

Before the Expert Panel

FTAA-2504-1054

Under **Fast-track Approvals Act 2024**

In the matter of an application for approvals in relation to the Ryans Road Industrial Development

By **Carter Group Limited**
Applicant

Legal submissions for Carter Group Limited

23 February 2026

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May it please the Panel:

INTRODUCTION

- 1 These legal submissions are filed on behalf of Carter Group Limited (**Carter Group** or **Applicant**), the applicant for the substantive application for the Ryans Road Industrial Development (**Project**) under the Fast-track Approvals Act 2024 (**FTAA**).
- 2 In light of the positions advanced by CIAL and Airways, both in their s 53 comments and in the memoranda filed on 18 December 2025 and subsequent memoranda, the Applicant now files a final package comprising (**Final Package**):
 - (a) An updated set of proffered conditions;
 - (b) expert evidence regarding aviation safety effects and the proffered conditions; and
 - (c) these legal submissions which are intended to assist the Panel in making its decision within the statutory framework of the FTAA.
- 3 In particular, these legal submissions address:
 - (i) the evidence before the Expert Panel (**Panel**);
 - (ii) how the Panel must approach conflicting (or in this case a lack of) expert evidence to support assertions made by Christchurch International Airport Limited (**CIAL**) and Airways Corporation of New Zealand (**Airways**);
 - (iii) further technical reports regarding aviation safety;
 - (iv) the Civil Aviation Act 2023 (**CAAct**) and Civil Aviation Rules (**CARs**);
 - (v) the proffered conditions; and
 - (vi) the FTAA decision-making framework.
- 4 A response to the Panel's questions regarding the application of the precautionary principle is attached as **Appendix 1**.

FURTHER EVIDENCE FILED BY THE APPLICANT

- 5 As part of its Final Package of evidence and conditions, the Applicant files:
- (a) Supplementary statement of evidence of **Mr Simon McPherson** (Cyrrus Limited);
 - (b) Supplementary statement of evidence of **Mr Geraint Bermingham** (Navigatus Consulting Limited);
 - (c) Supplementary statement of evidence of **Mr Benjamin Hargreaves** (L+R Airport Consulting);
 - (d) Statement of **Ms Lizzie Civil** responding to comments on the draft Wildlife Hazard Management Plan (**draft WHMP**) and aviation safety matters relating to bird strike;
 - (e) Supplementary statement of evidence of **Mr Nick Fuller** in relation to traffic which responds to the supplementary comments of Christchurch City Council and New Zealand Transport Agency Waka Kotahi dated 18 December 2026; and
 - (f) Statement of evidence of **Dr Andrew Shelley** providing further expert comment on civil aviation regulatory matters relating to the Project;
 - (g) Supplementary statement of evidence of **Mr Jeremy Phillips** addressing the planning matters relevant to the Final Package, including the proffered conditions.
 - (h) Economic Assessment of Regional Significance and Claimed Third Party Costs by **Ms Maggie Hong (PhD)** and **Mr Greg Akehurst**.

THE EVIDENCE BEFORE THE PANEL

- 6 These legal submissions begin by identifying the evidential foundation presently before the Panel on which it is to make its decision.
- 7 In response to the concerns raised by CIAL and Airways in their respective comments under section 53 of the FTAA, the Applicant commissioned the following expert reports to assess matters relating to aviation safety and airport safeguarding:¹

¹ Carter Group Limited response to comments received from persons invited to comment on the applicant under s 53 of the FTAA (28 November 2024).

- (a) Technical Safeguarding Assessment of Air Navigation Equipment Report, prepared by Cyrrus, a UK specialist who was recommended by Airways, to prepare a technical safeguarding study assessment of air navigation equipment (**Cyrrus Assessment**).²
- (b) Aviation Safeguarding Assessment, prepared by Navigatus, a New Zealand specialist also recommended by Airways, to provide New Zealand based aviation advice and expert review of the Cyrrus Report, and address other aviation safety matters raised by Airways and CIAL (**Navigatus Assessment**).³
- (c) Christchurch International Airport Safeguarding Assessment, prepared by L&R Airport Consulting (**L&R Assessment**).⁴

(together, the **Aviation Safety Assessments**)

- 8 Cyrrus and Navigatus were engaged by the Applicant on the recommendation of Airways. Neither CIAL nor Airways has raised any concern regarding the suitability or professional qualifications of these experts to undertake assessments relating to aviation safety and airport safeguarding. Airways has confirmed that "Cyrrus and Navigatus are recognised experts in aviation safety and have been recommended by Airways as being appropriately qualified to assess aviation impacts".⁵
- 9 As noted at paragraph 83 below, the Civil Aviation Authority (**CAA**) has also confirmed the suitability of the Applicant's experts as recognised experts in the field of aviation safety. However, Airways went on to say that although "these experts are appropriately qualified does not mean the assessments provided are adequate in the context – Airways considers more information is required to demonstrate that the effects of the proposed development on aviation safety can be adequately and safely managed."⁶
- 10 In their respective memoranda dated 18 December 2025 CIAL and Airways, remain highly critical of the level of assessment undertaken by the Applicant in relation to aviation safety. At the risk of simplifying matters

² Carter Group Limited response to comments received from persons invited to comment on the Application under s 53 of the FTAA (28 November 2024), **Appendix 18**.

³ Carter Group Limited response to comments received from persons invited to comment on the Application under s 53 of the FTAA (28 November 2024), **Appendix 19**.

⁴ Carter Group Limited response to comments received from persons invited to comment on the Application under s 53 of the FTAA (28 November 2024), **Appendix 17**.

⁵ Supplementary submission for Airways Corporation New Zealand dated 18 December 2025 at page 5.

⁶ Supplementary submission for Airways Corporation New Zealand dated 18 December 2025 at page 5.

which the Applicant acknowledges are technically complex, the position advanced on behalf of CIAL and Airways appears to be that the Aviation Safety Assessments, whether considered individually or collectively, do not constitute a “completed aeronautical study”, and that the agencies therefore “does not presently have sufficient information to assess the nature or extent of the aviation safety and operational risks associated with the Project”.⁷ They assert that an "aeronautical study" is usual or required in a process such as this (we assume that they are referring to RMA processes).

11 The Applicant addresses the question of what constitutes an "aeronautical study", and when such a study is required and what the standard of information from an applicant in a resource consent process in more detail at paragraphs 87-98 below.

12 CIAL also contends that the Applicant’s technical assessments proceed on an incorrect methodological premise. CIAL states:⁸

At a fundamental level, the Applicant’s technical reports assume development is to proceed, then model how it might be constrained to manage adverse impacts. In doing so, the reports do not answer the threshold question of whether development here is acceptable at all – which is precisely what an aeronautical study would be looking to answer.

13 Airways states:⁹

Airways' responses show that there are significant shortcomings, information gaps and uncertainties, and the mitigation and management measures proposed by the applicant are not adequate or appropriate to manage aviation safety effects. Airways' view is that further technical assessments and/or peer reviews are considered necessary to address the aviation safety effects.

14 CIAL and Airways' comments must be considered in light of the evidential record presently before the Panel.

15 With respect, neither CIAL nor Airways, in their section 53 comments or subsequent memoranda, has provided any expert evidence or any technical assessment to support the criticisms they make of the Aviation

⁷ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025.

⁸ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [21].

⁹ Supplementary submission for Airways New Zealand Limited dated 18 December 2025

Safety Assessments and neither has produced any expert evidence to support the assertion that they describe as an aeronautical study is usual or required for determination on a resource consent application.

16 In the Applicant's view:

- (a) The comments of counsel for CIAL and Airways relate to matters "in a highly technical field" and which require specialist expertise.¹⁰
- (b) While Airways notes in its memoranda dated 18 December 2025 that its engineering staff assisted in preparing its response. However,
 - (i) the authors are not identified;
 - (ii) no expert statement has accompanied that material;
- (c) CIAL has confirmed that it "does not hold specialist technical expertise across all of the discrete disciplines that may be engaged by a proposal of this nature."¹¹ Despite this, neither CIAL nor Airways, have commissioned any experts to provide a contrary opinion to the three Aviation Safety Assessments commissioned by the Applicant, and nor have they commissioned an economist to assess alleged adverse operational effects.
- (d) The Applicant acknowledges that CIAL has provided expert evidence on 15 September 2026 on bird-strike risk. However, beyond the Avisure report and the planning input reflected in its legal memoranda, the remainder of CIAL's technical assertions are entirely unattributed. The documents do not identify the authors, their qualifications, or whether they possess any relevant expertise in aviation-safety assessment.
- (e) An applicant must rely on the opinions of its suitably qualified expert advisors as to the scope and level of technical assessment reasonably required to address aviation safety and airport safeguarding effects in the context of a resource consent application, particularly where those assessments are comprehensive, methodologically explained, and unchallenged by any contrary expert evidence.

¹⁰ Memorandum of counsel for Christchurch International Airport Limited dated 26 January 2026 at [16].

¹¹ Memorandum of counsel for Christchurch International Airport Limited dated 26 January 2026 at [16].

- (f) The only expert evidence before the Panel on aviation safety effects is that is contained in the Aviation Safety Assessments, each of which concludes that the effects of the Project can be appropriately managed and are acceptable and the economic assessment which concludes that the Project will deliver "substantial economic benefits for both the Christchurch and Canterbury economies."¹²

HOW MUST THIS PANEL APPROACH AN ABSENCE OF CONFLICTING EVIDENCE?

- 17 In light of the above, before turning to the merits of the aviation safety issues raised by CIAL and Airways, it is necessary to address how the Panel must treat the comments made regarding aviation safety effects that are unsupported by expert evidence including the assertion also unsupported by expert evidence that what they describe as an aeronautical study is required for decision-making on a resource consent application.
- 18 It is well-established that decision makers under the RMA framework, must base its findings of fact on the evidence before it. Assertions of significant adverse effects, particularly where they relate to highly technical matters such as aviation safety, must be supported by appropriate expert evidence before a decision maker may place material weight upon them. In the absence of such evidence, submissions of counsel cannot, of themselves, establish a factual foundation for the alleged effects.
- 19 Caselaw authority is clear, that while submitters may advance argument, submissions are not evidence, and cannot substitute for expert opinion on matters requiring specialist assessment. For example, in *Warburton v South Wairarapa District Council*, the Environment Court held that submissions of legal counsel can only address questions of law, such as the interpretation of statutes or planning documents, but will not be given weight as assertions of fact or opinion.¹³ The Court emphasised that although parties are not required to discharge a burden of proof under the RMA, section 276 of the RMA does not mean "anything goes" as to evidence.¹⁴ Evidence must be provided by persons with specialised knowledge; otherwise, the Court would be encumbered with evidence of no value. In this case, the lack of evidence meant there was no basis for consideration of the appeal, resulting in its dismissal. The Court observed

¹² **Greg Akehurst**, Ryans Road Industrial Development - Reply to CCC (21 October 2025) (**Appendix 20** to the Applicant's s 55 response).

¹³ *Warburton v South Wairarapa District Council* ENC Wellington W079/09, 15 October 2009.

¹⁴ *Warburton v South Wairarapa District Council* ENC Wellington W079/09, 15 October 2009 at [21].

that “the tactical choices made have doomed this appeal” before it could engage with any potential merits.¹⁵

- 20 Caselaw confirms that this principle carries particular force where a party alleges serious or potentially significant adverse effects particularly in a technical area where the decision-maker has no relevant experience or expertise themselves, and that party elects not to adduce expert evidence capable of demonstrating those effects. In such circumstances, the decision maker is not entitled to speculate or to elevate unsupported assertions to the level of probative evidence.
- 21 For example, in *Shirley Primary School v Christchurch City Council* (**Shirley Primary School**) the Environment Court held that opponents of a proposed cell tower could not rely on dire claims about catastrophic health and social effects without providing reliable expert evidence to support them.¹⁶ While the submitter (i.e. the school) warned of serious risks such as cancer, psychological harm and financial ruin, they provided no scientifically credible material, whereas the applicant's expert evidence showed no such risks. The Court rejected a 'no-risk approach', finding it logically impossible. The Court held applicants do not need to prove absolute safety, particularly when alleged harms are unproven or speculative, even when those alleged harms are those of high potential impact.
- 22 In our submission, there is no reason to depart from the orthodox RMA approach to assessing evidence because this application is being assessed within the framework of the FTAA. As CIAL itself notes in its memoranda dated 18 December, "the FTAA does not signal any intention to relax the standard of scrutiny".¹⁷ The Applicant agrees with that statement, but notes that it necessarily follows that the level of evidential robustness required for foundational issues such as aviation safety must be met through probative expert evidence. It is therefore difficult to reconcile CIAL's stated position with the fact that neither CIAL nor Airways has filed, or relied upon, any expert evidence to substantiate the aviation safety concerns advanced in the submissions prepared by their legal counsel.

¹⁵ *Warburton v South Wairarapa District Council* ENC Wellington W079/09, 15 October 2009 at [26].

¹⁶ *Shirley Primary School v Christchurch City Council* ENC C136/98, 14 December 1998; see also *Trans Power New Zealand Limited v Rodney District Council* A085/94 [1994] NZPT 297 (14 November 1994) at 22; *Telecom New Zealand Ltd v Christchurch City Council* [1996] ELHNZ 416 at 9.

¹⁷ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [46].

- 23 CIAL also places considerable weight on the alleged potential for adverse effects on its own and Garden City Helicopter's (**GCH**) operations. For example:
- (a) CIAL asserts that the Project may necessitate changes to its own operations or to those of GCH, but provides no expert analysis identifying what those changes might be, their scale, or their likelihood of their costs. CIAL then appears to criticize the Applicant's experts for not "disproving" these hypothetical effects, in circumstances where CIAL itself has not articulated, let alone evidenced, the nature of the effects it alleges.
 - (b) No evidence is provided to quantify or describe those alleged costs or constraints of such operational changes. Without such information, these claims cannot meaningfully be assessed within the framework of the FTAA which requires a weighing of adverse impacts against the Project's benefits (as addressed further from paragraph 150 below).
- 24 The evidentiary burden of establishing that the Project will give rise to adverse effects rests, in the first instance, with the party making the allegation.¹⁸ In *Shirley Primary School* this was described as a "swinging evidential burden" on each issue that needs to be determined by the Court as a matter of evaluation.¹⁹ While an Applicant bears the initial obligation to provide an adequate assessment of effects, once expert evidence has been produced that the effects are acceptable or can be appropriately managed, the evidential onus shifts to those challenging the proposal to produce cogent evidence to the contrary.
- 25 Under the RMA, a decision-maker does not assume the existence of adverse effects where none have been demonstrated by expert evidence. The RMA requires decision-makers to assess the evidence before them and determine whether the proposal achieves the sustainable management purpose of the Act. This principle applies with equal, if not greater, force under the FTAA framework, where the purpose of the legislation is "to

¹⁸ *Baker Boys Limited v Christchurch City Council* [1998] NZRMA 433 citing *McIntyre v Christchurch City Council* [1996] NZRMA 289 the Environment Court held that while there is no strict legal burden of proof on any party in RMA cases, there was an evidentiary burden on any party who makes an allegation to present evidence tending to support that allegation.

¹⁹ *Shirley Primary School v Christchurch City Council* ENC C136/98, 14 December 1998 at [136]; See also *McIntyre v Christchurch City Council* [1996] NZRMA 289 where the Environment Court said at 306 "[o]n the first, it is our understanding of the law that on a resource consent application, like a planning application under the former regime, there is not a burden of proof on any party, but that there is an evidentiary burden on a party who makes an allegation to present evidence tending to support the allegation."

facilitate the delivery of infrastructure and development projects with significant regional or national benefits"²⁰ and here the grounds for declining to facilitate delivery are limited to narrow circumstances where effects have been demonstrated (through evidence from the party asserting the effect) to be of sufficient significance to outweigh the benefits.

- 26 Where, as here, the Applicant has filed detailed specialist assessments addressing the relevant technical matters, and those reports are unchallenged by any expert evidence from submitters or affected agencies, a decision maker is entitled, and often obliged, to place substantial weight on the only expert evidence available.²¹ The absence of opposing expert evidence does not prevent the Panel from reaching findings of fact; to the contrary, it strengthens the evidential weight of the uncontroverted expert assessments before it.
- 27 The Applicant acknowledges that both CIAL and Airways hold statutory responsibilities relating to aviation safety, and that their views on such matters are properly afforded respect. These statutory responsibilities are discussed in more detail below. However, the institutional roles of those agencies do not remove the need for assertions to be supported by probative expert evidence, particularly where they concern specialised engineering, safeguarding, or operational matters.
- 28 Even where a statutory body expresses concern, the weight to be given to that concern depends on the evidence underpinning it, rather than the status of the submitter. In the present case, despite their statutory functions, it is highly telling that neither CIAL nor Airways has filed expert evidence that contradicts or undermines the conclusions of the Applicant's experts, nor have they filed evidence to substantiate the alleged operational constraints that might be imposed on them or evidence as to what the cost of those constraints might be.
- 29 Therefore, in our submission, it follows that allegations of serious aviation safety effects or operational impacts with resulting costs, without supporting expert evidence, cannot displace the conclusions of independent technical assessments commissioned by the Applicant. The Panel must base its

²⁰ Fast-track Approvals Act 2024 (FTAA), s 3.

²¹ See for example in *Stewart v Wellington City Council* ENC Wellington W108/05, 21 December 2005, where the Court observed that although evidence may still be admitted, the fact that a party relies on hearsay or material inconsistent with ordinary evidential principles will affect the weight the Court gives that evidence. The Court also noted that where appellants raise matters requiring technical expertise, this may oblige an applicant to engage its own experts to respond. In such circumstances, if technical issues are raised but the applicant's expert evidence ultimately remains unchallenged, that may be a relevant factor in justifying an award of costs.

findings on the evidence, not on the apprehensions or assumptions advanced in submissions without expert evidential foundation.

FURTHER TECHNICAL REPORTS

30 Notwithstanding the above, and the Applicant's position that neither CIAL nor Airways has established any evidential foundation for the issues of aviation safety advanced in their respective legal memoranda, the Applicant has nonetheless sought to assist the Panel by commissioning the following further technical responses responding directly to the Supplementary Comments lodged by CIAL and Airways:

- (a) Supplementary statement of evidence of **Mr McPherson** (Cyrrus);²²
- (b) Supplementary statement of evidence of **Mr Bermingham** (Navigatus);²³
- (c) Supplementary statement of evidence of **Mr Hargreaves** (L+R Airport Consulting);²⁴
- (d) Memorandum of **Ms Civil** responding to matters relating to bird strike risk and the draft WHMP;²⁵
- (e) Statement of evidence of **Dr Shelly**.²⁶

31 The supplementary statement of evidence of **Mr Phillips** also addresses the planning matters relevant to the Final Package, including the proffered conditions.²⁷

(collectively, the **Aviation Safety Expert Responses**)

32 Each of these reports, and their respective conclusions, is summarised in the sections that follow.

33 In addition to the Aviation Safety Expert Responses, the Applicant has commissioned the *Economic Assessment of Regional Significance and*

²² Supplementary statement of evidence of **Simon McPherson** dated 17 February 2026.

