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

9 March 2026

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May it please the Panel:

INTRODUCTION

1 These legal submissions accompany the amended proposal that has been prepared in response to the concerns raised by the Expert Panel (**Panel**) during the conference held on 4 March 2026 (**Conference**) and subsequently in Minute 13.

2 **Mr Jeremy Phillips** has prepared a supplementary statement to explain and support the new and amended conditions drafted following the Panel's requests for further clarification and assurance on issues relating to potential adverse effects on aircraft safety.

3 An updated set of proposed conditions of consent, including the newly proffered conditions, is attached to the evidence of Mr Phillips as **Appendix 1**. All new or amended wording arising from the Panel's feedback at the 4 March 2026 conference is shown in **purple text**.

4 These submissions address the principal legal issues arising from the Conference and Minute 13, including:

(a) the relevance (or otherwise) of the Panel making comparisons with the likely outcome if the applications being decided as a noncomplying activity under the Resource Management Act 1991 (**RMA**) rather than the Fast-track Approvals Act 2024 (**FTAA**);

(b) whether internalisation of all effects would be required for an out of zone activity seeking to establish on rural land near strategic infrastructure if the applications being decided under the RMA rather than the FTAA;

(c) the statutory framework that governs the Panel's decision making under the FTAA, including clause 17 of Schedule 5 and the direction to give greatest weight to the purpose of the FTAA and the express direction not to take into account s104D of the RMA;

(d) the appropriateness and enforceability of the new proposed conditions; and

(e) the Panel's concerns regarding the application relying on third party actions to provide for public safety and/or potential costs being incurred by third parties (Airways Corporation New Zealand

(**Airways**), Christchurch International Airport Limited (**CIAL**), and Garden City Helicopters (**GCH**) to make way for the application.

5 In preparing these submissions reference has been made to the guidance that now comes from recent final and draft decisions made under the FTAA including the final decisions on the *Waihi North*, *Aratiki* and *Homestead Bay* projects and the draft decisions on the *Sunfield* and *Taranaki VTM* projects.[1]

NONCOMPLYING ACTIVITIES AND THE RMA ANALOGY

6 During the Conference, an analogy was drawn with a typical scenario under the RMA where a noncomplying activity seeks to locate on rural land near an established activity (e.g. strategic infrastructure such as an airport). The observation was made that, in such RMA settings, the "second in time" activity would be expected to internalise all effects.

7 As will be explained below, what might typically occur in an RMA scenario involving an "out of zone" activity establishing on rural land is of no assistance in an FTAA context because the RMA scenario would require an applicant to clear the jurisdictional hurdle of meeting one of the gateway tests in section 104D. Relevantly s104D provides that a consent authority may grant consent for a noncomplying activity only if satisfied that either:

(a) the adverse effects on the environment will be minor; or

(b) the activity will not be contrary to the relevant objectives and policies of the applicable planning instruments.

8 In the RMA scenario an application for such an out of zone activity will often be contrary to the objectives and policies of the relevant plan and it will therefore fail the policy consistency limb in section 104D(1)(b). In those circumstances, an applicant for a noncomplying activity will often be in a position of needing to internalise effects because they need to demonstrate that adverse effects are "minor" for the purposes of s104D(1)(a).

9 There are lots of examples in RMA case law where applicants have not been able to clear one or both of the s104D gateway tests which the Panel will be familiar with. Because it is a recent local example involving an activity seeking to establish in the Rural Urban Fringe zone (**RUF zone**) under the

[1] THE WAIHI NORTH PROJECT [FTAA-2504-1046] EXPERT PANEL (18 December 2025); THE ARATAKI EXPERT PANEL – FTAA-2506-1083 (24 January 2026); THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026); SUNFIELD [FTAA-2503-1039] EXPERT PANEL (10 February 2026); TARANAKI VTM [FTAA-2504-1048] (4 February 2026).

Christchurch District Plan we draw the Panel's attention to the decision in relation to Harewood Gravel Company Limited to establish a quarry and clean fill near Christchurch Airport.[2]

10 In that case the applicant was unable to internalise all effects and the Panel found that at times noise from traffic generated by the activity would be "more than minor" at third party properties and that the application did not meet the first gateway of s 104D. The activity was therefore only able to be consented because the quarry was not found to be an activity contrary to the objectives and policies of the District Plan. However, another type of activity (e.g. an industrial activity seeking to establish in the RUF zone) might struggle to meet those objectives and policies and would necessarily be forced to demonstrate it was not having any more than minor external effects on an external party.

