March 2026 at [3.9].

assessment provided by CGL (some months after lodgement of the Application) is an initial step in that process, based on a desktop exercise only. It provides the Panel with *some* information on aviation safety effects but not, in our submission, *adequate* information.

17. As set out in the evidence of Mr Grimm and in previous Airways' comments to the Panel, [18] critical further work to verify assumptions in the initial assessment must be undertaken by CGL (in collaboration with key stakeholders, such as Airways and CIAL) to determine the extent of aviation safety effects (including on-the-ground assessment and verification) and whether the Application can proceed in this location and in its proposed form.[19] The further work is required for the Application because:

    (a) The Site is extremely close to Christchurch Airport and the Airways navigation infrastructure (approximately 180m away) which is regionally and nationally significant infrastructure.

    (b) The Application sits within Building Restricted Areas for critical Communications, Navigation and Surveillance infrastructure serving Christchurch Airport and the wider Canterbury region.

    (c) The potential safety risks on Airways' infrastructure from development occurring in proximity to it (and interfering with its operation) are significant and serious and can result in lives of passengers and communities being put at risk.[20] As explained by Mr Grimm, Airways cannot operate at the limits of risk – the risk must be as low as reasonably possible.[21]

    (d) As New Zealand's airspace (air traffic control) operator, Airways has important statutory obligations under the Civil Aviation Act 2023 ("**CAA**") to ensure the safety of all passengers and the public.[22]

18. Not only does the safeguarding assessment provided by CGL fail to adequately address aviation safety issues, the information provided by CGL is also not reliable. As explained by Mr Grimm in his evidence, the evidence provided by CGL contains statements that are simply inaccurate and cannot

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18 Airways Response, 18 December 2025 at section 3, Memorandum of Counsel on behalf of Airways, 28 January 2026, at [9], Memorandum of Counsel on behalf of Airways, 16 February 2026, at [15].
19 Memorandum of Counsel on behalf of Airways, 23 February 2026, at [24].
20 Evidence of Mr Grimm, 12 March 2026 at [4.1].
21 Evidence of Mr Grimm, 12 March 2026 at [4.1].
22 Evidence of Mr Grimm, 12 March 2026 at [4.2].

be used to support any conclusions made on aviation safety.[23] It therefore cannot be considered "adequate" for the Panel's purposes of determining the Application.

Aviation safety effects cannot be left to a subsequent process

19. CGL's submits that if the Panel has "any remaining concerns about safety aviation", these are to be determined by the regime under the CAA and that process would follow the RMA / FTAA process.[24] With respect, the submission that the Panel might have "remaining concerns" or there are "residual effects" that can be addressed underplays the significance of aviation safety and the fundamental shortcomings in the information provided by CGL. Further it is our submission that the suggestion that some aviation safety effects can be addressed under a separate regulatory regime (or post-grant of resource consent) must not distract the Panel from the requirements it must consider under the FTAA and RMA regime and determine now as part of the Application.

20. As the Panel will be aware, it must consider applicable parts of the RMA when making its decision on the application, including Part 6 of the RMA.[25] Part 6 includes (amongst other provisions) s104 of the RMA which requires a decision maker to have regard to actual and potential effects on the environment, including aviation safety effects. We agree with CGL's submission that an RMA (or FTAA, as the case may be) decision maker must be satisfied that the land-use effects have been identified and evaluated.[26]

21. As set out in Airways and CIAL's joint memorandum,[27] and explained in further detail in the evidence of Mr Grimm,[28] the CAA regime is not guaranteed to apply to this Application. Even if it did apply:

    (a) it does not abrogate the Panel's responsibility and requirement to be satisfied that aviation safety effects can be appropriately addressed (which CGL acknowledges is the correct legal position);[29]

    (b) it is not equivalent to establishing aviation safety governed by Parts 171 / 172 of the CAA; and

23 Evidence of Mr Grimm, 12 March 2026 at [4.6].
24 Legal Submissions on behalf of CGL, 23 February 2026 at [71].
25 FTAA, Schedule 5, clause 17(1)(b) the Panel to take into account Part 6 of the RMA (resource consents).
26 Legal Submissions on behalf of CGL, 23 February 2026 at [138].
27 Joint Memorandum of Counsel on behalf of Airways and CIAL dated 2 March 2026 at [7(c)].
28 Evidence of Mr Grimm, 12 March 2026 at Section 5.
29 Legal Submissions on behalf of CGL, 23 February 2026 at [137].

(c) it would put the burden on Airways and / or CIAL to make operational changes to their infrastructure as result of the Application, to ensure aviation safety (which is entirely inappropriate).

22. In their legal submissions, CGL references the Environment Court decision of *Queenstown Airport*[30] to support its position that the residual risk can be addressed through a post-consent process. This case relates to a notice of requirement ("**NoR**") by Queenstown Airport Corporation ("**QAC**") for an extension to the aerodrome. A key issue for the Court to determine was whether QAC had to support its NoR with specific CAA safety cases, or whether this could be provided as part of a subsequent outline plan of works process.

23. In our submission, this case cannot be relied on by the Panel to support CGL's proposition that subsequent processes, including the CAA regime, can be used to deal with aviation effects post-grant of resource consent. The facts of this case (relating to a NoR by QAC) are very different to a resource consent application by a developer seeking to locate a development near airport infrastructure. The Court clearly distinguished a NoR from a resource consent application, stating:[31]

> The NOR is not an application for resource consent wherein QAC seeks authorisation for certain activities, with the actual and potential effects of those activities on the environment being a matter which the decision-maker is to have regard (s 104) […] While both resource consent applications and notices of requirement are broadly concerned with proposed works, NORs have two key distinguishing features that are relevant to the scope of our deliberations. The first feature is that the final layout and design of the work may be a matter left for a future outline plan (s 176A) […] The point being the content of the outline plan will overlap with the subject matter of the task specific safety cases, and this work has not yet been done.