²³ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026.

²⁴ Supplementary statement of evidence of **Ben Hargreaves** dated 20 February 2026.

²⁵ **Lizzie Civil** *Response to: Ryans Road Industrial Development Substantive Fast-Track Application – Christchurch International Airport Limited: Initial Comment on Draft Wildlife Hazard Management Plan and Aviation Safety Matters* (19 February 2026).

²⁶ Statement of evidence of **Andrew Shelley** dated 23 February 2026.

²⁷ Statement of evidence of **Mr Jeremy Phillips** dated 23 February 2026.

Claimed Third-Party Costs prepared by **Ms Hong and Mr Akehurst**. Although that analysis is referred to within the aviation experts' reports, it is addressed in detail separately at from paragraph 150 below, where it is considered within the FTAA's decision-making framework.²⁸

Mr McPherson (Cyrrus)

- 34 **Mr McPherson** provides a response to the technical concerns raised by Airways. Mr McPherson's overall conclusion is that all potential effects on air-navigation equipment are manageable to an acceptable standard, and the worst-case modelling indicates that actual effects will be less than predicted. No significant operational impacts on Airways' systems are anticipated, and any required mitigations would be standard aviation-practice adjustments achievable within the existing regulatory framework.²⁹
- 35 Mr McPherson also confirms that the proposed conditions relating to aviation safety are "appropriate and sufficient" to address the issues identified in the Cyrrus Assessment.³⁰

Mr Bermingham (Navigatus)

- 36 **Mr Bermingham** responds comprehensively to the matters raised by CIAL and Airways, addressing both the regulatory framework and the technical aviation safety issues relevant to the Project. He confirms that the development will fully comply with the aviation safety related provisions in the District Plan, including all relevant Obstacle Limitation Surfaces (**OLS**) for both Christchurch Airport and the GCH heliport. He explains that any temporary construction-related penetrations (such as cranes or lasers) will be appropriately managed through the established CAR Part 77 process.
- 37 Mr Bermingham concludes that the safeguarding assessments prepared for the Project are "appropriate in scope and depth" for decision-making in this process, and that they reliably identify the aviation safety considerations associated with development in this location.³¹ He agrees with **Mr McPherson** that no significant impacts on fixed-wing operations or on Airways' navigation or surveillance systems are anticipated.³² The only

²⁸ **Maggie Hong (PhD) and Greg Akehurst**, *Economic Assessment of Regional Significance and Third Party Costs* (19 February 2026).

²⁹ Supplementary statement of evidence of **Simon McPherson** dated 17 February 2026

³⁰ Supplementary statement of evidence of **Simon McPherson** dated 17 February 2026 at [27].

³¹ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [75].

³² Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [78] – [81].

operational interface relates to the GCH heliport, where some adjustments to helicopter approach and departure paths *may* be required; however, any such adjustments "would not be significant."³³

- 38 Overall, Mr Bermingham confirms that he maintains the conclusion reached in the Navigatus Assessment dated 28 November 2025 that the effects on aviation safety are "acceptable" and "[t]he assessment provides confidence that aviation safety risks are identified, managed, and mitigated".³⁴ Mr Bermingham further confirms that the conditions proposed by the Applicant are suitable and "will effectively address any aviation safety risks that may arise from any particular development".³⁵

Mr Hargreaves

- 39 **Mr Hargreaves** confirms that: having reviewed the memoranda filed by CIAL and Airways, as well as the additional technical material prepared by **Mr McPherson, Mr Bermingham** and **Dr Shelley**.³⁶

nothing has been raised that causes me to modify or reconsider the conclusions reached in the L&R Airport Safeguarding Assessment submitted with the Applicant's section 55 response.

- 40 Mr Hargreaves maintains the conclusions in the L+R Assessment that "the aviation safety effects of the proposal remain acceptable, and any residual risks are appropriately managed through the suite of conditions proposed by the Applicant."³⁷

- 41 Mr Hargreaves also confirms that:³⁸

(a) the technical assessments provided by the Applicant are sufficient to enable a "robust evaluation of the aviation safety effects of the proposal";³⁹ and

(b) the revised set of conditions:⁴⁰

³³ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [78].

³⁴ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [92].

³⁵ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [76].

³⁶ Supplementary statement of evidence of **Benjamin Hargreaves** dated 20 February 2026 at [18].

³⁷ Supplementary statement of evidence of **Benjamin Hargreaves** dated 20 February 2026 at [19].

³⁸ Supplementary statement of evidence of **Benjamin Hargreaves** dated 20 February 2026 at [12]-[13].

³⁹ Supplementary statement of evidence of **Benjamin Hargreaves** dated 20 February 2026 at [14].

⁴⁰ Supplementary statement of evidence of **Benjamin Hargreaves** dated 20 February 2026 [12]-[13].

- (i) "collectively and appropriately address the matters raised and addressed" in the L+R Assessment; and
- (ii) while "not strictly necessary in light of the conclusions reached in the [L+R Assessment] and reinforced [Aviation Safety Expert Responses]" the new preferred conditions represent an "appropriately precautionary response to address any outstanding aviation safety matters."

Ms Civil (Bird Strike)

- 42 **Ms Civil** responds to CIAL's comments regarding the draft WHMP. CIAL notes that Avisure was commissioned to assist it with its review.⁴¹ Although no Avisure material accompanied CIAL's legal memorandum dated 18 December 2025, and CIAL indicates that only a "preliminary" review was undertaken, it is acknowledged that CIAL had previously filed evidence from Avisure as part of its s 53 comments.
- 43 Ms Civil's assessment concluded that the proposed development is "unlikely to increase bird strike risk", noting that replacing open grassland and seed-bearing habitat with industrial development will reduce overall bird presence, particularly species associated with higher strike risk.⁴²
- 44 She further considers that the draft WHMP, supported by proposed consent conditions, provides a "robust and enforceable framework for managing bird attraction and bird strike risk", ensuring obligations are binding on all future owners and occupiers. The draft WHMP "comprehensively addresses the potential risks" during construction and operation, establishes clear mitigation and escalation procedures, and can be refined post-consent in consultation with CIAL.⁴³

⁴¹ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025, Attachment 4 *Christchurch International Airport Limited Initial Comments on draft Wildlife Hazard Management Plan and Aviation Safety Matters* (21 November 2025).

⁴² **Lizzie Civil** *Response to: Ryans Road Industrial Development Substantive Fast-Track Application – Christchurch International Airport Limited: Initial Comment on Draft Wildlife Hazard Management Plan and Aviation Safety Matters* (19 February 2026) page 1.

⁴³ **Lizzie Civil** *Response to: Ryans Road Industrial Development Substantive Fast-Track Application – Christchurch International Airport Limited: Initial Comment on Draft Wildlife Hazard Management Plan and Aviation Safety Matters* (19 February 2026) page 2.

45 Overall, Ms Civil concludes that the approach “appropriately manages bird strike risk and provides the level of certainty required for aviation safety in this context.”⁴⁴

Dr Shelley

46 Following the receipt of the CIAL and Airways' memoranda, the Applicant engaged **Dr Shelley** to review the Aviation Safety Assessments and review the CIAL and Airways respective memoranda.⁴⁵

47 **Dr Shelley:**

- (a) Outlines the civil aviation regulatory framework in New Zealand including the obligations placed on:
 - (i) aerodrome operators such as CIAL under CAR Part 139;
 - (ii) Airways under Part 171 and Part 172; and
 - (iii) landowners who are not 'aviation participants' under Part 77;
- (b) Provides a technical discussion about air traffic surveillance technology used by Airways at Christchurch International Airport;
- (c) Provides further detailed consideration of the impact on GCH, specifically the potential impact on flight paths and the absence of any impact on the operation of air ambulance helicopters;
- (d) Comments on specific aspects of the Ryans Road industrial development, including the extent to which it meets obstacle limitation requirements, Part 77 notification requirements, consideration of unknown future development, and the appropriateness of the proposed consent conditions; and
- (e) Provides comments on the potential impact / costs of the proposal, particularly with respect to whether the proposal could give rise to costs that affect the economic significance of the project;
- (f) Responds to the NPS-I assessments filed by CIAL and Airways.⁴⁶

⁴⁴ **Lizzie Civil** *Response to: Ryans Road Industrial Development Substantive Fast-Track Application – Christchurch International Airport Limited: Initial Comment on Draft Wildlife Hazard Management Plan and Aviation Safety Matters* (19 February 2026) at page 2.

⁴⁵ Statement of evidence of **Andrew Shelley** dated 23 February 2026.

⁴⁶ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [10.1] to [10.4].

48 Dr Shelley's conclusions are addressed in more detail under the headings below.

Mr Phillips

49 **Mr Phillips** addresses the planning implications of the aviation safety concerns raised by CIAL and Airways. In particular, he discusses how those matters are managed through the district plan framework and the proposed conditions of consent.⁴⁷

AVIATION SAFETY EFFECTS

50 The evidence confirms the aviation-safety effects associated with the Project have been fully assessed and addressed through the safeguarding analyses and the conditions proffered, and that those effects will be acceptable. The Aviation Safety Expert Responses provided by Mr McPherson, Mr Bermingham and Mr Hargreaves each confirm this position and do not alter the conclusions reached in the Applicant's 28 November 2025 response.

51 **Dr Shelley** sets out the experience he has had in RMA consenting processes and further concludes and confirms that:

The particulars of the proposal and as evidenced by the technical assessments and compliance with the District Plan / protection surfaces means the proposal will be safe and appropriate from an aviation safety perspective. I consider that **the information and technical assessment provided by the Applicant are more than sufficient for this process, and go well beyond what would typically be expected in an RMA process**, particularly given the proposal's compliance with the District Plan protection and the applicable CARs.

Further assurance of aviation safety is provided by the regulatory processes under the CAA which will be followed.

The conditions of consent proposed by the Applicant require/reinforce/support the above

Given the above, including the evidence in the technical assessments, **there will be no significant operational constraints, costs or limitations on CIAL or Airways**. With reference to the economic assessment of Maggie Hong and Greg

⁴⁷ Statement of evidence of **Mr Jeremy Phillips** dated 23 February 2026.

Akehurst, if there are any additional costs to CIAL or Airways, those costs would not be of a magnitude that would materially affect the regional significance of the Ryans Road development.

[our emphasis]

- 52 To the extent the Panel retains any residual concern with regards to the alleged aviation safety effects raised by CIAL and Airways, Dr Shelley confirms that further assurance of aviation safety is provided by the regulatory process under the CAAct and CARs. Therefore, it is important to understand how the FTAA and RMA land-use frameworks interact with (and are complemented by) the specialist aviation-safety regime established under the CAAct and the CARs. It is to that statutory framework that these submissions now turn.

CIVIL AVIATION ACT 2023 AND CIVIL AVIATION RULES

- 53 Paragraphs 14 to 17 of the legal memorandum dated 18 December 2025 filed on behalf of CIAL outline the respective roles of CIAL, Airways, and the CAA within New Zealand's aviation safety framework.⁴⁸
- 54 The Applicant agrees that this context is important as it clarifies how any resource consent approvals the FTAA might deliver sit within the wider statutory framework that regulates aviation safety in New Zealand. It is noted however that CIAL's memorandum omits reference to the responsibilities placed in third party landowners under the CAAct.
- 55 **Dr Shelley** provides a comprehensive overview of the civil aviation framework in New Zealand, including civil aviation rules, associated guidance in Advisory Circulars (**ACs**), the obligations placed on aerodrome operators, the requirements applying to landowners/developers of structures and activities affecting airspace, and the regulatory framework governing navigational aids and obstacle-limitation surfaces.
- 56 **Mr Bermingham** also provides an overview of the civil aviation framework and how it applies to the Project.
- 57 We do not repeat their evidence in full. Instead, we set out below the statutory and regulatory framework within which aviation-safety effects must properly be assessed, as the foundation for the Panel's consideration of the matters raised by CIAL and Airways.

⁴⁸ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [13]-[17].

The Civil Aviation Act 2023

- 58 The purpose of the CAAct is "a safe and secure civil aviation system".⁴⁹ The CAAct establishes this structure by setting out the roles of the CAA and the Director of Civil Aviation (**Director**), including system-wide regulatory functions such as rule-making, certification, surveillance, and enforcement, as described in sections 22 and 23 (functions and objective of the CAA) and section 32 (functions and powers of the Director) of the Act.
- 59 The Director has responsibility for certification and regulatory oversight of aerodromes within New Zealand. In exercising this safety oversight function, the Director enforces the minimum safety standards articulated within CARS applicable within New Zealand.
- 60 In practice, the Director's responsibilities are managed in practice by delegation to the Aeronautical Services Unit (**ASU**). The ASU (acting on behalf of the Director) has responsibility for certification and safety monitoring of aerodromes and heliports, and of air traffic control, telecommunications, navigation, meteorological and aeronautical information services. It also has other responsibilities regarding airspace and objects affecting navigable airspace. Each of these responsibilities is governed by the CCAct and dedicated Rule Parts in the CARs.
- 61 As CIAL notes in its legal memorandum dated 18 December 2025:⁵⁰
- (a) The "CAA is the independent statutory regulator responsible for civil aviation safety and security in New Zealand". The CAA "exercises specialist expertise and independent judgment to assess aviation safety risk and determine whether proposed activities or changes to the operating environment are compatible with acceptable safety margins. This institutional separation between regulator and operator underpins the integrity, objectivity, and lawfulness of aviation safety decision-making."
 - (b) CIAL, as the operator of Christchurch International Airport (CHC), is "responsible for the safe operation of the aerodrome itself, including the protection of obstacle limitation surfaces, instrument flight procedures, and the operational environment in which aircraft safely arrive, depart, and manoeuvre."

⁴⁹ Civil Aviation Act 2023, s 3.

⁵⁰ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [14] -[15].

- (c) Airways "is the national air navigation service provider, responsible for the integrity and resilience of the air navigation system at a national level."
- (d) The CAAct and CAR "adopt an individual-accountability model: each participant is responsible for its own activities. CIAL cannot abdicate its responsibilities under CAR Part 139 to Airways, just as Airways, as an operator under the separate CAR Part 172, cannot assume responsibility for aerodrome-level safety on CIAL's behalf. Each must independently be satisfied its aviation safety management systems are not compromised, and the separate regulatory responsibilities it is subject to are discharged."

The CAAct and CARs controls: The Governing Framework for Aviation Safety

- 62 The CARs are secondary legislation made under the empowering provisions of the CAAct. The CARs govern the technical and operational requirements for the civil aviation sector in New Zealand. They set detailed, enforceable standards covering certification, licensing, airworthiness, maintenance, air operations, aircraft registration, and aviation safety, among many other areas.
- 63 As explained in the evidence of **Dr Shelley**, the CAAct and the CARs together form a comprehensive, mandatory regulatory system governing all aspects of civil aviation safety in New Zealand.
- 64 The CAR function as binding secondary legislation and apply to every person where relevant (not only to aviation operators but also third-party developers such as the Applicant) setting enforceable technical standards for the safe use of airspace, management of obstacles, operation of aerodromes, air traffic services, and the provision of navigational aids.
- 65 The CARs are divided into parts, including of particular relevance to this Project and the comments of CIAL and Airways:
 - (a) Part 77: Objects and Activities Affecting Navigable Airspace
 - (b) Part 139: Aerodrome Certification, Operation and Use; and
 - (c) Part 171: Aeronautical Telecommunication Services – Operation and certification;
 - (d) Part 172: Air Traffic Service Organisations Certification.

66 The evidence of **Dr Shelley**:

- (a) Summarises how each relevant CAR Part interacts to create a system through which obstacles, structures, navigational aids and air-traffic operations are assessed, safeguarded and managed.
- (b) Explains that there are enforcement mechanisms for non-compliance with CAA Act and associated regulations, including:
 - (i) action against certificate holders (such as CIAL under Part 139 and Airways under Parts 171/172);
 - (ii) infringement or prosecution for breaches by any person (for example, landowners under Part 77); and
 - (iii) the CAA may also take action under the Health and Safety at Work Act 2015 where material risk persists despite technical compliance.
 - (iv) Explains the interaction between the civil aviation regulatory framework and the RMA. Aerodromes can designate land under the RMA where necessary for safe operations, and district plans incorporate OLS and other safety controls that “give effect” to Part 139 requirements.

67 On this basis, Dr Shelley explains that:⁵¹

... it is typically unnecessary to look beyond the relevant district plan, as the relevant constraints are already embedded there and, in any event, the airport’s status as a requiring authority provides a further mechanism to issue a notice of requirement where restrictions are reasonably necessary for the safe or efficient operation of the aerodrome. In the case of Christchurch International Airport, this is achieved through the relevant requirements included in the District Plan.

68 In the opinion of **Dr Shelley**, compliance with the district plan generally means the essential aviation safety constraints have already been met, with any residual matters managed through a developer/landowner being required to make a notification under Part 77 or operational mitigations. **Mr Phillips** confirms that the Project complies with the relevant District Plan controls.⁵² Part 77 is explained in more detail at paragraphs 73 to 78 below.

⁵¹ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [4.28].

⁵² Statement of evidence of **Mr Jeremy Phillips** dated 23 February 2026 at [64].

- 69 In our submission, it is further noted that:
- (a) The purpose and structure of the CAAAct and CARs remove any uncertainty about where aviation safety responsibilities sit. The main purpose of the CAAAct, as set out in section 3, is “a safe and secure civil aviation system”.
 - (b) Compliance obligations on aviation participants are mandatory and ongoing. As noted by CIAL, the Act imposes general and continuing duties on aviation participants, including operators, pilots, aerodrome operators and others involved in aviation activities. These obligations are enforceable through the powers given to the CAA and the Director.
 - (c) The CARs give operational effect to the CAAAct by prescribing enforceable technical requirements for safe airspace and aviation activities, including obstacle management and notification processes.
 - (d) Landowners such as the Applicant here, whilst not aviation participants are not “outside” the aviation safety regime. Part 77 of the CARs regulates objects and activities affecting navigable airspace, including structures, lights, lasers and other hazards, and imposes mandatory duties (including notification) where relevant thresholds are met. This is explained in more detail at paragraphs 73-79 below.
 - (e) The CAA has chosen not to participate in this FTAA process. That position is understandable (and probably legally correct) given their separate statutory role as the regulator of aviation safety under separate legislation.
- 70 Against that background, and as confirmed in the evidence of **Dr Shelley**, the CAAAct and CARs together form a comprehensive, mandatory and specialist safety system governing the assessment and management of aviation-safety risks. The Rules apply not only to aviation operators but, where relevant (for example under Part 77), to all persons, including landowners and developers.
- 71 Therefore, to the extent the Panel has any remaining concerns about aviation safety (notwithstanding the Aviation Safety Assessments and further Aviation Safety Responses), **Dr Shelley** confirms that the correct framework for such matters to be determined is the civil aviation regime under CAAAct and the CARs and that process properly follows an RMA process, or in this case, the FTAA process.