11 The point is that even the RMA does not mandate absolute internalisation of effects. Reasonable internalisation is required as part of avoiding, remedying, or mitigating adverse effects, and further constraints or conditions are only imposed where effects cannot reasonably be internalised. Provided applicants have done what is reasonably achievable, some residual effects may lawfully remain and be managed by conditions.

12 For example, in *Winstone Aggregates Ltd v Papakura District Council* the Court held that "'internalise' is not to be interpreted as to 'internalise at all costs'". In determining the extent to which the associated effects of mining aggregate resources should be contained, so as to avoid the need to restrict the use of land owned by others, the Court added a qualification such as "reasonable" when using the word internalisation.[3] Only those effects which cannot reasonably be internalised justify constraints on nearby land-use activities.[4] In that case, the Court emphasised that the 'polluter pays' approach was to be applied, but internalisation is not a separate duty, rather it is part of avoiding, remedying, or mitigating effects as required by the RMA The reasonableness of internalisation depends on practicable mitigation measures and their economic feasibility. Overall, the Court found that not all adverse effects of the quarry could reasonably and economically

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[2] Decision of Commissioners Robinson and Henderson application by Harewood Gravel Company Limited for land use consents from Christchurch City Council to establish a gravel quarry and cleanfill at 21 Conservators Road, Yaldhurst (RMA/2024/663) (20 October 2025).

[3] *Winstone Aggregates Ltd v Papakura District Council* ENC Auckland A049/2002, 26 February 2002 at [46].

[4] *Winstone Aggregates Ltd v Papakura District Council* ENC Auckland A049/2002, 26 February 2002.

be contained within the site, so a buffer zone was appropriate to manage residual effects.[5]

13 That approach aligns with the wider recognition that the RMA is not a “no-effects" statute. As the Environment Court in *C J Industries Ltd v Tasman District Council* explained:[6]

> the RMA is not a no-effects statute. Every activity has some form of an effect and an approach of prohibiting activities with any adverse effects at all would not enable positive effects, or allow people to provide for their social, cultural or economic wellbeing, or be consistent with the authorities on how “avoid” policies are to be interpreted and applied, while accounting for whether there will be material harm

14 Further caselaw confirming that the RMA is neither a no effects nor a no risk statute was discussed in detail in Appendix 1 to the Applicant’s legal submissions dated 23 February 2026. Although the authorities there cited were discussed in the context of the precautionary principle, they are equally applicable to the present issue of internalisation under s 104D and the current FTAA framework. Without repeating those submissions, these submissions highlight that the RMA requires the avoidance, remediation or mitigation of effects to the extent reasonably achievable. It does **not** demand the total elimination or internalisation of all effects, nor does it require consent to be refused simply because some degree of effect may persist.

15 The decision in *Shirley Primary School v Christchurch City Council* offers a particularly instructive illustration. That case concerned an application for a noncomplying activity involving the establishment of a cellular telecommunications facility adjacent to a primary school. Among the key issues raised were asserted risks to children’s health and learning outcomes, fears within the school community, and the potential for risk avoidance by relocating or redesigning the facility. The Court reiterated that the RMA is not a “no risk” statute, observing that it is *“impossible”* to guarantee absolute safety and that *“life cannot be made completely safe*

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[5] See also *Winstone Aggregates v Matamata-Piako District Council* ENC Wellington W55/2004, 18 June 2004 where it was held that "total internalisation of effects within the site boundary will not be feasible in all cases and there is no requirement in the RMA that that must be achieved"; *Waikato Environmental Protection Society Inc v Waikato Regional Council* ENC Auckland W060/07, 23 July 2007 where it was held that "[t]here is no absolute requirement for internalisation of odour effects although that is to be preferred," and the bottom line is that activities may not continue to discharge offensive or objectionable odours.

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

for anybody". Accordingly, the decisionmaker's task is to assess whether any remaining risk is acceptable within the statutory purposes

16 Importantly, the Court rejected the proposition that a mere possibility of risk requires elimination of all effects. It held that potential risks must be evaluated, not exaggerated, and that residual effects may remain where supported by evidence. The Court explained that although parents and teachers legitimately expressed concerns (including fears for children's health, the potential for school closures, and psychological apprehension) the RMA does not authorise a "no risk" veto. Only risks that are substantiated, significant, and reasonably avoidable justify refusal. The Court stated:[7]

> We cannot guarantee there is no risk… a no risk approach is (logically) impossible… There is also authority that the RMA is not a 'no risk' statute and therefore it is not the role of this Court to ensure [the activity] can operate with absolute safety.