24. This case must be distinguished from the Application in that an assessment of effects at the NoR stage can be at a higher-level than a resource consent application, as it includes the ability for an outline plan upon which further detail of the project is confirmed. A resource consent application, like the present one, must include a full and comprehensive assessment of effects (including safety).

25. A key element in CGL's legal submissions of 9 March 2026 is its submission that the RMA does not require internalisation of "all" effects and that the RMA

30 *Re Queenstown Airport Corporation Ltd* [2017] NZEnvC 46.
31 *Re Queenstown Airport Corporation Ltd* [2017] NZEnvC 46 at [49], [50] and [51].

is not a "no effects" statute.[32] CGL's position is that residual effects can lawfully remain and be managed by conditions.

26. Although we do not disagree in principle with the general submission that the RMA does not require internalisation of every single effect, the extent to which effects of an activity seeking to locate near existing infrastructure must manage and internalise its effects must be considered in the particular context and in light of the applicable planning provisions.

27. Unlike the consequences of some other adverse environmental effects, the consequences of aviation safety effects are serious. Airways' evidence is that the aviation industry cannot operate at the margins of risk, and that the system must work within clearly defined parameters where the limits are known (not claimed), tested (not assumed), and confirmed (not inferred).[33] Further, there are relevant "avoidance" policies in the applicable planning documents which provide strong direction and require decision makers to avoid or mitigate the potential effects of activities that could interfere with safe navigation and control of aircraft.

28. The requirement to manage the aviation safety effects of the Application must be viewed in that context and cannot, in our submission, (in the absence of further work and verification) be considered to be "acceptable" as CGL and its experts claim, or left to confirm (both in terms of scope of effect and mitigation) in conditions and/or to processes after the grant of resource consent.

The Panel should decline the Application

29. The Panel has powers to decline an application under the FTAA. It may decline the Application under section 85(3) of the FTAA, if one or more adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits.[34]

30. The *Taranaki VTM* draft decision states that the assessment required by the Panel under section 85(3) is a "factual proportionality assessment".[35] The Panel must approach this by assessing:[36]

    (a) the extent of the project's regional or national benefits;

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32 Legal Submissions on behalf of CGL, 9 March 2026 at [6]-[38].

33 Evidence of Mr Grimm, 12 March 2026 at [4.1].

34 FTAA, section 85(3).

35 Draft Decision *Taranaki VTM* Expert Panel FTAA-2504-1048, 4 February 2026, at [233].

36 Draft Decision *Taranaki VTM* Expert Panel FTAA-2504-1048, 4 February 2026, at [232]-[234].

(b) the significance of adverse impacts; and

(c) whether the adverse impacts are 'sufficiently significant' to be out of proportion to the project's regional or national benefits.

31. An 'adverse impact' means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.[37] This is much broader than the definition of an "effect" under the RMA. The *Taranaki VTM* confirmed that inadequate information to determine the scale of adverse impacts, itself constitutes an adverse impact:[38]

> […] If: (i) information is inadequate or uncertain such that favouring caution is required, and 'favouring caution' cannot be achieved through conditions, or (ii) the Panel considers that it does not have adequate information to determine the application, these scenarios would meet the definition of an 'adverse impact' in s 85(5), which is "any matter considered by the panel in complying with s 81(2) that weighs against granting the approval". As such, the inadequacy of information could provide the basis for declining the approval if the panel considers that adverse impact, by itself or in combination with any other adverse impact, is sufficiently significant to be out of proportion to the project's regional or national benefits.

32. The severity of the consequences which could result from the insufficient information provided by the Application include the possibility that navigation equipment is compromised which can result in aviation accidents and / or risks flight operations needing to cease at one of New Zealand's busiest airports.[39] In our submission, the Panel must assess this impact as significant.

33. Further, as explained in previous memoranda and CIAL's planning assessment,[40] the adverse aviation safety impacts resulting from the Application are inconsistent with multiple NPS-I provisions which provide strong direction to protect and not compromise the importance of existing infrastructure (including Airways and CIAL infrastructure). The Application is also inconsistent with multiple Canterbury Regional Policy Statement and Christchurch District Plan provisions which require decision makers to protect established infrastructure and manage the interface and compatibility of this infrastructure with proposed activities. In particular, there are avoidance

37 RMA, section 85(5).
38 Draft Decision *Taranaki VTM* Expert Panel FTAA-2504-1048, 4 February 2026, at [184].
39 Evidence of Mr Grimm, 12 March 2026 at [7.1].
40 Memorandum of Counsel on behalf of Airways, 16 February 2026, and Memorandum of Counsel on behalf of CIAL, 16 February 2026.

policies which require decision makers to avoid or mitigate the potential effects of activities that could interfere with safe navigation and control of aircraft.[41]

34. Based on the inadequate information (and including the additional inconsistencies with the NPS-I and policy / district plan provisions), the Panel would be justified to decline the Application under section 85(3). The FTAA does not require the Panel to proceed in the face of evidential deficiency; it accommodates refusal where the information gap prevents a proper proportionality assessment. The insufficient information in this Application is an adverse impact of sufficient significance to outweigh the Application's benefits.

DATED 12 March 2026

L Rapley / L Espin
Counsel for Airways Corporation of New Zealand

41 Christchurch City District Plan Policies 6.7.2.1.2 and 16.2.1.4 and Canterbury Regional Policy Statement Policy 5.3.2.2.b.