72 This Panel is not being asked to, and does not have the power to, make determinations with regards to aviation safety under the civil aviation regime (for example, a Part 77 determination about hazards in navigable airspace, obstacle treatment, or operational aviation safety controls). Those matters are appropriately left to the CAA and, in particular, the Director, who holds the overarching responsibility and powers for aviation safety oversight, including monitoring, investigation and enforcement. That allocation of responsibility is deliberate and sensible given the technical complexity of aviation safety, and because aviation risk management commonly depends on system-wide and operational considerations that extend beyond land use effects.

Part 77 Objects and Activities Affecting Navigable Airspace

73 Part 77 applies to landowners such as the Applicant and is directed to ensuring aircraft safety is not compromised by objects or activities that may create hazards in navigable airspace. It captures, in particular, proposals to construct or alter structures, and the use of lights, lasers, weapons, pyrotechnics and similar hazards that may affect airspace.

74 In broad terms, Part 77 operates by requiring notification by the developer to the Director in prescribed circumstances, triggering the Director/CAA to undertake an aeronautical assessment and determine whether the proposal constitutes a hazard and what mitigation (if any) is required.

75 **Dr Shelley** considers that:⁵³

Part 77 complements Part 139 by requiring certain obstacles and constructions to be notified to the CAA. While most CARs only apply to participants in the civil aviation system, the Part 77 requirements apply to all persons, including those who would not otherwise have any interaction with the civil aviation system including the Carter Group.

76 As noted by **Dr Shelley** and **Mr Bermingham**, none of the proposed buildings will penetrate the relevant OLS for the airport's main runway. Some structures may temporarily breach the Part 77 notification surfaces during construction (for example, through the use of cranes or other equipment), which will require notification to the CAA.⁵⁴

⁵³ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [4.16].

⁵⁴ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [56]; Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [8.3].

- 77 **Dr Shelley** confirms that breaching a Part 77 notification surface does not mean a development seeking resource consent through the RMA or FTAA must be declined. It simply triggers the CAA's assessment process, through which any aviation safety impacts are identified and managed. Any restrictions imposed will relate only to addressing the specific non-compliance with Part 77.⁵⁵
- 78 **Dr Shelley** also confirms that a Part 77 assessment will consider all relevant aviation safety impacts. This process includes consultation with potentially affected parties to identify any safety issues and determine whether mitigation measures are required. Following notification, the Director of Civil Aviation must determine within 28 working days whether the proposed construction constitutes a hazard in navigable airspace. That decision is made on the basis of the Part 77 assessment.⁵⁶
- 79 This is process 'routine' and standard procedure. For example, **Dr Shelley** explains that cranes frequently penetrate OLS, and the CAA typically authorises them subject to mitigations such as lighting or construction-management controls. Permanent penetrations are treated the same way, the CAA determines whether they can be safely accommodated and what, if any, mitigation is required.⁵⁷

Engagement with CAA

- 80 Despite being invited to comment on the application, the CAA has chosen not to provide any formal views on the proposal. As set out above, that is appropriate and probably legally correct given its operates as the regulator under a separate legislative framework.
- 81 **Mr Phillips** and **Dr Shelley** met with Mr Nick Jackson of the CAA on 4 February 2026 to confirm their understanding on how the CAA Act and associated CAR apply to development occurring outside the boundary of a Part 139 certified aerodrome.⁵⁸ Mr Jackson confirmed that while the CAA was aware of the proposal and the technical work undertaken since August 2025, it did not intend to review that material or form a position as part of the FTAA process. He also acknowledged the disagreement between the

⁵⁵ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [4.20].

⁵⁶ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [8.5].

⁵⁷ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [4.21].

⁵⁸ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.16]; and Statement of evidence of **Jeremy Phillips** dated 23 February 2026 at [8]-[29].

Applicant, CIAL and Airways in the FTAA process but indicated that the CAA did not intend to intervene in that dispute.

82 Mr Jackson explained that the CAA's regulatory responsibilities are particularly focused on activities occurring within a certified aerodrome, and that its ability to intervene in private development outside the aerodrome boundary is limited. He noted that while early and collaborative aeronautical assessment is generally preferable, the CAA cannot require a private landowner to undertake a full aeronautical study. He also clarified the distinction between a Part 77 assessment and a full aeronautical study under Part 139 (which applies to aerodrome operators), and emphasised that Part 77 processes and, if necessary, operational constraints provide a regulatory "failsafe" if safety issues were to arise later.

83 In summary, the engagement with the CAA confirmed that:⁵⁹

- (a) the CAA has a clear and active role in relation to activities within an aerodrome
- (b) the CAA has an interest in the proposal given its location, and its involvement will be triggered when a Part 77 application is made;
- (c) the applicant's aviation experts are regarded as reputable and credible technical experts;
- (d) the CAA Act and CARs ultimately ensure aviation safety outcomes, including through Part 77 and, if necessary, can impose constraints; and if unanticipated and material aviation safety risks were to arise, the CAA has the power to impose constraints on aerodrome operations. In this regard, the regulatory framework functions as a fail-safe, ensuring that aviation safety outcomes are achieved even if issues emerge at a later stage;
- (e) an aeronautical study could be undertaken while a project is at a conceptual stage and does not necessarily require a fully detailed building; and
- (f) aeronautical assessments undertaken as part of the CAR Part 77 process are materially different from the aeronautical studies typically undertaken by aerodrome operators under CAR Part 139 (i.e. when those operators develop their land).

⁵⁹ Statement of evidence of **Jeremy Phillips** dated 23 February 2026 at [8]-[29].

Conclusion

- 84 The evidence of **Dr Shelley** confirms that any residual aviation safety effects raised by CIAL and Airways fall to be managed under the established statutory regime of the CAA and the CARs. That regime allocates responsibility for aviation-safety oversight to the CAA and the Director and requires aviation participants (including CIAL and Airways) to manage aviation-safety risks within the scope of their own statutory obligations, subject to ongoing regulatory oversight by the CAA.
- 85 The civil aviation regime also provides specific processes for assessing off-aerodrome activities undertaken by third parties such as the Applicant, including the mandatory notification and hazard-assessment functions under Part 77.
- 86 In these circumstances, and consistent with the evidence of **Dr Shelley**, any remaining aviation-safety matters will be dealt with through the civil-aviation regulatory framework. There is therefore no evidential or regulatory basis on which approval under the FTAA could be declined on aviation-safety grounds.

A COMPLETED AERONAUTICAL STUDY

- 87 CIAL contends that the Applicant was required to produce a "completed aeronautical study" and that, in the absence of such a study, the Panel lacks the information needed to assess aviation-safety risk.⁶⁰
- 88 Similarly, Airways' primary criticism is that the Applicant's assessment is "not adequate" and "[r]igorous assessment and analysis to aviation industry standards, which has not been provided by the Applicant, is required to determine the actual and potential risks to aviation safety."⁶¹
- 89 CIAL asserts such a "completed aeronautical study" is what "would usually be done".⁶² However, there is no evidence to support this assertion and a search of analogous caselaw has not revealed any requirement for such a study to be conducted by an applicant for a resource consent decided under the RMA.

⁶⁰ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [11].

⁶¹ Supplementary submission for Airways Corporation of New Zealand dated 18 December 2025.

⁶² Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [23].

- 90 Moreover, the evidence of **Dr Shelley** confirms that CIAL and Airways position is inconsistent with the structure of the CAA Act and the CARs.⁶³ The question of *whether* an aeronautical study is required, *who* must undertake it, and *in what circumstances* such a study is mandated, is determined by the civil-aviation regulatory framework. That framework does **not** impose an obligation on private landowners or developers outside an aerodrome to undertake an "aeronautical study". Nor does it contemplate such an exercise being undertaken by third parties.
- 91 **Dr Shelly's** evidence explains that aeronautical studies are typically associated with the aerodrome operator, and that the AC139-15 guidance as to what an aeronautical study must contain is directed at aerodrome operators in the context of complying with their obligations under Part 139. Aeronautical studies may also be undertaken by the CAA in the performance of its regulatory functions. AC139-15 aeronautical studies arise *only* when an aerodrome operator undertakes works or proposes changes on land *within its control*. An aeronautical study:⁶⁴
- (a) is an aerodrome operator tool for assessing the safety implications of its own works;
 - (b) forms part of the operator's obligations under CAR Part 139 to protect navigation aids and aerodrome operations "to the extent it is within the certificate holder's authority"; and
 - (c) requires access to operational information, flight procedure design data, and internal safety management processes that only an aerodrome operator and the CAA possess
- 92 Dr Shelley is explicit that the CAA Act does not require an "aeronautical study" of the type contemplated in AC139-15 for a development located outside the aerodrome boundary.
- 93 The Applicant is not the aerodrome operator, it has no authority or obligation under Part 139, no control over aerodrome operations, and no access to the operational systems and datasets required to undertake an AC139-15 aeronautical study process. Accordingly, it is not the entity required or permitted to prepare such a study and it is inappropriate to suggest that it should be required to do so in the context of the FTAA (or by analogy, in an RMA process).

⁶³ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.14] to [6.22]

⁶⁴ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.14].

- 94 As noted by **Mr Phillips**, Mr Jackson at the CAA has confirmed that aeronautical studies are a "requirement for activities inside the aerodrome fence, not beyond it."⁶⁵
- 95 CIAL refers to "Examples of the Recognised Aeronautical Study Process" and submits that these illustrate what is "usually" done before development proceeds.⁶⁶ However, CIAL does not explain, and the examples themselves do not establish, that any of those studies were undertaken by off-aerodrome developers, nor is it apparent whether they were undertaken as part of a resource consenting process and provided to an RMA decision maker (as opposed to a separate CAA process).
- 96 To the extent the examples cited involve aeronautical studies undertaken within the aerodrome or by or for an aerodrome operator, they arose in circumstances where the operator was discharging its own statutory responsibilities under the CAA and CAR Part 139 within its area of authority. That situation is fundamentally different. In those contexts, an aeronautical study is prepared by the aerodrome operator itself, to inform the operator's duties to manage risks to aerodrome operations in relation to activities under its control.
- 97 CIAL does not identify any instance in which an aeronautical study has been required of a private landowner outside the aerodrome boundary, nor does it identify any situation where such study was undertaken as part of an RMA process to inform an RMA decision-maker.
- 98 The examples therefore do not support the proposition advanced by CIAL.

Correct regulatory pathway for off-aerodrome development is Part 77

- 99 Where a proposed structure outside the aerodrome may affect navigable airspace, the CARs assign responsibility to the CAA under Part 77.
- 100 **Dr Shelley** distinguishes clearly between:⁶⁷
- (a) Part 77 studies, undertaken by the CAA following notification, and

⁶⁵ Statement of evidence of **Jeremy Phillips** dated 23 February 2026 at [36].

⁶⁶ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025, Attachment 2.

⁶⁷ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.15].

- (b) Part 139 (AC139-15) aeronautical studies undertaken by for aerodrome operators, undertaken for works *on* the aerodrome or in their control.

101 **Dr Shelley** confirms that:⁶⁸

- (a) a Part 77 process applies to developments outside an aerodrome;
- (b) the Part 77 aeronautical study process is undertaken by the CAA itself, not the developer; and
- (c) the CAA determines whether a structure constitutes a hazard and what mitigation, if any, is necessary.

102 This is not optional. It is the statutory mechanism designed for situations such as the present and reflects the principle that air-navigation hazard determinations must be made by the aviation regulator, not private parties.

It would be inappropriate and unworkable for a private developer to undertake a Part 139 (AC139-15) aeronautical study

103 **Dr Shelley's** evidence explains why Part 139 (AC139-15) studies cannot be performed by landowners:⁶⁹

- (a) They require coordination between the aerodrome operator, Airways, the CAA and other aviation participants.
- (b) They depend on access to sensitive operational and surveillance information unavailable to private parties.
- (c) They require agreement on risk tolerability, system wide consequences, and operational adjustments, matters only aviation system participants can assess

104 He notes:⁷⁰

It would be challenging or impossible for private landowners or developers to produce a compliant aeronautical study, given conflicting interests with an

⁶⁸ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.22]; This is also consistent with the advice received from the CAA as detailed in the Supplementary statement of evidence of **Jeremy Phillips** dated 23 February 2026.

⁶⁹ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.14].

⁷⁰ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.14].

aerodrome operator, limited timeframes, and practical barriers to obtaining mandatory inputs.

- 105 If CIAL consider a "complete aeronautical study" is required due to off-aerodrome changes, the evidence of **Dr Shelley** confirms that its remedy lies within its own hands as:
- (a) Part 139 obliges CIAL to undertake aeronautical studies to the extent matters fall within its authority.
 - (b) The RMA allows CIAL to designate land if further restrictions are "reasonably necessary" for safe aerodrome operation.
- 106 Neither the FTAA nor the RMA operates to transfer CIAL or Airways responsibilities under the CAAct and CARs to private landowners. There is no statutory or evidential foundation requiring the Applicant to undertake an Part 139 (AC139-15) aeronautical study either under CAAct, let alone as part of an RMA (or FTAA process). That process is reserved for aerodrome operators acting within their own areas of statutory responsibility and, where relevant, the Director of Civil Aviation. It is not a requirement that applies to off-aerodrome developers, nor one that the civil-aviation framework contemplates being performed by anyone other than the aviation participants themselves.

Aviation safety has been assessed to the appropriate standard

- 107 Although the evidence of **Dr Shelley** confirms that an "aeronautical study" per AC139-15 is not required in this case either under the RMA or FTAA, the Applicant has:⁷¹
- (a) engaged with Airways and CIAL proactively;
 - (b) commissioned Cyrrus (recommended by Airways) to undertake detailed navaid and CNS safeguarding analysis;
 - (c) obtained Navigatus' broader aviation effects assessment; and
 - (d) received a consolidated assessment from L+R Airport Consulting.
- 108 **Dr Shelley** concludes that the Applicant has assessed aviation safety risks to an appropriate standard under the FTAA (by analogy with the RMA), including by complying with District Plan controls, engaging with CIAL and Airways, obtaining specialist technical advice, and committing to the Part 77

⁷¹ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.19] to [6.22].

notification process and associated CAA assessment. He further states that the criticisms made by CIAL and Airways are “unfounded,” and that the Applicant’s assessments and those aviation assessments “are entirely appropriate for this decision-making process and would also be appropriate in an RMA process.”⁷² He also notes that the assessments undertaken in this case go “well beyond what would typically be expected.”⁷³

CONDITIONS PROFERRED

109 An updated set of conditions is attached to the supplementary statement of evidence of **Mr Phillips**.⁷⁴ The updated set of conditions include new proffered Land Use Conditions 21A, 21B, and 21C.

110 **Mr Phillips** provides commentary on the new proffered conditions. In summary:

- (a) **Land Use Condition 21A:** Replaces the former advice note with an explicit requirement that the applicant must obtain “CAR Part 77 determinations prior to construction,” disclose any determination to CCC, CIAL, and Airways, and “adhere to any determination.” It also enables the Council to review consent conditions to ensure consistency with any CAA determination
- (b) **Land Use Condition 21B:** Requires appointment of a suitably qualified aviation contact person available at all times during construction and operation. This provides a “*proactive method for responding to any aviation safety concerns*” and is described as a “*proportionate, practical and real-time risk management measure that does not duplicate CAA processes.*”
- (c) **Land Use Condition 21C:** Introduces a post-approval aviation risk assessment, even though **Dr Shelley** states this is “over and above anything that developers are legally required to conduct” and “overly precautionary and not necessary.”⁷⁵ Despite that, it is offered to ensure “identifying and managing any residual aviation safety risks” not otherwise addressed by consent conditions or the civil aviation regulatory framework. It requires early CAA input and engagement with aviation stakeholders, while making clear that “agreement or

⁷² Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [6.22].

⁷³ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [10.1].

⁷⁴ Supplementary statement of evidence of **Mr Jeremy Phillips** dated 23 February 2026, Appendix 1.

⁷⁵ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [8.10(f)]

regulatory endorsement is not required.” Although experts do not anticipate such risks, the condition provides an opportunity for CIAL and Airways to raise concerns, and requires “due consideration of those concerns, prior to construction commencing.”

- 111 The Aviation Safety Expert Responses each confirm that the proposed conditions address the matters raised in the Aviation Assessments and that the updated set of conditions (including the new proffered conditions) although not necessary, are an “overly”⁷⁶ precautionary response to any residual aviation safety risk.
- 112 For completeness, the Applicant notes that it sought to engage constructively with CIAL and Airways on the now-proffered Land Use Conditions 21A–21C, including by proposing procedural steps for processing the application that would have enabled informal technical discussions on the draft conditions.⁷⁷ The Applicant was disappointed that CIAL and Airways did not agree to those steps, meaning that no such discussions were able to occur.⁷⁸

Similar conditions have been set other consenting processes

- 113 Other consenting processes involving potential effects on aviation safety have confronted similar issues where there are allegations about the adequacy of technical information at the application stage. In those cases, decision makers have resolved outstanding uncertainty by sometimes imposing conditions requiring a further level of aviation-risk assessment and the development of corresponding mitigation measures after consent is granted (similar to what is now proposed by the Applicant). These decisions assist in illustrating how comparable issues have been managed.

Taheke Geothermal Project

- 114 In the *Taheke Geothermal Project* decision (which was a decision under the COVID-19 Recovery (Fast-track Consenting) Act 2020, aviation-related effects were a central issue. The proposed power station was located beneath one of Rotorua Airport’s designated Airport Approach and Take-Off Obstacle Limitation Surfaces, meaning potential interactions between

⁷⁶ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [8.10(f)]

⁷⁷ Memorandum of counsel for Carter Group Limited responding to Minute 7 dated 19 January 2026.