17 Therefore, in our submission even if 104D were a relevant consideration, the RMA does not impose an **absolute** requirement that **all** effects be internalised. The case law recognises that total internalisation within the site boundary will not always be feasible and is not mandated as a standalone duty. Rather, reasonable internalisation is one method of giving effect to the RMA's direction to avoid, remedy, or mitigate adverse effects. Constraints on nearby land use activities can be appropriate but only where effects cannot reasonably be internalised. Provided an applicant has done what is reasonably achievable, some residual effects may lawfully remain and be managed by conditions.

THE FTAA ESTABLISHES A DISTINCT STATUTORY FRAMEWORK

18 As set out in the legal submissions for the Applicant dated 23 February 2026, the FTAA establishes a distinct decision-making framework from the RMA. In considering whether to grant resource consents, the Panel must apply clauses 17 to 22 of Schedule 5 of the FTAA.

19 In particular, clause 17 of Schedule 5 prescribes the criteria and other matters the Panel must consider when determining whether to grant approvals for resource consents under the FTAA. While Parts 2, 3, 6 and 8 to 10 of the RMA must be "taken into account" (with the greatest weight

[7] *Shirley Primary School v Christchurch City Council* ENC C136/98, 14 December 1998 at [105]-[106].

given to the purpose of the FTAA), clause 17(1)(b) **expressly excludes section 104D of the RMA from consideration by an FTAA panel.**

20 The effects of clause 17(1)(b) is that the decision-making criteria for noncomplying activities under s 104D of the RMA do not apply, meaning an applicant is not required to pass the section 104D gateway (i.e. to demonstrate that adverse effects are no more than minor or that the activity is consistent with relevant objectives and policies).[8]

21 It is for this reason that the applicant says that any analogy with an of out zone noncomplying activity being decided under the RMA is not helpful because an applicant under the FTAA seeking to undertake an out of zone activity on rural land which is contrary to objectives and policies does not face the jurisdictional hurdle of having to demonstrate its effects (including indirect effects on third parties) are minor.

22 The Court of Appeal's decision in *Glenpanel Development Ltd v Expert Consenting Panel (**Glenpanel**)* confirms where section 104D is expressly excluded from the decision-making framework (in that case the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**CRA**)) that exclusion is deliberate and significant.[9]

23 In *Glenpanel,* the Court observed that the CRA treated listed projects and referred projects differently. For listed projects, the statute expressly stated that s 104D "must not be applied."[10]

24 The Court held that this contrast is *"significant"*, confirming that Parliament made a conscious legislative choice to apply s 104D in one context but exclude it in the other.[11] The Court further held that where the CRA incorporates s 104D, it must be applied "without substantive modification."[12]

25 The FTAA contains a similarly explicit exclusion. Clause 17(1)(b) of Schedule 5 states that s 104D must not be "taken into account" in determining resource consent applications under the FTAA. The reasoning in *Glenpanel* therefore applies with equal (if not greater) force here.

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[8] This is consistent with the decision of the Expert Panel in Sunfield; see SUNFIELD [FTAA-2503-1039] EXPERT PANEL (10 February 2026).

[9] *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154.

[10] COVID-19 Recovery (Fast-track Consenting) Act 2020, Sch 6, cl 30,

[11] *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154 at [22].

[12] *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154 at [20].

26 The deliberate exclusion confirms that:

(a) Applicants under the FTAA do not need to satisfy the s 104D gateway;

(b) The Panel cannot require a demonstration that effects are “no more than minor”, nor assess whether the proposal is contrary to objectives and policies as a gateway to gaining consent; and

(c) The Panel must instead apply the statutory criteria in clause 17, while giving greatest weight to the purpose of the FTAA.

27 It is also noted that clauses 17(3) and (4) of Schedule 5 of the FTAA provide:

(a) 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

(b) 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.

28 Those subclauses must be read in conjunction with section 85(4) of the FTAA which provides that:[13]

> To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).

29 The combined effect of these provisions mean that the directive avoidance policies in planning instruments are to be taken into account in the manner outlined in clause 17(4) by:

(a) recognising that they would usually require applications to be declined on the basis of a "bottom line" approach;[14] ***but***

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[13] Fast-track Approvals Act 2024, s 85(4)

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

(b) do not require the Panel to decline an application.