⁷⁸ Memorandum of counsel on behalf of Airways Corporation of New Zealand dated 28 January 2026; Memorandum of counsel for Christchurch International Airport Limited regarding Minute 7 dated 26 January 2026.

power plant discharges, airport operations, and airspace designation required careful assessment.⁷⁹

115 Comments were received from Rotorua Airport, Airways, and the CAA. Unlike this application, comments included an aviation effects assessment and a peer review of the applicant's aviation report. In summary:

- (a) **Rotorua Airport** opposed the project, stating that the application contained “insufficient assessment of the potential adverse effects... on aviation safety.”⁸⁰ It considered the applicant's evidence not to constitute a proper aeronautical study for CAR purposes. The Airport also raised concerns about potential social and economic effects flowing from plume behaviour, including possible restrictions on operations or increased delays and cancellations.
- (b) **Airways** considered the evidence too limited to properly assess consequences for current and future instrument flight procedures. It urged the Panel to seek further expert advice and requested continued consultation to ensure aviation safety and operational consistency were not compromised.
- (c) **CAA** confirmed a Part 77 determination had been issued. That determination recommended the creation of a “Danger Area” in the relevant airspace, which could disrupt aviation operations. CAA emphasised that the CAR framework is separate from the Fast-track consenting regime.

116 Throughout the process, Rotorua Airport's core concern remained that aviation safety responsibilities were being shifted from the Applicant onto the Airport. Because a second-stage aeronautical study had not been completed, and because CAA's statutory powers apply to aviation operators rather than applicants, the Airport maintained that any required mitigation would ultimately fall on it to implement.

117 In that case, the Panel found that the adverse aviation safety and operational effects were adequately identified and appropriately addressed through the evidence including design changes and consent conditions. Aviation effects therefore did not weigh against granting consent, stating that:⁸¹

⁷⁹ [Decision of the Expert Panel for the Taheke Geothermal Project](#), (6 November 2024).

⁸⁰ [Decision of the Expert Panel for the Taheke Geothermal Project](#) (6 November 2024) at [6.65].

⁸¹ [Decision of the Expert Panel for the Taheke Geothermal Project](#) (6 November 2024) at [6.104].

the potential adverse effects of the Project on aviation safety and operations (and 'downstream' economic effects) have been adequately defined, and are appropriately addressed through the design of the Project and the conditions that we have imposed. Consequently, aviation effects do not weigh against a grant of consent

- 118 The conditions that were ultimately imposed included a proffered condition for the Applicant to complete further second-stage aeronautical study to CAA standards (in consultation with Rotorua Airport), to implement any recommended mitigation measures, and to comply with prescribed “hard limits” on plume characteristics.⁸²
- 119 The *Taheke* decision is instructive in that Rotorua Airport likewise opposed that proposal and advanced criticisms similar to those made by CIAL and Airways here, including that the applicant had not provided a "complete aeronautical study" and that the information before the Panel was insufficient to assess aviation safety effects. Notwithstanding those objections, the Panel in *Taheke* determined that consent could appropriately be granted given the evidence it had but subject to conditions requiring a second-stage aeronautical study to be completed after consent, along with associated “hard limits” and mitigation obligations. That approach is broadly consistent with the framework proposed by the Applicant in this case, although the Applicant maintains that such a condition is unnecessary and overly precautionary on the evidence available here.

Smooth Hill Landfill

- 120 A similar approach was also taken in the *Smooth Hill Landfill* decision, where a proposed landfill was located approximately 4.5 km southeast of Dunedin International Airport. In that case, Dunedin Airport and the CAA opposed the application due to concerns about bird strike risk and aviation safety.⁸³ The draft Bird Hazard Management Plan relied on preliminary wildlife-hazard information and was not based on a longitudinal study of bird behaviour.
- 121 The Panel requested that the applicant develop a “condition precedent” requiring a full bird-strike risk assessment before waste discharge commenced. This was intended to ensure that appropriate mitigation would

⁸² [Decision of the Expert Panel for the Taheke Geothermal Project](#) (6 November 2024).

⁸³ [Smooth Hill Landfill Combined Decision Report of Dunedin City Council and Otago Regional Council](#) (9 September 2022).

be developed proactively and to avoid the situation in which CAA might later impose operational restrictions on Dunedin Airport.

- 122 In reply submissions, it was confirmed that the applicant had attempted to engage the CAA "*with regard to whether the conditions negate the need for the CAA to impose operational restrictions on DIAL as a consequence of the operation of the landfill.*"⁸⁴ However, in response the CAA had "*advised that it did not wish to be directly involved in any RMA consultation, as any decisions made by CAA in the interests of aviation safety, will be independent of those made by ORC.*"⁸⁵
- 123 The Panel was disappointed with CAA's unwillingness to participate directly in the RMA process but nevertheless found that the proposed condition requiring a full bird-strike risk assessment, informed by at least 12 months of ornithological monitoring "to be a suitably precautionary response to CAA's concerns."⁸⁶
- 124 Those conditions were ultimately confirmed by the Environment Court on appeal.⁸⁷

Conclusion

- 125 Taken together, these decisions demonstrate that requiring further technical assessment through a post-grant condition can be an appropriate and orthodox response in consenting processes involving aviation-related risk, if any residual uncertainty exists. They also illustrate that decision-makers have accepted such conditions even where submitters such as airports and Airways alleged incomplete aeronautical studies or inadequate bird-strike risk information at the resource consent application stage.
- 126 Notwithstanding the above, we note two material differences in the present case. First, in both *Taheke* and *Smooth Hill* the CAA was a participant. Secondly, in each of those processes the opposing submitters supported their concerns with technical evidence, which materially informed the Panel's assessments. As confirmed in the evidence of **Dr Shelly**, the conditions proffered by the Applicant here therefore serve as an "overly"

⁸⁴ [Smooth Hill Landfill Combined Decision Report of Dunedin City Council and Otago Regional Council](#) (9 September 2022) at [361].

⁸⁵ [Smooth Hill Landfill Combined Decision Report of Dunedin City Council and Otago Regional Council](#) (9 September 2022) at [361].

⁸⁶ [Smooth Hill Landfill Combined Decision Report of Dunedin City Council and Otago Regional Council](#) (9 September 2022) at [363].

⁸⁷ *South Coast Neighbourhood Society Inc v Otago Regional Council* [2023] NZEnvC 83.

precautionary response which provide an additional margin of safety notwithstanding that the underlying expert evidence already demonstrates that aviation-safety effects are acceptable.

"Leave it till later" conditions

127 With regard to the conditions proposed by the Applicant in its s 55 response, CIAL submits that the:⁸⁸

... "leave till later" approach is unacceptable in principle. It is too uncertain and an inappropriate delegation of power and would defer resolution of a threshold aviation safety issue, risk sterilising approved land and demonstrates tangibly why aviation safety cannot be addressed incrementally or contingently through conditions after approval.

128 Further, citing the *Director-General of Conservation v Marlborough District Council*,⁸⁹ CIAL submits that the condition that was proposed is "not an approach that is legally available here".⁹⁰

129 The case cited by counsel for CIAL arose from a proposal to establish a large mussel farm in Marlborough. The Marlborough District Council granted coastal permits, and the matter was appealed to the Environment Court by multiple parties, including the applicant and the Director-General of Conservation. A central issue at the Environment Court hearing was the uncertainty surrounding potential effects on the local population of Hector's dolphins.

130 Faced with limited scientific information, the Environment Court recommended granting the coastal permits subject to a novel "initial survey" condition. This condition required a two-year baseline survey of the site and surrounding areas to determine dolphin use and population dynamics, and provided that the marine farm could only proceed if the results satisfied the consent authorities that it was "very probable" the site was not of special significance to the local Hector's dolphin population. The Court also imposed extensive requirements for peer-reviewed research, independent

⁸⁸ 18 Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [32].

⁸⁹ *Director-General of Conservation v Marlborough District Council* [2004] 3 NZLR 127 (2005) 11 ELRNZ 15 (High Court).

⁹⁰ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [45.4].

experts, and identification of control sites, all to be undertaken at the applicant's cost.

131 On appeal, the High Court was asked whether the Environment Court had power under s 108 RMA to impose such conditions. The Court held that, while s 108 confers a broad ability to impose conditions, the particular condition in this case was unlawful for several reasons:

- (a) First, in substance it amounted to a condition precedent: the consent would not become operable until the future survey produced satisfactory results. The RMA does not authorise conditions that suspend the very existence or coming-into-effect of the consent.
- (b) Second, the condition had the potential to frustrate the consent entirely, which is impermissible unless expressly authorised. And lastly, that the condition unlawfully delegated a core judicial function. By requiring the consent authorities at some later date to determine whether the site was of special significance for Hector's dolphins, the Environment Court had improperly transferred to them the essential factual determination that the Court itself was obliged to make when deciding whether to grant consent. The High Court found this was not an administrative "certifier" function but rather a determinative merits decision, and therefore impermissible.

132 The Court emphasised that monitoring or pre-commencement conditions may be lawful where they ensure how an activity is to be carried out. But conditions are unlawful where they effectively reserve to another decision-maker the threshold question of whether the activity should be allowed at all, or where they require a post-grant reassessment of the core effects analysis that should have been undertaken by the Court itself. For these reasons, the matter was remitted to the Environment Court to consider whether an alternative, lawful set of conditions could achieve the Court's objectives without involving an impermissible delegation.

133 The present case is fundamentally different to *DOC v MDC* for several reasons:

- (a) First, unlike *DOC v MDC*, the Panel is not being asked to defer a threshold merits decision to a future process. Here, the Applicant has produced comprehensive and uncontested expert evidence (across Cyrrus, Navigatus, L&R Airport Consulting, PDP (bird-strike), and Dr Shelley) demonstrating that aviation-safety effects are acceptable and can be appropriately managed. There is no evidential vacuum comparable to the uncertainty that drove the Environment Court in

DOC v MDC to impose a substantively determinative “initial survey” condition.

- (b) Second, the aviation-safety matters raised by submitters are already governed by a separate, specialist regulatory regime under the CAA and the CARs. That regime provides ongoing oversight by the CAA and the Director, ensures that operational risk is continuously managed, and does so independently of the FTAA/RMA process. Any condition proposed here does not ask a third party to decide whether the Project may proceed; it merely ensures continued compliance with processes that already apply as a matter of law.
- (c) Third, **Dr Shelley, Mr McPherson, Mr Bermingham and Mr Hargreaves** each confirm that the proposed conditions do not amount to a “should the activity proceed?” type-condition of the type considered in *DOC v MDC*. Instead, the Applicant’s experts conclude that the Project can safely proceed, and that any mitigation required would be minor and would plainly not be “out of proportion” to the Project’s significant regional benefits under s 85(3). While some temporary construction activities (such as cranes or equipment) may breach the Part 77 notification surfaces which will require notification to the CAA.⁹¹ **Dr Shelley** confirms any restrictions imposed will relate only to addressing the specific noncompliance with Part -77.⁹²
- (d) Fourth, the courts have repeatedly confirmed that conditions requiring future technical assessment, certification, or refinement are permissible where they regulate *how* effects are to be managed, rather than delegating a core merits determination. For example, this principle is well-illustrated in *Thompson v Invercargill City* where High Court held:⁹³

[66] As to whether the decision to replace condition 19 with condition 19A was wrong in an administrative law sense, I agree with Judge Jackson's approach to the requirement of certainty for resource consent conditions in his Environment Court decision *in Aubade*. The Judge said the management of effects under the RMA sometimes requires conditions to be imposed in circumstances of considerable

⁹¹ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [56]; Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [8.3].

⁹² Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [4.20].

⁹³ *Thompson v Invercargill City Council* [2020] NZHC 174 citing *Aubade NZ Ltd v Marlborough District Council* [2015] NZEnvC 154 and *Sustain Our Sounds Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 40, [2014] 1 NZLR 673.

uncertainty. These may require future assessments or decisions and therefore these conditions do not have to be completely certain.⁶¹ As the Supreme Court said in *SOS*, the correct approach is for consenting authorities to “sufficiently” reduce uncertainty and “adequately” manage any remaining risk.

134 In short, the updated conditions fall squarely within the lawful category recognised in these authorities: they govern how aviation-safety obligations will be met; they do not postpone, transfer, or delegate the Panel’s decision as to whether the Project may proceed. The expert evidence confirms that such conditions are not necessary to establish the acceptability of aviation-safety effects, and this is not a case in which the ability of the Project to proceed is contingent on further technical work. Rather, the conditions are proffered as an appropriately precautionary response to the concerns raised by CIAL and Airways and are intended to provide the Panel with an additional margin of assurance that any residual aviation-safety matters will be addressed within the established statutory framework that is specifically designed to ensure aviation safety.

RECONCILING THE CIVIL AVIATION FRAMEWORK AND THE RMA / FTAA

135 For the avoidance of doubt, the Applicant acknowledges that safety where it bears on effects arising from the use and development of land is a relevant consideration under the RMA and therefore is relevant matter for this Panel to “take into account” the framework of the FTAA.⁹⁴

136 In performing its function under the FTAA in respect of the RMA approvals sought, the Panel must undertake its own evaluation of the effects. However, in our submission, it must do so in a way that respects the statutory allocation of functions to the CAA and the Director under the CAA and CARs. For reasons set out above and as confirmed by **Dr Shelley**, the legal framework requires the Panel recognise the boundary between:

- (a) safety effects properly assessed as land-use effects under the FTAA/RMA; and
- (b) matters of aviation operations and risk management that are regulated under the CAA and CARs by the CAA and the Director.

⁹⁴ While giving the greatest weight to the purpose of the FTAA per section 81 and Schedule 5, clause 17 of the FTAA.

The Panel cannot abdicate its RMA/FTAA function — but it can recognise the proper role of the specialist aviation regime

137 In *Re Queenstown Airport Corporation Ltd*, the Environment Court considered Queenstown Airport's notice of requirement to alter its designation in the Queenstown Lakes District Plan by extending the aerodrome designation to provide for projected growth, including expansion of the passenger terminal and facilitating the relocation of general aviation/helicopter activities. In that case, the Environment Court confirmed that decision-maker cannot "abrogate" its RMA decision-making to the CAA. It must consider safety issues insofar as they are relevant RMA matters and may hear expert evidence and reach its own conclusions.⁹⁵ At the same time, the Court emphasised that there is a principled boundary between:

- (a) land-use safety effects (for the RMA decision-maker), and
- (b) micro-level operational risk mitigation (for the CAA/Director and the Civil Aviation system).

138 The Court's approach was not one of "delegation". Rather, it held that it is appropriate for the RMA decision-maker to satisfy itself that land-use effects (including safety) have been properly identified and evaluated, while recognising that ongoing, progressive operational risk management is appropriately addressed through the statutory system under the CAAct. The Court noted the Director's statutory role in enforcing civil aviation requirements, describing that function as one of oversight and auditing, rather than operational participation in day-to-day aerodrome decision-making stating:⁹⁶

[57] We take notice of the powers and functions of the Director of Civil Aviation which include enforcing statutory and regulatory requirements of the Civil Aviation Act. It is a purpose of the Civil Aviation Act to promote aviation safety through the rules of operation and assigned responsibilities and auditing participants' performance against the prescribed safety standards and procedures. The Court of Appeal recently noted this function is likened to oversight responsibility, rather than one which requires participation in operational issues which are the province of the airline operators. We anticipate there is an ongoing requirement to produce task specific safety cases as part of the concomitant obligation on QAC as the holder of an

⁹⁵ *Re Queenstown Airport Corporation Ltd* [2017] NZEnvC 46.

⁹⁶ *Re Queenstown Airport Corporation Ltd* [2017] NZEnvC 46 at [57] citing *New Zealand Air Line Pilots' Association Industrial Union of Workers Inc v Director of Civil Aviation* [2017] NZCA 27 at [14]-[17].

aerodrome operator certificate to continue to meet the standards and comply with the requirements prescribed for aerodrome certification under the rules (pt 139.101).

The absence of a CAA determination/aeronautical study is not determinative: it is (at most) an issue of evidential weight

- 139 In *ZJV (NZ) Ltd v Queenstown Lakes District Council (ZJV)* the Environment Court considered an appeal concerning resource consent for the operation (and related works) of a helipad at Bob's Peak (Skyline), with aviation safety raised as a central issue.⁹⁷
- 140 The Court accepted that a Director's determination under Part 157 of CARs may be "very useful" evidence, but emphasised the RMA decision-maker remains entitled to take "a more particular look" at community effects even where CAA safety standards are met.⁹⁸
- 141 Importantly, the Court rejected the proposition that the absence of a Part 157 determination was fatal to the application. It held that the absence of an "aviation document" or Director determination is "neutral" in respect of the application, although the absence may make the evidential burden more difficult for an applicant to meet.⁹⁹
- 142 The Court stated the correct approach is to consider all safety issues raised by the evidence (including the discussion of Part 157), make the Court's own risk predictions, and then weigh those matters as part of the overall evaluation under the RMA.¹⁰⁰
- 143 *ZJV* is therefore useful authority that the Panel should not treat the absence of a prior CAA/Director determination or, in this case, a "complete aeronautical study" as particularly relevant in making a determination in respect of a resource consent process.
- 144 Further, that reasoning applies with even greater force here because the Applicant is not seeking to alter a certified aerodrome (as was the case in *ZJV*); it is an adjacent landowner. The relevant Civil Aviation pathway for landowners is typically through CAR Part 77 (objects and activities affecting navigable airspace), which imposes notification and compliance obligations where thresholds are met. As explained above, there no is obligation on a

⁹⁷ *ZJV (NZ) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 205

⁹⁸ *ZJV (NZ) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 205 at [52].

⁹⁹ *ZJV (NZ) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 205 at [59].

¹⁰⁰ *ZJV (NZ) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 205 at [59].

landowner that is not 'aviation participant' to prepare an aeronautical study under the CARs.

Conditions referencing compliance with an external specialist regime do not constitute unlawful delegation

- 145 The High Court's decision in *Southern Alps Air Ltd v Queenstown Lakes District Council* provides authority on the "delegation" issue in the context of the RMA sitting alongside a specialist external regimes under other legalisation.¹⁰¹ The case concerned jet-boat safety and the interface between RMA decisions and Maritime Rules/Harbourmaster oversight.
- 146 Panckhurst J held that there is no difficulty in granting a resource consent which, by its terms, contemplates compliance with other rules (there, Maritime Rules). In such circumstances, "no issue of delegation arises".¹⁰²
- 147 The Court further held there is nothing wrong with requiring something to be done to the satisfaction/approval of a suitably qualified person acting as an auditor/certifier (there, the Harbourmaster), provided that person is not given an arbitral function.¹⁰³ Provided the Environment Court itself confronts its safety responsibility, delegation of the judicial function will not occur.
- 148 That reasoning supports the approach here: the Panel must confront safety effects as a relevant RMA/FTAA matter and take into account the Applicant's technical evidence, but it may also impose conditions that interface with the specialist regime (e.g., requiring compliance with relevant CAR processes and requirements), without unlawfully delegating its function.

Conclusion

- 149 Drawing these authorities together, the correct approach is:
- (a) The Panel must assess aviation safety effects to the extent they are effects of the use and development of land, on the basis of the expert evidence before it.
 - (b) The Panel is not required to treat the absence of a CAA/Director determination or aeronautical study as determinative; that absence is neutral.

¹⁰¹ *Southern Alps Air Ltd v Queenstown Lakes District Council* [2008] NZRMA 47, [2007] ELHNZ 281.

¹⁰² *Southern Alps Air Ltd v Queenstown Lakes District Council* [2008] NZRMA 47, [2007] ELHNZ 281 at [70].

¹⁰³ *Southern Alps Air Ltd v Queenstown Lakes District Council* [2008] NZRMA 47, [2007] ELHNZ 281 at [71].

- (c) The Panel may lawfully include conditions that require later compliance with applicable specialist regulatory processes and requirements, without unlawfully delegating its function, provided the Panel has confronted the safety issues relevant under the FTAA/RMA. In this case, the safety issues have been assessed by the Applicant's appropriately qualified experts, whose evidence establishes that aviation-safety effects are acceptable
- (d) In doing so, the Panel may properly recognise that residual operational risk mitigation is addressed through post-consent ongoing specialist oversight, rather than being fully resolved within the FTAA/RMA approval and may reflect that in conditions.

THE PURPOSE OF THE FTAA AND THE STATUTORY TEST

- 150 Having established the evidential foundation on which the Panel must base its decision and the role of the civil-aviation regulatory framework in managing the matters relating to aviation safety raised by CIAL and Airways, these submissions now turn to the legal framework under the FTAA. In particular, it is necessary to explain how the Panel must deal with the issues raised in the CIAL and Airways legal memoranda within the statutory purpose, structure, and decision-making tests of the FTAA.
- 151 The purpose of the FTAA is *"to facilitate the delivery of infrastructure and development projects that provide significant regional or national benefits."*¹⁰⁴ To achieve that purpose, the FTAA creates a single, consolidated process for obtaining a suite of approvals that would otherwise require separate applications under multiple statutes.¹⁰⁵
- 152 It is essential that the Panel keep firmly in mind that while the FTAA refers in separate places to the RMA it establishes a distinct legal framework. It is intended to provide an alternative and more flexible approvals pathway, enabling projects that deliver significant regional or national benefit, particularly where such development may not have been anticipated under traditional planning instruments or might otherwise have been declined if it had been determined under the relevant "specified Act"¹⁰⁶ (i.e. in this case, the relevant specified Acts are the RMA and the Wildlife Act 1953).
- 153 This point is important as it points to a very different regime to the RMA. Whether a project could have been consented under the RMA is not

¹⁰⁴ FTAA 2024, s 3.

¹⁰⁵ FTAA 2024, s 42.

¹⁰⁶ FTAA, s 4 definition of specified Act.

determinative. The FTAA's purpose and decision-making criteria are deliberately different and place primary emphasis on the benefits of the proposal, in which the greatest weight is to be given in decision-making. This is a material shift away from the "sustainable management" purpose of the RMA.¹⁰⁷

- 154 The Panel's assessment and conclusions must therefore be undertaken strictly within the statutory framework and decision-making criteria of the FTAA, rather than by reference to any RMA pathway.

Section 81 and Schedule 5 – the greatest weight to the purpose

- 155 Section 81 sets out how the Panel must decide the approvals sought under the Application. It is the core decision-making provision for all approvals under the fast-track process. Relevant to the Panel's consideration of aviation safety matters, section 81(2) provides that:

81 Decisions on approvals sought in substantive application

...

(2) For the purpose of making the decision, the Panel—

[...]

(a) must consider the substantive application and any advice, report, comment, or other information received by the Panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:

(b) **must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):**

[...]

[...]

(f) **may decline the approval only in accordance with section 85.**

[our emphasis]

- 156 Section 81(3) directs the Panel to the FTAA Schedules, which set out the specific decision-making criteria for each category of approval. Relevantly, s 81(3)(a) provides that, for an approval described in s 42(4)(a) (a resource

¹⁰⁷ Resource Management Act 1991 (RMA), s 5.

consent), the applicable criteria are contained in clauses 17 to 22 of Schedule 5. For the purposes of this application, clauses 17 (criteria and other matters for assessment of consent application) and 18 (conditions on resource) of Schedule 5 identify the factors the Panel must consider when determining an approval for a resource consent.

157 For ease of reference, the relevant parts of clause 17 is set out below:

17 Criteria and other matters for assessment of consent application

(1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, **giving the greatest weight to paragraph (a)**,—

(a) **the purpose of this Act**; and

(b) the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and

(c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.

(2) For the purpose of applying any provisions in subclause (1),—

(a) a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and

[...]

(3) Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.

(4) For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application the panel is considering.

[our emphasis]

158 Importantly, clause 17(1) requires that, while the Panel must "take into account" the relevant RMA provisions, the Panel must give the greatest weight to the purpose of the FTAA.¹⁰⁸

159 The Draft Decision of the Expert Consenting Panel for the Sunfield Application offers helpful guidance on the meaning of the phrase "taking into account", noting that:¹⁰⁹

The phrase "take into account" requires us to consider the matters so identified and give them genuine consideration; rather than mere lip service, such as by listing them and setting them aside. This can be best effected (and demonstrated) by considering them first in ways that are uninfluenced by the FTAA's purpose and secondly, only then carrying out the weighing exercise required by clause 17(1).

160 Section 81(4) further requires that when taking the purpose of the FTAA into account "the panel must consider the extent of the Project's regional or national benefits".

161 Overall, the FTAA provides a clear directive: the Panel must apply the FTAA's bespoke framework and *give the greatest weight to the Act's purpose of facilitating projects with significant regional or national benefits*. RMA provisions are relevant and must be taken into account where cl 17 directs, but they are not determinative. The Panel's decision-making powers to decline an application is deliberately constrained by s 85, which prioritises facilitating projects that deliver significant regional and national benefits.

Section 85 – The Panel may decline if adverse impacts out of proportion to regional or national benefits

162 Against this backdrop, the circumstances in which the Panel may decline an approval are deliberately narrow. Under s 81(2)(f), the Panel may *only* decline an approval in accordance with s 85.

163 Section 85(1) and (2) sets out a limited list of circumstances in which the Panel *must* decline an approval, and none of those mandatory-decline triggers apply here.

¹⁰⁸ FTAA, Schedule 5 cl 17(1)(a).

¹⁰⁹ Draft Decision by the Sunfield [FTAA-2503-1039] Expert Panel at [544]; *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

164 Otherwise, under s 85(3) provides when a Panel *may* decline an approval:
For ease of reference subclause 3 is set out below:

85 When panel must or may decline approvals

[...]

Approval may be declined if adverse impacts out of proportion to regional or national benefits

(3) A panel **may decline** an approval **if**, in complying with **section 81(2)**, the panel forms the view that—

(a) there are 1 or more adverse impacts in relation to the approval sought; and

(b) those **adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits** the panel has considered under section 81(4), even after taking into account—

(i) any conditions that the Panel may set in relation to those adverse impacts; and

(ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

[our emphasis]

165 A plain reading of s 85 makes it clear that a Panel may decline an approval only in the circumstances expressly set out in that section. Declining is permitted only:

(a) where s 85(1) or s 85(2) applies (each of which requires a mandatory decline (i.e. *must* decline)); or

(b) where s 85(3) applies (a discretionary decline (i.e. *may* decline)).

166 Under s 85(3), the discretion to decline is narrow and conditional: the Panel may decline only if both limbs in subs (a) and (b) are met. Although the decision under s 85(3) is discretionary (in the sense that the Panel may choose to decline if satisfied that the statutory threshold is met), the discretion is not open ended. The Panel may decline only where it considers the adverse impacts to be “sufficiently significant” that they are out of proportion to the project’s regional or national benefits, after accounting for the ability to impose conditions or accept applicant proposed modifications. Even where the Panel considers the adverse effects to be significant, the

Panel retains discretion as to whether decline is the appropriate outcome; the statute does not require decline simply because the threshold is met.

167 When section 85 is read together with section 81(2)(f), the position is unambiguous: outside these limited circumstances, the Panel has no power to decline consent.

168 The Panel's Draft Decision of the Expert Consenting Panel for the Sunfield Application provides some helpful commentary, stating that:¹¹⁰

Consistent with the approach adopted by other Panels, we see the exercise provided for by section 85(3) as requiring assessments:

(a) of the extent of the regional or national benefits of Sunfield;

(b) of the significance of adverse impacts; and

(c) whether the adverse impacts are "sufficiently significant" to be out of proportion to the regional or national benefits of Sunfield after allowing for, amongst other things, compensation that may be provided.

169 Importantly, there is no requirement to demonstrate that the adverse effect will be no more than minor or even that the adverse effects are not significant, as even a project with significant effects can proceed, provided the effects are not so significant as to tip the balance when measured in proportion to the project's benefits.

170 In the same vein, section 85(4) confirms that non-compliance with avoidance policies is not, on its own, determinative and does not mandate decline under the FTAA. In other statutory contexts, such "bottom line" provisions would ordinarily mandate refusal, but that approach does not apply under the FTAA.¹¹¹

171 The FTAA clearly envisages an overall judgement or weighing approach to decision making. The Panel must weigh the adverse impacts against the regional or national benefits of the project when coming to its final decision.

¹¹⁰ [Draft Decision of the Sunfield \[FTAA-2503-1039\] Expert Panel](#) (10 February 2026) at [78].

¹¹¹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38; [2014] 1 NZLR 593.

Extent of the projects regional or national benefits

172 Section 81(4) requires the Panel to consider the "extent of the project's regional or national benefits". Here, the extent of the Project's regional benefits are quantified in the following reports:

- (a) Economic Assessment in support of the Application (Appendix 20 to the application) prepared by Mr Akehurst,¹¹² and
- (b) Further Economics Assessment in support of the Applicant's s 55 prepared by Mr Akehurst.¹¹³
- (c) Economic Assessment of Regional Significance and Claimed Third Party Costs by **Ms Hong and Mr Akehurst**, set out in the report (**Further Assessment of Costs**).¹¹⁴

173 In short, with regards to the significance of the Project, **Mr Akehurst** confirms that the Project will deliver "substantial economic benefits for both the Christchurch and Canterbury economies". In particular:¹¹⁵

The construction-phase benefits reflect a significant short-term stimulus, with an estimated \$348 million in total output supporting around 2,070 FTE jobs and contributing approximately \$263 million in value added to the Christchurch economy during the build period. Once operational, the development will sustain around 3,200 FTEs annually and contribute roughly \$321 million per year to regional GDP, reflecting the ongoing productivity and employment benefits generated by the site Christchurch economy during the build period. Once operational, the development will sustain around 3,200 FTEs annually and contribute roughly \$321 million per year to regional GDP, reflecting the ongoing productivity and employment benefits generated by the site.

174 Beyond these quantified impacts, **Mr Akehurst** confirms that the proposal delivers important qualitative benefits. For example, the project enhances land market efficiency by introducing freehold, serviced lots into a submarket where such options are scarce, improving competition, choice,

¹¹² **Greg Akehurst and Maggie Hong**, Economic Assessment – 104 Ryans Rd Industrial Development (11 March 2025) (Appendix 20 to the Application).

¹¹³ **Greg Akehurst**, Ryans Road Industrial Development - Reply to CCC (21 October 2025) (**Appendix 20**, to the Applicant's s 55 response).

¹¹⁴ **Maggie Hong (PhD) and Greg Akehurst**, *Economic Assessment of Regional Significance and Third Party Costs* (19 February 2026).

¹¹⁵ **Greg Akehurst**, Ryans Road Industrial Development - Reply to CCC (21 October 2025) (**Appendix 20**, to the Applicant's s 55 response) at page 22.

and ownership certainty. Its strategic location reduces freight distances and vehicle kilometres travelled, lowering transport-related emissions and logistics costs while leveraging existing infrastructure to avoid major public investment. The development also strengthens regional resilience and economic diversification by providing modern, flexible industrial land for logistics, manufacturing, and export-oriented firms.

175 Taken together, the economic assessments form the necessary evidential foundation for the s 85(3) proportionality exercise. They establish the scale and significance of the project's regional and national benefits against which any identified adverse impacts must be weighed. In practical terms, the quantified and qualitative benefits identified by **Mr Akehurst** provide the baseline reference point for determining whether any adverse impacts demonstrated to exist through the evidence this Panel has could be considered "sufficiently significant" to be out of proportion to those benefits under s 85(3). This evidence is therefore an essential starting point for the Panel's evaluative judgment under the FTAA.

176 It is noted that CIAL observes that the Applicant's response to aviation-safety concerns has involved refinements to the Project, including additional development constraints and revised conditions and that these changes have direct implications for the nature, scale, and flexibility of the development. In particular, CIAL submits that:¹¹⁶

Under the FTAA, it is submitted refinements such as these – which 'reduce' the proposal in an effort to also reduce its adverse effects – are not neutral in their implications. Unlike under the RMA, where iterative refinement through a consenting process is often anticipated, such changes necessarily alter the nature and extent of the development able to proceed and, in turn, the benefits originally relied upon to justify listing of the Project. Here, the economic assessment does not evaluate the proposal as refined in response to aviation safety concern.

177 CIAL's position appears to assume that any refinement to the Project in response to aviation-related matters is inconsistent with the FTAA framework. There is no principled reason in this context to treat reasonable modifications or additional conditions any differently as is allowed under the RMA, provided the Panel remains satisfied that the Project (as refined) continues to deliver regional or national benefits that outweigh its adverse impacts under s 85(3).

¹¹⁶ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at 36.

178 Even if the Panel were to consider a scenario in which the scale or form of the Project were further reduced in response to aviation-related matters through the imposition of further conditions, that does not materially alter the proportionality analysis under s 85(3). As addressed from paragraph 195 below, the Further Assessment of Costs demonstrates that the Project's regional significance is robust to reductions in development scale. Moreover, as **Dr Shelley** confirms, any constraints imposed on the developer through the subsequent Part 77 process would be limited to addressing the specific extent of any temporary or permanent non-compliance and would not result in material curtailment of the development itself. There is therefore no evidential basis to suggest that any aviation-related refinements would undermine the Project's regional benefits or otherwise alter the baseline reference point for the Panel's evaluative assessment under s 85(3).

Significance of adverse impacts

179 Once the extent of the project's regional and national benefits is established, the Panel must undertake the s 85(3) proportionality assessment. Under that test, the Panel may decline an approval only if the adverse impacts are out of proportion to the project's regional or national benefits. In doing so, the Panel must take into account:

- (a) any conditions the Panel may set to address adverse impacts; and
- (b) any conditions or modifications proposed or agreed by the Applicant to avoid, remedy, mitigate, offset, or compensate for those impacts.

180 The Applicant's s 55 response records that most effects are fully addressed through modifications and conditions. Table 3 to the Applicant's s 55 response compares:

- (a) the residual adverse impacts after proposed conditions and design modifications (i.e. principally the loss of HPL and rural amenity), and
- (b) the project's regional and national benefits (as set out in Mr Akehurst's economic evidence).

181 In its memorandum, CIAL is critical of the Applicant's economic assessment, particularly the assertion that the assessment does not

identify or quantify any externalised costs that might arise from the mitigation or avoidance of aviation-safety effects. CIAL alleges that:¹¹⁷

The Applicant's economic assessment does not evaluate the potential costs associated with maintaining aviation safety if this Project proceeds. In particular, there is no assessment of whether the introduction or management of aviation safety risk would require operational, procedural, or infrastructural changes by CIAL, Airways New Zealand (Airways), or other aviation system participants, nor who would bear the cost of any such measures. If the maintenance of aviation safety requires operational constraints or system-level responses being imposed on existing nationally significant infrastructure, those costs are real, potentially significant, and fall outside the benefits case relied upon by the Applicant. In the absence of an aeronautical study, the nature, scale, feasibility, and cost of any required mitigation are unknown, and therefore cannot be meaningfully weighed against the claimed benefits for the purposes of s 85(3).

- 182 CIAL and Airways also contend that the Applicant has failed to quantify the alleged operational constraints that might arise for aviation activities. However, neither CIAL nor Airways has filed any economic evidence to quantify those alleged costs themselves. That omission is significant. As explained at paragraphs 17 to 29 above, the evidential burden rests in the first instance with the party asserting an adverse effect, and once an applicant has produced expert evidence addressing a topic, the burden shifts to those challenging it to produce cogent evidence to the contrary. Here no such economic evidence has been advanced by CIAL or Airways.
- 183 In any case, operational constraints, and any associated economic implications, are matters that the airport operator is best placed to assess, particularly where their quantification requires access to internal operational data, modelling, and commercially sensitive information that is not publicly available. It is therefore not apparent how the Applicant could meaningfully or reliably undertake such an assessment. We understand that Airports routinely undertake this type of operational-economic assessment in the ordinary course of planning, safeguarding, and investment decision-making. From an economic perspective, **Ms Hong and Mr Akehurst** confirm that:¹¹⁸

¹¹⁷ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [8.6].

¹¹⁸ Statement of evidence of **Ms Hong (PhD) and Mr Akehurst** dated 20 February 2026 at page 5.

... aviation-related operational costs are, in principle, eminently quantifiable. For such claims to be actionable within a decision-making framework, they must satisfy a set of minimum evidential standards.

- 184 **Ms Hong and Mr Akehurst** further confirm that, given CIAL's role as both operator and primary data-holder, it would necessarily need to play a central role in providing any evidence of the kind required to substantiate the alleged operational costs. Without evidence which clearly identifies the operational changes said to arise, quantifying those changes, and establishing a causal link to the Project, the claimed costs remain non-falsifiable and economically non-actionable.¹¹⁹
- 185 In that context, the absence of any expert qualitative or quantitative evidence of constraints/costs from either CIAL or Airways leaves the Panel without an evidential basis on which to weigh the alleged impacts they describe.
- 186 The analytical approach taken by Ms Hong and Mr Akehurst is consistent with the reasoning applied in recent fast-track decisions, including the *Waihi Mine* decision.¹²⁰ Those decisions demonstrate that findings on regional or national significance are grounded in the scale, durability, and net nature of a project's economic benefits, and that projects may incorporate design refinement or mitigation without diminishing their strategic significance. Claimed adverse effects or third-party costs are afforded weight only where they are clearly identified, supported by probative expert evidence, and shown to be materially relevant when assessed against the project's established benefits. The same principles have been applied here by testing the sensitivity of the Project's regional economic contribution to changes in scale if the Panel were to set further conditions than those proffered and by assessing the threshold in which any alleged third-party costs constraints (if substantiated) could become economically material.
- 187 Aviation safety effects have been comprehensively assessed by the Applicant's aviation experts. That evidence is unchallenged by any contrary expert opinion and confirms that aviation-safety effects are acceptable and can be appropriately managed within the existing civil-aviation regulatory framework. The conclusions reached in the Applicant's technical reports are maintained and reinforced in the supplementary expert evidence.¹²¹

¹¹⁹ Statement of evidence of Ms Hong (PhD) and Mr Akehurst dated 20 February 2026 at page 6.

¹²⁰ [Decision of the Waihi North Project](#) [FTAA-2504-1046] Expert Panel (18 December 2025).

¹²¹ As set out at paragraphs [30] to [52] above.

- 188 In addition, the Applicant has offered a new suite of proffered conditions (Conditions 21A–21C), each of which has been confirmed by the Applicant’s experts as appropriate and, in several respects, “overly precautionary.” These conditions provide a proportionate and structured mechanism to address any residual aviation-safety matters, even though the underlying evidence confirms that such risks are already acceptable and can be managed within the proffered set of conditions and the CAA Act and CARs.
- 189 To the extent any residual effects might indirectly arise in the form of operational adjustments having to be made by CIAL or Airways, neither party has submitted any expert evidence quantifying or describing qualitatively those alleged impacts. By contrast, the further Aviation Safety Expert Responses confirm that no significant operational costs or impacts are anticipated.¹²² Having reviewed all of the evidence provided by the Applicant, **Dr Shelley** further confirms that there will be “no significant operational constraints costs or limitations on CIAL or Airways” and “[a]ny mitigation measures required to protect navigation equipment or helicopter operations are expected to be minor and fall within standard aviation practice with associated costs (if any) being limited in scale.”¹²³

When monetisation of adverse impacts is appropriate

- 190 For completeness, it is acknowledged that an assessment of “economic benefits” or “adverse impacts” under the FTAA does not require the Panel to always undertake a cost–benefit analysis that monetises all environmental, social, and cultural factors.
- 191 This accords with the approach taken in the Supreme Court in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*.¹²⁴ In that case, which concerned seabed mining, it was argued that the requirement to assess “economic benefit to New Zealand” obliged the decision-maker to translate environmental, social, and cultural impacts into monetary values. The Supreme Court rejected that interpretation, confirming that a “qualitative analysis of environmental, social and cultural benefits and costs” had been open to the decision-maker.¹²⁵

¹²² Supplementary statement of evidence of **Simon McPherson** dated 17 February 2026 at [29], Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [18] and Supplementary statement of evidence of **Ben Hargreaves** dated 20 February 2026 at [16] to [17].

¹²³ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [9.2] and [10.4].

¹²⁴ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127.

¹²⁵ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* at [188] – [192].

- 192 Many environmental effects cannot meaningfully be expressed in economic terms. These include effects for which there is no accepted methodology to assign a monetary value or where attempting to do so would produce results too uncertain or speculative to be of assistance.
- 193 However, where certain environmental effects can be expressed in economic terms using accepted and standard methodologies, monetisation can assist the panel. In such cases, monetisation provides an additional analytical tool that may help inform the Panel's consideration, without displacing the broader assessment required under the FTAA.
- 194 In the present circumstances, alleged operational constraints on CIAL, Airways, or GCH provide a clear example of impacts (or "costs") that are capable of monetisation alongside qualitative analysis. As confirmed in the evidence of Ms Hong and Mr Akehurst "aviation-related operational costs are, in principle, eminently quantifiable."¹²⁶ Where effects fall within these socially accepted or institutionally recognised valuation practices, they are matters the Panel are required to consider under the FTAA, including for the purposes of sections 81, 83, and 85 of the Act.

The proportionality assessment

- 195 In undertaking the s 85(3) proportionality assessment, the Panel must weigh the extent of the Project's regional and national benefits against any residual adverse impacts, giving the greatest weight to the purpose of the FTAA. As earlier outlined, the Applicant's primary position is that aviation-related effects are appropriately avoided, remedied, or mitigated through the revised package of conditions and design refinements (aside from the loss of rural amenity and highly productive land (**HPL**) already identified). As part of the Applicant's s 55 response to comments **Mr Akehurst** prepare a cost-benefit analysis of the remaining effects (i.e. loss of rural amenity and HPL) and against the regional benefits of the Project. His conclusion was that:
- (a) the loss of rural amenity is small in the regional context, and
 - (b) the economic cost of losing HPL is negligible when compared with the substantial and sustained economic benefits of the development.
- 196 Overall, Mr Akehurst concludes that the limited remaining adverse effects are not out of proportion to the significant economic and strategic benefits

¹²⁶ Statement of evidence of Ms Hong (PhD) and Mr Akehurst dated 20 February 2026 at page 5.

of the project, meaning the proposal makes a clear net positive contribution under the s 85(3) proportionality test.

- 197 If, however, the Panel were to conclude that some residual aviation-related effects remain notwithstanding the revised conditions package, those effects must still be assessed within the statutory framework of s 85(3). That assessment is ultimately an economic and proportionality exercise: the question is whether any such effects (particularly those alleged to arise through impacts on CIAL, GCH or Airways) are sufficiently significant to be out of proportion to the Project's established regional and national benefits.
- 198 In that context, it is relevant that CIAL and Airways each already have ongoing statutory obligations under the CAAAct and the CARs to manage operational risk within their respective spheres of responsibility. The Applicant must also comply with CAR Part 77. Therefore, any operational adjustments that *may* be required to meet CIAL and Airways' obligations under the CARs must be understood within the normal functioning of the civil aviation regulatory regime, rather than assumed to amount to material economic costs attributable to the Project.
- 199 Notwithstanding the evidential gap addressed at paragraphs 182 to 186 above, the Applicant has sought to assist the Panel and has commissioned further independent economic advice from **Ms Hong and Mr Akehurst** to understand whether the alleged aviation-related impacts could realistically undermine the Project's net regional contribution.¹²⁷
- 200 The Further Assessment of Costs prepared by Ms Hong and Mr Akehurst provides a coherent framework for considering the relevance and economic materiality of any such alleged costs, including by addressing:¹²⁸
- (a) the regional significance of the Ryans Road Industrial Development;
 - (b) the sensitivity of that significance to hypothetical reductions in project scale where the Panel impose extra conditions; and
 - (c) the relevance and potential magnitude of any alleged costs said to fall on third parties as a consequence of having to undertake aviation-related mitigation.

¹²⁷ **Maggie Hong (PhD) and Greg Akehurst**, *Economic Assessment of Regional Significance and Third Party Costs* (19 February 2026).

¹²⁸ **Maggie Hong (PhD) and Greg Akehurst**, *Economic Assessment of Regional Significance and Third Party Costs* (19 February 2026).

201 In summary, the Further Assessment of Costs:

- (a) Confirms that it has taken into account the Aviation Safety Expert Responses and considers how the Project's regional significance may change under hypothetical reductions in scale. This is achieved through a sensitivity analysis of scenarios ranging from 40% to 80% of the currently proposed development scale (**Sensitivity Analysis**). This exercise does not attempt to predict any particular design response to aviation related mitigation. Instead, its purpose is to inform the Panel's understanding of proportionality and economic risk, namely, whether the Project would continue to deliver benefits of a distinctly regional nature if its scale were materially constrained; and
- (b) Examines the relevance, quantification, and potential magnitude of the third party costs alleged by submitters, particularly the possibility of operational adjustments having to be made by on CIAL (**Assessment of Claimed Costs on Third Parties**). The analysis identifies the evidential thresholds that must be met before such claims can carry weight in an economic evaluation: clearly defined operational impacts, robust and transparent quantification, and a demonstrable causal link to the Project itself. It further considers, in principle, whether costs of a plausible scale could materially offset the Project's quantified economic benefits or alter its classification as regionally significant.

202 Ms Hong (PhD) and Mr Akehurst conclude that:

- (a) The Sensitivity Analysis indicates that:

the Project's regional significance is robust to moderate reductions in scale. Reductions of up to approximately 40% would still result in:

- GDP contributions in excess of 0.6% of Canterbury's economy, and
- A long-term GDP contribution of \$2.2Bn in PV terms, and
- Ongoing employment levels in the order of 2,000 jobs.

Only reductions approaching 50–60% of the currently proposed scale (darker shading in the table) are likely to meaningfully call into question whether the Project continues to deliver benefits of a clearly regional nature, and even under that outcome the contribution to regional GDP would still be substantial in PV terms.

[...]

Based on the operational impact metrics, the analysis indicates that the Project would likely retain its regionally significant status unless it were subject to very substantial reductions in scale (more than 50%), which would proportionally reduce its long-term contribution to regional GDP and growth.

Accordingly, the Project's regional role is resilient to moderate design or scale adjustments, and only mitigation measures that would require reductions approaching or exceeding this threshold would warrant further consideration in terms of proportionality and overall strategic outcomes.

(b) In terms of the Assessment of Claimed Costs on Third Parties, Ms Hong (PhD) and Mr Akehurst conclude that:

For third-party costs to materially undermine the Project's regional significance, they would need to be of a very substantial magnitude, when assessed relative to the scale of the Project's benefits.

The Project's operational-phase impacts provide a clear benchmark:

- Annual gross value added of \$320.7 million, equivalent to approximately 1.0% of Canterbury's average GDP (2015–2024).
- Sensitivity testing indicates that a reduction in net economic contribution to approximately 0.5% of regional GDP represents the approximate threshold at which regional significance starts to become borderline.

This implies that externalised costs would need to offset around \$160 million per annum of value added before they could plausibly tip the balance

203 The Further Costs Assessment was provided to each of the Applicant's aviation experts, and the aviation experts' further technical reports were, in turn, provided to Ms Hong and Mr Akehurst:

(a) **Mr McPherson** concludes:¹²⁹

No significant operational impacts on Airways are anticipated to arise from the proposal. Any mitigation measures, where considered necessary to protect navigation equipment, are expected to be limited in scope, for example radar re-configuration or

¹²⁹ Supplementary statement of evidence of **Simon McPherson** dated 17 February 2026 [28]-[29].

updating radar reflector files. Such mitigation may involve safety cases, radar manufacturer engineering support and flight trials to confirm the efficacy of the measures, **the costs of which would be far outweighed by the proposal's economic benefits, as set out in the Economic Assessment.**

[our emphasis]

(b) **Mr Bermingham** concludes:¹³⁰

there will be "**no material impact** on either general or commercial fixed wing operations" at CIAL and the costs of potential mitigation for GCH "**would not be significant**".

[our emphasis]

(c) **Mr Hargreaves** concludes:¹³¹

I agree with the views expressed in the supplementary statements of Mr Simon McPherson, Mr Geraint Bermingham, and Dr Andrew Shelley that there are no significant operational impacts on CIAL or Airways and, therefore, **I would expect any potential operational constraints or costs (if any) would be relatively minor in comparison with the economic benefits of the proposal, as outlined in the [Further Costs Assessment].**

[our emphasis]

(d) **Dr Shelley** concludes:¹³²

In my opinion, no significant operational impacts on CIAL, GCH or Airways are anticipated to arise from the proposal. **Any mitigation measures required to protect navigation equipment or helicopter operations are expected to be minor and fall within standard aviation practice, with associated costs (if any) being limited in scale. These potential costs would be far outweighed by the economic benefits of the proposal, as outlined in the Economic Assessment.**

¹³⁰ Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026 at [78].

¹³¹ Supplementary statement of evidence of **Ben Hargreaves** dated 20 February 2026 at [17].

¹³² Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [10.4].

- 204 **Ms Hong and Mr Akehurst** consider that the Aviation Safety Responses support "the conclusion that costs of the scale required to materially offset the Project's regional economic contribution would be unlikely."¹³³
- 205 Drawing on the above, the Panel's task is to make its determination on the evidence before it. Even if the Panel were to find that some residual aviation-related effects may arise (for example, operational adjustments to CIAL or Airways), the question under s 85(3) remains whether those effects are sufficiently significant to be out of proportion to the Project's established regional and national benefits. On the evidence, they clearly are not. The Applicant's specialist aviation safety evidence indicates that any mitigation, if required, would be limited and operationally manageable would fall well short of the magnitude required to alter the Project's regional significance or "tip the balance" under s 85.
- 206 Further, there is no probative expert evidence from CIAL or Airways quantifying the alleged operational constraints. In the absence of such evidence, there is no evidential foundation on which the Panel could properly form the view required by s 85(3)(b) that any adverse impacts are "sufficiently significant" to be out of proportion to the Project's benefits particularly once the new proffered conditions are taken into account.
- 207 The new proffered conditions provide additional assurance that any residual aviation safety effects raised by CIAL and Airways will be managed under the CAAct and the CARs, which is the appropriate regulatory regime for managing such matters. The uncontroverted evidence is that such conditions are "overly" precautionary rather than necessary, and, if imposed, would not diminish the Project's regional benefits or alter the s 85(3) proportionality outcome.¹³⁴ Accordingly, the appropriate course is to grant the approvals, subject to the proposed conditions.
- 208 Outside the limited circumstances in s 85(1) and (2), the Act does not permit decline. On this basis, there is no lawful basis to exercise the narrow s 85(3) discretion to decline.

¹³³ **Maggie Hong (PhD) and Greg Akehurst**, *Economic Assessment of Regional Significance and Third Party Costs* (19 February 2026) at page 8.

¹³⁴ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [8.10(f)]

CONCLUSION

209 In light of the evidence before the Panel and the statutory framework governing its decision-making, the Applicant respectfully submits that this is a case in which approval must be granted. The Project delivers clear and enduring regional benefits; the alleged adverse effects have either been addressed or lack evidential foundation; and none reach the threshold in s 85(3). In these circumstances, the FTAA requires that the approvals be granted.

Dated this 23rd day of February 2026

A handwritten signature in black ink, appearing to read "Jo Appleyard", is written over a horizontal line.

Jo Appleyard / Meg Davidson

Counsel for the Applicant

APPENDIX 1: PRECAUTIONARY PRINCIPLE

- 1 In the Minute dated 2 February 2026, the Panel notes that "[i]n the CIAL Memorandum dated 18 December 2025 counsel for CIAL state that CIAL, Airways and the CAA exercise overlapping public safety responsibilities and are required to take a precautionary approach to managing any effects on aviation risk." In light of these comments, and the broader concerns raised by CIAL and Airways regarding aviation and airport-related safety matters, the Panel considers that the precautionary principle is potentially relevant to this application. On that basis, the Applicant has been directed to provide advice on the following matters:
 - (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 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 Airways and CIAL have also been directed to provide advice on these matters, and the Panel has directed the EPA to engage a legal advisor to provide further advice (with the exception of matter (d)).

QUESTION (A): WHAT IS THE PRECAUTIONARY PRINCIPLE AND WHAT DOES IT REQUIRE OF DECISION-MAKERS

- 3 For the purpose of this section, we address the precautionary principle as it would apply if the resource consent applications were being determined under the RMA, noting that its relevance in the FTAA context is dealt with subsequently at (b). It is important to articulate the principle accurately here, so that its proper place (and its limits) can then be correctly translated into the FTAA framework.
- 4 The precautionary principle is a principle of environmental and risk management decision making that recognises that a lack of full scientific certainty should not be used as a reason to postpone measures to prevent or mitigate potential adverse effects where there is a risk of serious or irreversible harm. At its core, the principle requires decision makers to proceed cautiously where there is probative evidence of a potentially significant risk, even if that risk cannot be quantified with precision.

- 5 The RMA does not refer to the precautionary principle but incorporates aspects of caution in decision-making. Specifically, the definition of "effect" in section 3 includes potential effects of low probability but high potential impact, which is considered precautionary in substance.¹³⁵ When considering applications for resource consent, authorities must have regard to actual and potential effects, including those where there is scientific uncertainty, and relevant provisions such as the New Zealand Coastal Policy Statement (**NZCPS**), which explicitly require a precautionary approach for activities with uncertain or potentially significant adverse effects on the coastal environment. The application of the precautionary principle to date has been typically reserved for situations in the coastal environment where potential effects are unknown, or where there is a risk of serious or irreversible harm. It does not generally have broader application other than where expressly referred to in another legislative instrument.

Precautionary principle vs the precautionary approach

- 6 Before addressing how precaution applies in the context of the FTAA, it is necessary to clarify the distinction between the precautionary principle and the precautionary approach. In *Shirley Primary School*, the Court observed that the precautionary principle is a "subset of the precautionary approach", the latter deriving from Principle 15 of the Rio Declaration. The precautionary principle recognises that lack of full scientific certainty should not be a reason to postpone measures where there is a risk of serious or irreversible harm. The Environment Court in *Golden Bay Marine Farmers v Tasman District Council (Golden Bay)* noted that the true precautionary principle arises only in contexts where it is expressly incorporated (in this case, in the wording of the NZCPS).¹³⁶ Where it applies, the principle can shift the decision-making framework more strongly towards preventing harm, even in the absence of complete information.
- 7 The relevant extracts from *Golden Bay* are set out below:¹³⁷

[419] ... We note that in *Shirley Primary School* the Court was doubtful whether a "wider precautionary principle" is useful. The precautionary approach is inherent in the RMA — (s 3(f)). If the Court applies the precautionary principle to a decision under s 105(1) or as another matter to

¹³⁵ RMA, s 3.

¹³⁶ *Golden Bay Marine Farmers v Tasman District Council* ENC Christchurch W42/2001, 27 April 2001.

¹³⁷ *Golden Bay Marine Farmers v Tasman District Council* ENC Christchurch W42/2001, 27 April 2001 at [419] to [421].

be considered under s 104(1)(i), the need for caution will have been considered twice. Accordingly, reference to a precautionary principle should be avoided or if used, recognised as a restatement of s 3(f) and the precautionary approach¹³⁶.

[420] We have concluded:

- The precautionary principle, as opposed to the precautionary approach, only arises in the NZCPS (and the RPS in this case) and therefore issues which arise only in the coastal environment are relevant to any application of “the principle”.
- Where activities take place in the coastal environment, the precautionary principle as the precautionary approach should be applied where potential effects are unknown or partially unknown (NZCPS and RPS).
- A precautionary approach in reference proceedings on a proposed plan or plan change may be applied in various ways:
 - (a) through the application of and analysis of the factual evidence under the provisions of s 3 RMA, particularly s 3(f) — that regard be had “to potential effects of low probability but high potential impact”;
 - (b) after findings of fact are made, a precautionary approach may be inbuilt into the various relative provisions of the plan — objectives, policies, rules, methods, etc;
 - (c) such a precautionary approach may define the classification of the activity — prohibited, discretionary, controlled - depending on the nature of the activity;
 - (d) such an approach may be supported by statutory management plans or other methods;
 - (e) such an approach may be promoted through the application of review conditions under s 128, and decisions on enforcement orders where the Environment Court has a discretion to make orders in certain circumstances (s 319(2)).

[421] In other words application of the precautionary principle/approach is not extraneous to the legislation. It does not sit outside in a way which provides additional weight to the decision-maker in its application.

- 8 In this case, the Court found on the evidence that the life-supporting capacity and intrinsic values of the ecosystem would be safeguarded through a staged precautionary approach to AMA aquaculture development.¹³⁸ This reflects precaution in the resource-management sense (i.e. through the conditions of consent), rather than the use of the precautionary principle to prevent the activity altogether, which the Courts have found to be reserved for rare or limited cases.¹³⁹
- 9 The precautionary principle is expressly incorporated into certain statutory and policy frameworks (that do not apply here), whereas the precautionary approach is inherent in the RMA processes for assessing effects and managing uncertainty. *Shirley Primary School* also provides helpful guidance on when it is appropriate to invoke the precautionary principle. The Court concluded that applying the precautionary principle in that case would not be warranted for three reasons:¹⁴⁰
- (a) First, a precautionary approach is already implicit in the RMA through the flexible standard of proof and the ability to give weight to evidence that is supported only to a low level of probability. The courts have consistently held that the RMA does not expressly adopt or require application of the precautionary principle. Instead, the RMA incorporates a precautionary approach through its statutory direction to consider potential effects, including low-probability, high-impact effects. This distinction was first made clear in *McIntyre v Christchurch City Council*, where the Planning Tribunal held that the Act's requirements are "precautionary in substance" without expressly adopting the broader precautionary principle.¹⁴¹
 - (b) Secondly, introducing an additional "principle" would unnecessarily complicate an already complex statutory and evidential framework.
 - (c) Thirdly, applying the precautionary principle as an additional matter under s 104(1)(i) would risk "double-counting the need for caution"¹⁴², because the required degree of caution is already accounted for when

¹³⁸ *Golden Bay Marine Farmers v Tasman District Council* ENC Christchurch W42/2001, 27 April 2001 at [1011].

¹³⁹ *Aquamarine Ltd v Southland Regional Council* ENC Christchurch C126/97, 15 December 1997.

¹⁴⁰ *Shirley Primary School v Christchurch City Council* ENC C136/98, 14 December 1998 at [217] to [223].

¹⁴¹ *McIntyre v Christchurch City Council* (1995) 2 ELRNZ 84; [1996] NZRMA 289 (PT); *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06, 30 May 2006 Environment Court, Auckland at [457]; *Golden Bay Marine Farmers v Tasman District Council* ENC Christchurch W42/2001, 27 April 200 at [418].

¹⁴² *Shirley Primary School v Christchurch City Council* ENC C136/98, 14 December 1998 at [223].

determining effects under s 104(1)(a) using a sliding standard of proof that adjusts to the seriousness of the potential impact.

- 10 In regard to the approvals sought by the Applicant, there is no or policy instrument that engages the precautionary principle. As *Golden Bay* makes clear, the principle only arises where it is expressly incorporated (most commonly through the NZCPS or other coastal policy provisions). Because no such instrument applies here, there is no foundation for invoking the precautionary principle in this case. Instead, decision-making process inherent in the RMA and is addressed through the assessment of effects and, where appropriate, through conditions of consent
- 11 For the avoidance of doubt, nothing in the CAAct or the CARs operates to import a precautionary principle into this RMA or the FTAA decision-making framework because:
 - (a) We are not aware of any provision in the CAAct or the CARs that expressly incorporates, mandates, or applies a precautionary principle (as is required before the principle can be invoked).
 - (b) In any event, this application does not involve (and cannot involve under the FTAA or RMA) any request for a determination or approval under the CAAct or the CARs. Therefore, neither the FTAA nor the RMA provides a mechanism for applying for determinations under Parts 77, 139, 171 or 172. Any precautionary obligations that may apply to an aerodrome operator, air navigation service provider or the Director under those specialist regimes remain matters to be addressed within those regimes. They are not matters that can be incorporated into, or that redefine, the statutory framework that governs this Panel's assessment under the RMA or FTAA.
- 12 While the Panel has only sought submissions on the 'precautionary principle', for completeness we also consider whether the precautionary approach has any bearing on this application below.

Precautionary approach

- 13 A precautionary approach, as articulated in cases such as *Sea-Tow Ltd v Auckland Regional Council (Sea-Tow)* involves the careful exercise of judgment where there is scientific uncertainty, but it operates within the discretion afforded by the RMA.¹⁴³ In *Sea-Tow* the Environment Court derived the following statements from caselaw of general principle about

¹⁴³ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06, 30 May 2006.

the adoption of a precautionary approach to deciding resource consent applications under the RMA:¹⁴⁴

- (a) Good environmental decision-making under the Act involves careful and balanced judgement. In many cases such a judgement is reached without the need to call in aid any principle of precaution; but in others, particularly those where scientific uncertainty exists, the need for balance may only be adequately achieved by applying precaution to the ultimate judgement.¹⁴⁵
- (b) A decision-maker may allow its discretionary judgement to grant or refuse resource consent to be influenced by the precautionary principle to the extent consistent with the statutory purpose of promoting the sustainable management of natural and physical resources and with judicial exercise of that discretion.¹⁴⁶
- (c) The fact that a dispute exists as to the basic material upon which the decision must rest, does not mean that necessarily the most conservative approach must be adopted. The obligation is to consider the material and decide on the weight which can be given to it with such care as the situation requires.¹⁴⁷
- (d) A precautionary approach should only be applied where there is scientific uncertainty or ignorance about the nature or scope of environmental harm. Conflicting opinions about whether a proposal would result in adverse effects, where the expert witnesses were in no doubt about how the effects arise, what creates them, what might cause them, are not lack of scientific knowledge.¹⁴⁸ There needs to be a plausible basis, not mere suspicion or innuendo, for adopting that approach.¹⁴⁹

14 In *Sea-Tow* the Environment Court considered whether a precautionary approach should influence its assessment of proposals to continue extracting sand because the activity occurred within the coastal environment, the precautionary policies of the NZCPS and the Auckland

¹⁴⁴ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06, 30 May 2006 at [462].

¹⁴⁵ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06, at [462(a)] citing *Rotorua Bore Users v Bay of Plenty Regional Council* ENC Auckland A138/98, 27 November 1998.

¹⁴⁶ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06 at [462(b)] citing *McIntyre v Christchurch City Council & Bell South* [1996] NZRMA 289, 2 ELRNZ 84.

¹⁴⁷ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06 at [462(c)] citing *Greenpeace v Minister of Fisheries HC Wellington* CP492/93, 27 November 1995 at p32.

¹⁴⁸ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06 at [462(c)] *Aquamarine v Southland Regional Council* ENC Christchurch C126/97, 15 December 1997 pp 146 to 47.

¹⁴⁹ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06 citing *TransPower v Rodney District Council* Planning Tribunal Decision A85/94.

Regional Plan: Coastal were relevant considerations. Opponents argued that the activity posed risks of significant environmental harm and therefore required a precautionary approach.

15 Applying the principles set out above, the Court first assessed whether the case involved genuine scientific uncertainty. Although the experts disagreed about the potential effects, the Court found that the disagreement concerned the interpretation of evidence rather than uncertainty about the mechanisms by which harm could occur. Accordingly, the level of uncertainty was insufficient to justify invoking precaution.

16 Having considered the evidence, the Court found that:¹⁵⁰

... to give weight to the contrary opinions by applying a precautionary approach would be unsupported, and simply indecisive. Opponents of resource-consent applications cannot expect to invoke the precautionary approach whenever the consent authority prefers the applicants' evidence to theirs.

17 The Court also found that a precautionary approach was already inherent in the appellants' proposed review conditions. Consistent with the caselaw, it considered that it should make a careful and balanced judgment on the applications based on its findings on the evidence, without adopting a precautionary approach in the balancing. In short, its decision on whether to grant consent, and on the conditions to impose, had to be made by reference to the actual and potential effects and the relevant statutory provisions, rather than by caution about the possibility that its findings might not accord with what occurs in future.¹⁵¹

18 We discuss how each of the key principles as articulated in *Sea-Tow* apply in the context of this FTAA application under the headings below.

Factual disputes do not automatically trigger the application of the precautionary approach, the obligation is to consider the evidence

19 Factual disagreement does not, in itself, trigger the precautionary approach; the Panel's task is simply to assess the evidence before it. Here, the supposed "dispute" centres on whether there is sufficient information about aviation safety effects. CIAL and Airways maintain that more work is required before any adverse effects can be understood:

¹⁵⁰ *Sea-Tow Ltd v Auckland Regional Council*, ENC Auckland A066/06 at [465].

¹⁵¹ *Sea-Tow Ltd v Auckland Regional Council* ENC Auckland A066/06 at [466] to [467].

- (a) CIAL asserts that “despite the volume and technical nature of the new material, the core deficiencies as to its assessment of aviation safety remain...” and that these issues “cannot be cured within the confines and timing constraints of the FTAA process.”¹⁵²
 - (b) Airways “does not accept that risks are adequately understood or mitigated.”¹⁵³
- 20 But when we turn to what the Panel actually has before it, the picture becomes much clearer:
- (a) For CIAL, the Panel has:
 - (i) An unattributed response dated 15 September 2025, raising concerns about aviation safety. Beyond the Avisure report and the planning input in its legal memoranda, the balance of the technical assertions are made by an unknown author. There is no information as to who prepared it, or whether those individuals hold any relevant expertise.¹⁵⁴ CIAL itself has confirmed that it “does not hold specialist technical expertise across all of the discrete disciplines that may be engaged by a proposal of this nature.”¹⁵⁵
 - (ii) Memoranda from legal counsel also raising technical assertions about the adequacy of the information with no apparent expert input on matters of aviation safety.
 - (b) For Airways, the Panel has:
 - (i) An unattributed response to comments dated 15 September; and
 - (ii) An unattributed supplementary submission dated 18 December 2025; and
 - (iii) Memoranda from legal counsel raising technical assertions without identifying any expert author or evidential basis for those assertions.

¹⁵² Memorandum of counsel for Christchurch International Airport Limited dated 18 December 2025 at [8.3].

¹⁵³ Airways Corporation of New Zealand Supplementary Response dated 18 December 2025

¹⁵⁴ For completeness, the Applicant acknowledges that CIAL has provided expert evidence on bird strike risk.

¹⁵⁵ Memorandum of counsel for Christchurch International Airport Limited dated 26 January 2026 at [16].

- (c) For the Applicant, the Panel has:
- (i) The Aviation Safety Assessments filed with the Applicant's s 55 response, comprising:
 - (A) Cyrrus Assessment;
 - (B) Navigatus Assessment; and
 - (C) L&R Assessment;
 - (ii) The Aviation Safety Expert Responses, each of which responds directly to the technical assertions in CIAL's and Airways' memoranda and confirms the conclusions reached in the original assessments, comprising:
 - (A) the supplementary statement of evidence of **Mr McPherson** (Cyrrus);
 - (B) the supplementary statement of evidence of **Mr Bermingham** (Navigatus);
 - (C) the supplementary statement of evidence of **Mr Hargreaves** (L+R Airport Consulting);
 - (iii) The statement of evidence of **Dr Shelley** which reviews and evaluates the technical assessments, addresses the civil-aviation regulatory framework, and responds to the issues raised by CIAL and Airways; and
 - (iv) Comprehensive economic evidence of **Ms Hong and Mr Akehurst**, including expert assessments of the Project's regional and national benefits and analysis of the alleged third-party aviation-related costs.

21 For completeness, the Panel also has the Applicant's extensive evidence on bird-strike risk, including the memorandum of Ms Civil responding directly to CIAL's comments.

22 All of the Applicant's reports are authored, attributed, and provided by recognised experts with established qualifications in aviation safety, safeguarding, and related technical disciplines. Notably, Cyrrus (**Mr McPherson**) and Navigatus (**Mr Bermingham**) were commissioned on the recommendation of Airways, and no party has suggested that these experts are not appropriately qualified.

- 23 These are the only experts before the Panel who can credibly speak to the appropriate level of assessment required for aviation-safety risk in a resource consent context. Their evidence is that the assessment undertaken is robust and appropriate. By contrast, neither CIAL nor Airways has filed any expert evidence contradicting that conclusion.
- 24 Airways similarly states that its “engineers” contributed to its documents, yet the material remains wholly unauthored and unsupported by any formally filed or identified expert evidence.
- 25 Accordingly, while CIAL and Airways assert the Applicant has not provided “sufficient information”, the *only* probative aviation safety *evidence* properly before the Panel is that provided by the Applicant. That evidence confirms that the scope and level of assessment undertaken is sufficient for this process and, indeed, goes “well beyond what would typically be expected.”¹⁵⁶

There must be a plausible evidential foundation for invoking the precautionary approach

- 26 Resort to the precautionary approach is not triggered by mere assertion of adverse effects or uncertainty; it requires a plausible evidential foundation demonstrating genuine scientific uncertainty about effects and a credible risk of serious or irreversible harm. In other words, there must be probative material that raises more than “mere suspicion or innuendo.”¹⁵⁷ Where (as here) the only cogent and attributed expert evidence before the decision-maker supports the adequacy of the assessment and proposed management response, there is no lawful basis to elevate “precaution” into a dispositive reason for refusal of consent.
- 27 A precautionary approach may be warranted only where there is:
- (a) genuine scientific uncertainty raised by experts about the nature or scope of effects; and
 - (b) a plausible threat of serious or irreversible harm again, raised by experts.

¹⁵⁶ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [10.1].

¹⁵⁷ *McIntyre v Christchurch City Council* PT A15/96, 5 March 1996.

- 28 On the record before the Panel, there is no credible or reliable scientific evidence on a highly technical topic that undermines the opinions of the Applicant's expert witnesses
- 29 *Ngāti Kahu ki Whangaroa Co-operative Society Ltd v Northland Regional Council* is illustrative.¹⁵⁸ There, although the NZCPS precautionary policies applied, the Court rejected reliance on "precaution" because the appellants had not presented material of probative value tending to show that exercising the consent would likely cause serious or irreversible harm. The Court emphasised that opponents "are not able to invoke the precautionary approach in default of presenting a case," and, having made findings on the evidence, it was not persuaded that serious or irreversible harm would likely occur.¹⁵⁹
- 30 It is also useful to refer to the Environment Court's summary of the relevant authorities in *Aquamarine Ltd v Southland Regional Council*, which reviewed *Transpower NZ v Rodney DC*, *Telecom New Zealand Ltd v Christchurch City Council*, and *McIntyre and Others*. The Court's distillation of the principles from those "cell-tower" cases is instructive and is reproduced below:¹⁶⁰

We think it is significant that the three cases in New Zealand where this principle has been considered are all cases where the effects of radiation from power lines or radio frequencies have been in issue. We refer to *Transpower NZ v Rodney District Council* Decision No: A85/94, *Telecom New Zealand Limited v Christchurch City Council* Decision No: W165/96, and *McIntyre and Others itself*.

In each of these cases the Court appears to have accepted that there may be a need for caution where there is scientific uncertainty although mere suspicion or innuendo will not suffice to create this uncertainty, and whether caution is to be applied is a discretionary matter to be exercised at the time when the overall judgment is being made. In the context of the Resource Management Act this would be when exercising the discretionary judgment under section 105 of the Act.

¹⁵⁸ *Ngāti Kahu Ki Whangaroa Co-operative Society Ltd v Northland Regional Council* ENC Auckland A95/2000, 4 August 2000.

¹⁵⁹ *Ngāti Kahu Ki Whangaroa Co-operative Society Ltd v Northland Regional Council* ENC Auckland A95/2000; 4 August 2000 at [161] citing *McIntyre v Christchurch City Council* (1995) 2 ELRNZ 84; [1996] NZRMA 289; *Wratten v Tasman District Council* (1998) 4 ELRNZ 148; and *Shirley Primary School v Telecom Mobile Communications* [1999] NZRMA 66.

¹⁶⁰ *Aquamarine Ltd v Southland Regional Council* ENC Christchurch C126/97, 15 December 1997 at 146 to 148.

In *Telecom New Zealand Limited* the Court did not refer to section 105 explicitly, but on page 11 it cited a passage from the decision in the *McIntyre* case which reads as follows:

“The influence of the general precautionary principle on the evaluation and ultimate judgment is a matter for discretion. None of the cases supports the application of a formal threshold. Like all elements that contribute to the ultimate judgment, the weight to be given to the precautionary principle would depend on the circumstances. The circumstances would include the extent of present scientific knowledge, and the impact on otherwise permitted activities. However we think that in an appropriate case they would also include the gravity of effects if despite present uncertainty, they do occur.”

- 31 The outcomes of the “cell-tower” line of authority reinforce a consistent principle: where the alleged effect is scientifically contested, the decision-maker must rely on probative expert evidence, not speculation or unevicenced assertions. A table containing a summary of these cases is attached as **Appendix 2**.
- 32 In this case, there is no expert evidence at all supporting CIAL’s or Airways’ claimed effects. The Panel has no probative foundation to require precaution. In any event, the effects identified by the Applicant’s experts are known, measurable, and manageable, and there is no evidential basis to suggest otherwise.

A precautionary approach is appropriate where necessary to achieve balanced and Informed decision-making

- 33 If this were a decision made under the RMA, the mere assertion by CIAL and Airways of uncertainty would not, support a decline of consent. Where the statutory framework already accommodates uncertainty through effects assessment and conditions, precaution is ordinarily given effect through calibrated conditions (for example staged implementation, targeted monitoring, defined performance standards and triggers, and review mechanisms) rather than by refusing an otherwise consentable proposal. Applied here, the proper expression of precaution (if any is required on this evidence) may be appropriately achieved by embedding caution within the consent framework, not by elevating it in the overall merits assessment.¹⁶¹

¹⁶¹ *Golden Bay Marine Farmers v Tasman District Council* ENC Christchurch W42/2001, 27 April 2001; *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66.

- 34 In this case, **Dr Shelley** confirms that the civil aviation legislative framework is the appropriate regime for managing residual aviation-safety effects (if any). Compliance with the CAA Act, CARs and district plan safeguards could be considered, by design, to be inherently precautionary applying an additional layer of “precaution” within the current consenting framework would therefore risk double-counting the same safeguarding considerations.
- 35 In this respect, the current situation is analogous with *Shirley Primary School*, where the Court held that compliance with the precautionary approach is “already inherent in the ICNIRP and ANZ Standards” (i.e. standards for radio frequency).¹⁶² The same reasoning applies here: the aviation regulatory framework already builds in the level of precaution appropriate to the domain. Where the Applicant meets those standards (as confirmed by **Dr Shelley**) the necessary precaution is already satisfied within the separate statutory aviation-safety regime.

The precautionary approach must be applied consistently with the purpose of the RMA

- 36 If this application were being determined under the RMA, the precautionary approach would inform, but not expand, the decision-maker’s task. Having regard to caselaw, precaution is already inherent in the statutory scheme; it operates within the s 104/s 105 evaluation by:
- (a) weighing the actual and potential effects on the evidence; and
 - (b) determining whether any residual uncertainty can be avoided, remedied, or mitigated through proportionate conditions.
- 37 The precautionary principle does not create a new evidentiary threshold (especially where there is no evidence to support the objection), and it does not carry additional weight outside the statutory tests.
- 38 The precautionary approach does not impose a requirement of “no risk”. The RMA is not a no-risk statute. Consistent with *Aquamarine* and *Shirley Primary School*, it calls for a proportionate response to scientific uncertainty and should not negate the enabling provisions of the RMA where effects can be appropriately managed.¹⁶³

¹⁶² *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at [250].

¹⁶³ The precautionary principle should not negate the enabling provisions of the RMA where there is uncertainty. See for example *Aquamarine Ltd v Southland Regional Council* ENC Christchurch C126/97, 15 December 1997 and *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at [250].

- 39 It does not require decision makers to assume worst case outcomes, nor does it mandate avoidance of all risk. Instead, it directs decision makers to take reasonable and proportionate steps to anticipate and manage potential harm where the evidence points to scientific uncertainty, including ensuring that adequate information is obtained and that protective measures are adopted where appropriate.

Conclusion

- 40 In summary, even if this application were being determined under the RMA, the precautionary approach alone would not provide any basis for declining consent. On the evidential record, the pre-conditions for invoking precaution are not met: there is no genuine scientific uncertainty, no credible risk of serious or irreversible harm, and no probative expert evidence contradicting the Applicant's technical assessments. In any case, consistent with the established line of authority, the appropriate expression of any residual caution would lie in conditions, not refusal. Nothing in the RMA framework, properly applied, would lead to a precaution-based decline.

QUESTION (B) Is the precautionary principle available to consider by an Expert Panel when making a decision on an application under the FTAA?

- 41 An Expert Panel under the FTAA must "take into account" the relevant provisions of the RMA but must give the greatest weight to the purpose of the FTAA. On this basis, application of the precautionary principle or the precautionary approach may be taken into account only in the following circumstances:
- (a) A FTAA panel may "take into account" the precautionary principle, only where that principle is expressly incorporated into the applicable statutory or policy framework (for example, the NZCPS in the coastal environment).¹⁶⁴
 - (b) A precautionary approach may be taken only where the evidence demonstrates the kind of genuine scientific uncertainty that would ordinarily engage precaution under the RMA. That is, where there is reliable, probative material indicating uncertainty about the nature or scope of potential effects, coupled with a plausible risk of serious or irreversible harm. Mere disagreement, conjecture, or assertion without expert technical support does not meet this threshold.

¹⁶⁴ FTAA, s 81 and Sch 5, cl 17(1)

- 42 It is noted that precaution was addressed in the *Taranaki VTM* FTAA draft decision, but in a materially different statutory setting.¹⁶⁵ There, the approvals sought were marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**), applied for through the FTAA. The Panel therefore had to "take into account" the EEZ Act's information principles, which specifically require decision-makers to favour caution and environmental protection where information is uncertain or inadequate, and to assess consistency with s 10(1)(b) (protection from pollution by regulating discharges of harmful substances). On the evidence in that case, the Panel identified uncertainty/inadequacy on key effects (including the sediment plume, underwater noise and benthic recovery), found a "credible risk" of material harm to sensitive species and habitats, and was not satisfied that conditions or adaptive management would reliably address those risks. Critically, that "credible risk" rested on the Panel's assessment that the probative expert evidence demonstrating a real possibility of ecological harm, it was not on an assessment based on speculation or unevidenced apprehension. In the weighting exercise, those adverse impacts were found to be out of proportion to the project's benefits, so the Panel proposed to decline approvals. In short, the Taranaki Panel was applying the EEZ Act's statutory direction to favour caution where information is uncertain or inadequate. That direction is not relevant or available here.
- 43 In summary, precaution may properly influence decision-making under the FTAA only where:
- (a) The approval type imports a statutory direction to account for uncertainty (as in marine-consent cases that require the EEZ Act information principles to be taken into account); or
 - (b) The evidence before the Panel demonstrates genuine scientific uncertainty combined with a credible risk of serious or irreversible harm.
- 44 For the reasons set out above, there is no basis on which the precautionary principle or precautionary approach could properly be invoked as a reason to decline the Project under an RMA framework. The threshold prerequisites for precaution are simply not met. It follows that the principle does not fall to be "taken into account" by this Panel when determining the approvals sought under the FTAA.

¹⁶⁵ Draft decision of the Expert Panel on the [Taranaki VTM](#) (4 February 2026).

QUESTION (C) How does application of the precautionary principle influence the assessments required under sections 81 and section 85 FTAA?

- 45 As established above, nothing in the FTAA or in the legislation governing the approvals sought imports, mandates, or triggers any precautionary principle. Nor does the evidence here raise the kind of scientific uncertainty or credible risk that would engage a precautionary approach.
- 46 However, for completeness, the way in which the precautionary principle/approach might (in theory) inform the Panel's evaluative task in another case under ss 81 and 85 is addressed below.
- 47 The FTAA decision making framework in detail at paragraphs 150 to 209, we do not repeat those submissions here but highlight that: clause 17(1) of Schedule 5 requires that, while the Panel must "take into account" the relevant RMA provisions, the Panel must give the greatest weight to the purpose of the FTAA.¹⁶⁶ "Taking into account" requires genuine and substantive consideration, not merely listing a matter and setting it aside. The proper method is to address the relevant provisions first, on their own terms and without influence from the FTAA's purpose, and only then undertake the clause 17(1) weighting exercise. This ensures that the matters required to be taken into account are meaningfully evaluated before being weighed against the FTAA's purpose.
- 48 Therefore, even if the Panel were to find that the precautionary principle or precautionary approach applies, that cannot, in itself, be a standalone ground for refusal. The Panel must still undertake the evaluative exercise required by s 85. This is consistent with the approach taken in the *Taranaki VTM Draft Decision*, where the Expert Consenting Panel identified genuine evidential uncertainty and credible risks of material harm (supported by specialist ecological evidence) and, in accordance with the EEZ Act's information principles, "favoured caution" in its effects assessment. However, the Panel did not treat precaution as determinative. Rather, having completed that precaution-influenced assessment, it proceeded to the s 85(3) proportionality analysis, considering whether those evidenced risks were sufficiently significant to be out of proportion to the project's regional or national benefits.

¹⁶⁶ FTAA, Sch 5, cl 17(1)(a).

QUESTION (D) What considerations are relevant to application of the precautionary principle in the circumstances of this case?

49 The considerations relevant to whether the precautionary principle or precautionary approach is engaged are set out in Question (A). In the context of the FTAA, the following additional matters arise:

- (a) Alleged adverse effects must be established through probative evidence, not conjecture, apprehension, or mere suspicion. The FTAA does not relax evidential standards that apply to decision-makers under the RMA: the Panel must evaluate actual effects on the basis of reliable expert analysis, and cannot give weight to concerns that are unsubstantiated, incapable of verification, or expressed at a level of generality that prevents meaningful assessment. As CIAL itself notes "the FTAA does not signal any intention to relax the standard of scrutiny".¹⁶⁷ Only effects that are properly evidenced, particularised, and demonstrably linked to the Project can influence the s 85 evaluation.
- (b) A precautionary principle or approach may only require refusal of a resource consent where there is genuine scientific uncertainty as to the nature or scale of an effect, and where probative evidence indicates that further enquiry or protective measures are reasonably required. That is not this case here because:
 - (A) The Applicant's expert assessments have already identified, assessed, and addressed all relevant aviation-safety effects. The suggestion by CIAL or Airways that additional or unidentified issues "might" later materialise is unsupported by any probative evidence. Those concerns are speculative, not evidential.
 - (B) In this case the parameters of any potential effect are known, measurable, and capable of being quantified and managed. The safeguarding measures required under the civil aviation framework have been identified and incorporated into the design. Even if further mitigation were theoretically required, such measures are capable of assessment and implementation within the existing regulatory framework.

¹⁶⁷ Memorandum of counsel for Christchurch International Airport Limited addressing Minute 6 dated 18 December 2025 at [46].

- (C) Accordingly, there is no evidential basis for invoking precaution as a decision-making weight under s 85: the effects are known, the risks are quantifiable, and the statutory frameworks already provide the mechanisms for managing them.
 - (ii) Conditions can appropriately operationalise precaution. The courts have consistently held (including in aviation risk contexts such as dealing with bird strike risk) that conditions can be the proper mechanism for expressing for dealing with a matter that requires precaution where effects can be managed. The FTAA provides the same pathway: the Panel may set conditions under ss 83 and must consider the role of conditions under s 85(3)(b)(i) when assessing whether any adverse impacts can be avoided, remedied, or mitigated. These provisions ensure that, even if precaution is relevant, it is embedded through conditions, not used as a basis for refusal in the absence of probative risk.
 - (iii) The RMA is not a “no-risk” statute. Its purpose of sustainable management inherently accommodates a degree of risk, with precaution expressed through effects assessment and proportionate conditions, not through prohibiting activities in the absence of certainty. By analogy, the FTAA (whose purpose is to facilitate the delivery of projects with significant regional or national benefits) is even less oriented toward risk-avoidance. Unlike the RMA, the FTAA does not embed a precautionary purpose; rather, it is an enabling regime that expressly requires the Panel to “take into account” the inherently precautionary provisions of the RMA but give the greatest weight to that FTAA facilitating purpose when making decisions under s 85.
- (c) Outside s 85(1)–(2) (which do not arise), the sole basis to decline is s 85(3). That provision enacts a proportionality test: the Panel must ask whether, having 'taken into account' any design modifications and conditions proposed or accepted by the Applicant, the residual adverse impacts are sufficiently significant to be out of proportion to the Project’s regional or national benefits.
- (d) In this case:
- (A) The expert evidence concludes that aviation safety effects are acceptable.
 - (B) There is no probative evidence to the contrary.

- (C) In any case, **Dr Shelley** confirms that the civil aviation legislative framework is the appropriate regime for managing any residual aviation safety effects. Compliance with the CAAct and CARs, is by design, inherently precautionary. This is consistent with the approach taken in *Shirley Primary School*.
- (D) Notwithstanding the above, the Applicant has proffered conditions as a precautionary response to respond to the matters raised by CIAL and Airways. **Dr Shelley** confirms these conditions are not necessary but are "overly precautionary".¹⁶⁸
- (E) Even if the Panel were to take a different view, the statutory test requires the Panel to return to the weighting exercise. On the evidence, effects do not come close to being out of proportion to the regional benefits of the Project.

CONCLUSION

- 50 For the reasons set out above, the precautionary principle has no application to this case. It is not incorporated into any statutory or policy instrument relevant to the approvals sought, and nothing in the FTAA, the RMA, the CAAct, or the CARs imports or mandates it.
- 51 Equally, there is no evidential foundation for invoking a precautionary approach. No expert evidence has been produced by CIAL or Airways identifying scientific uncertainty or a credible risk of serious or irreversible harm. The only qualified, attributed, and probative expert evidence before the Panel demonstrates that aviation-safety effects are known, measurable, and manageable.
- 52 Accordingly, to suggest that "uncertainty" exists would not be supported by expert evidence as the Panel has before it. Applying precaution here would risk double-counting: first, by assuming uncertainty unsupported by evidence, and secondly, by re-imposing precaution already built into the RMA/FTAA, the civil aviation regime and addressed through the Applicant's (overly) precautionary conditions.
- 53 If this application were before a consent authority under the RMA, there would be no basis upon which the precautionary principle or precautionary

¹⁶⁸ Statement of evidence of **Andrew Shelley** dated 23 February 2026 at [8.10(f)].

approach could justify refusal. For that reason, there is nothing capable of being “taken into account” under s 81 FTAA in relation to precaution.

- 54 In any event, even if the precautionary principle or precautionary approach were relevant, it would still need to be assessed within the FTAA framework. Under s 85(3), the determinative question is whether any residual adverse impacts (after taking into account design changes and conditions) are sufficiently significant to be out of proportion to the Project’s regional or national benefits.

APPENDIX 2 – SUMMARY OF "CELL-TOWER" CASES

Case citation	Summary/Relevance	Quotes (<u>emphasis added</u>)
<p><i>Trans-Power New Zealand Ltd and Power New Zealand Ltd v Rodney District Council</i> PT A85/94, 14 November 1994</p>	<p>This concerned an appeal against a decision of the council refusing consent regarding the extension of a high-voltage transmission line.</p> <p>The adverse effects on the health of people who may be exposed to electric and magnetic fields from high-voltage power was a point of contention.</p> <p>In terms of the precautionary approach, in this case, the Court stated that there needs to be some plausible basis, not mere suspicion or innuendo, for adopting a precautionary approach.</p>	<p>[...] Yet although we can accept that scientific knowledge about the potential health effects of the fields may be incomplete, it is our duty to make a decision now, on the present state of knowledge. It would be an abdication of that duty if we were to allow opponents of proposals to prevent them proceeding on the basis that science might in future discover effects that had not yet been established. <u>That is not to reject the precautionary approach, but there needs to be some plausible basis, not mere suspicion or innuendo, for adopting that approach.</u></p> <p>We acknowledge our own personal limitations in making findings on technical scientific questions. <u>The appropriate course for us is to be guided by the scientific community and by conclusions reached by application of scientific method.</u> [...]</p>
<p><i>McIntyre v Christchurch City Council</i> (1995) 2 ELRNZ 84, [1996] NZRMA 289</p>	<p>This concerned an appeal regarding a resource application to establish a base receiver station for mobile telephone transmission.</p> <p>The appellants argued that a serious hypothesis exists that exposure to the amounts of radiation that would be emitted by the proposed transmissions is potentially harmful to health.</p>	<p>As was explained by Chief Judge Pearlman in the Redbank case, the general precautionary principle of environmental law is an approach to “be adopted in evaluating the various relevant factors in determining whether or not to grant consent” [...]</p> <p>[...] Like all elements that contribute to the ultimate judgment, the <u>weight to be given to the precautionary principle would depend on the circumstances.</u> The circumstances would include the extent of present scientific knowledge, and the impact on otherwise permitted activities. However we think that in an appropriate case</p>

		<p>they would also include the gravity of the effects if, despite present uncertainty, they do occur.</p>
<p><i>Telecom New Zealand Ltd v Christchurch City Council [1996] ELHNZ 416</i></p>	<p>This concerned an appeal from a council decision refusing consent to establish and operate a cellular network site.</p> <p>One of the issues on appeal was around possible health risks to adjoining residents.</p> <p>In terms of the precautionary approach, the Court said that the approach taken in <i>Transpower</i> expressed the correct way to approach the task of evaluating scientific evidence against fears and suspicions. The approach <i>Transpower</i> took was that it was not appropriate for the Court to weigh suspicion. The Court further said that when adopting a precautionary approach, it was not required to have regard to mere suspicions or fears with no rational evidence or scientific basis.</p>	<p>In <i>Trans Power New Zealand Limited v Rodney District 4 NZPTD 35</i> the Tribunal dealt with the way in which it should approach evidence of mere suspicion of harm caused by a proposed activity and said:</p> <p><u>“As a judicial body it would not be appropriate for us to weigh suspicion, even when expressed by one who is qualified as an expert witness, against the opinions of even better qualified experts which are consistent with the consensus of the international scientific community. There is not evidence of probative value before us that electric or magnetic fields surrounding the proposed transmission line would have any actual or potential effect on the health of anyone who may be exposed to them. On the balance of probabilities, having regard to the gravity of the matter, we find that they would not.”</u></p> <p>That was a case dealing with emissions from electric transmission lines, <u>but in our view expresses the correct way in which we should approach the task of evaluating the scientific evidence given on behalf of the appellant against the no doubt sincerely held fears and suspicions entertained by Mr Haliday, and many other former submitters in objection, who live in the locality.</u></p> <p>It is only when the Court has decided that the evidence is sufficiently relevant and probative to be admitted to consideration that it is then enjoined to have regard to the matters raised in the sections of the Resource Management Act set out above, <u>with the added rider that even adopting the precautionary approach at that level</u></p>

		<p><u>of the debate the Court is not required to have regard to mere suspicions or fears which have no rational evidential or scientific basis.</u></p>
<p><i>Shirley Primary School v Telecom Mobile Communications</i> [1999] NZRMA 66.</p>	<p>This concerned a cross-appeal against a condition imposed by the Council, relating to an application to establish, operate and maintain a cellular tower.</p> <p>An issue in this case was how far it needed to be proven that the radiation from the cell tower sites was safe.</p> <p>The Court discussed the difference between a "precautionary approach" and the "precautionary principle", stating that the correct position is that the RMA is precautionary and justifies a precautionary approach. The approach applies where there is a threat of "serious or irreversible damage".</p>	<p>[10] The evidence ranged from individual statements of fear to "hard" science.</p> <p>[219] There is some confusion apparent over the applicability of the precautionary principle. <u>We hold that the correct position is that the RMA is precautionary and thus justifies a precautionary approach.</u> We consider, without deciding, that the precautionary principle is a limited consideration introduced by international law. The precautionary principle, a subset of the precautionary approach, derives from the Rio Declaration¹⁴⁶ principle 15 [...].</p> <p>[220] <u>It will be seen that the precautionary approach applies where there is a threat of "serious or irreversible damage"</u> and entails that just because it is not, say, 99% certain that the threat will materialise, or perhaps that the damage will be irreversible, does not mean that no step should be taken to minimise risk. To paraphrase in the language of section 3 of the RMA the principle is, if a potential effect is only of high (and not very high) probability and high potential impact that is no reason for failing to take action to guard against the effect. The position facing us of course is quite different in that the alleged effect is clearly one of low probability and of unknown potential impact.</p> <p>[223] In summary, we do not consider it is appropriate to apply the "precautionary principle" or the other policies suggested by witnesses and supported by counsel, for three reasons. <u>First a precautionary approach is already implicit in the</u></p>

		<p><u>Act and emerges in the flexibility of the standard of proof applied by the Court and (as we shall see) in the weight given to evidence that has only been "proved" to a low standard (probability).</u></p>
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