30 In support of this interpretation, we note the findings of the Expert Panel for the *Wahi North* project:[15]

> [10] The decision-making criteria in the Schedules impose obligations that are never more stringent than to "take into account" the various matters specified. In the case of Schedule 5 (applying in relation to resource consents), Section 104D of the RMA is specifically disapplied and with it the s 104D(1)(b) requirement that non-complying activities "not be contrary to" planning instrument objectives and policies. […].
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> [11] Also material are:
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> (a) The heavy emphasis in the Schedules on the purpose of the Act;
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> (b) The way in which s 85(3)(b) is expressed; and
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> (c) The prohibition in s 85(4) from concluding that 85(3)(b) threshold has been met "solely on the basis" of inconsistency with a statutory provision or document that must be taken into account or considered.
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> [12] The differences just referred to include the following overlapping considerations:
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> (a) The s 85(3) test and the decision-making criteria in the Schedules require a weighing of incommensurables between what are claimed to be economic benefits on the one hand and, on the other, actual or potential adverse effects (perhaps environmental or cultural). Carrying out the weighing exercise is likely to involve something akin to the overall judgment approach that was rejected by the Supreme Court in *Environmental Defence Society v The New Zealand King Salmon Company Limited & Ors*.
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> (b) Associated with this, there are no "bottom lines" of the kind applied in King Salmon.
>
> (c) Planning objectives and policies do not play as critical a role in relation to resource consent applications (particularly for non-complying activities) as they would under the RMA.
>
> (d) Where the activities (or effects) are not consistent with provisions in the planning instruments, there is thus scope for greater focus on the

[15] THE WAIHI NORTH PROJECT [FTAA-2504-1046] EXPERT PANEL (18 December 2025) at pg 318.

significance of the effects in issue than would be permissible under the RMA.

31 This is also consistent with the approach taken by the respective decisions of the Expert Panel for the *Arataki*[16] and *Homestead Bay*[17] projects and in the draft decision of Expert Panel for the *Sunfield* project under the FTAA.[18]

APPLICATION OF THE FTAA FRAMEWORK

32 Even if section 104D were relevant (which it is not), and even if any effects on CIAL or Airways were to be determined by the Panel to be more than minor (which the evidence does not establish and the FTAA does not use the word " minor"), the assessment would still fall to be undertaken within the FTAA's statutory framework not the RMA.

33 It is again emphasised that the Applicant's aviation experts (**Mr McPherson**, **Mr Bermingham**, **Mr Hargreaves** and **Dr Shelley**) have each confirmed that the aviation safety and operational- effects- associated with the Project will be acceptable.[19] Their evidence establishes that any operational constraints (if any) on CIAL or Airways will not be significant and will not materially affect their existing or foreseeable operations.

34 Accordingly, even if s 104D were applicable (which it is not), there is no evidence before the Panel to suggest that the proposal would fail the s 104D(1)(a) gateway. The aviation safety and operational effects have been assessed by four experts, all of whom conclude that any effects on CIAL or Airways will be acceptable in the context of the FTAA.

35 In response to CIAL's and Airways' concerns about what is meant by "acceptable" effects, the Applicant's experts have used that term deliberately and appropriately within the FTAA's statutory context. "Acceptable" refers to effects that are acceptable for the purposes of granting the approvals sought. The use of this terminology aligns with the

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[16] THE ARATAKI EXPERT PANEL – FTAA-2506-1083 (24 January 2026) at [337]-[339].

[17] THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026) at [541].

[18] SUNFIELD [FTAA-2503-1039] EXPERT PANEL (10 February 2026) at [546].

[19] 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**; 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**; 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**; Supplementary statement of evidence of **Simon McPherson** dated 17 February 2026; Supplementary statement of evidence of **Geraint Bermingham** dated 23 February 2026; Supplementary statement of evidence of **Ben Hargreaves** dated 20 February 2026; Statement of evidence of **Dr Andrew Shelley** dated 23 February 2026.

language adopted by the other Expert Panels when assessing effects under the FTAA. For example, in *Arataki* the Panel found that:[20]

> The remaining effects on the environment, discussed below, have been appropriately assessed by the Applicant and, with the conditions imposed, can be adequately addressed, **will be acceptable**, and do not preclude or otherwise count against a grant of consent.

[**Our emphasis**]

36 As explained at paragraphs 18 to 31 above, the FTAA requires the Panel to give greatest weight to the purpose of the Act, including enabling significant regional benefits and facilitating timely, nationally and regionally important development.

37 Within that framework, any residual effects that cannot reasonably be internalised must be weighed against the substantial regional benefits of the Project, with appropriate conditions available to avoid, remedy, or mitigate any residual risk to an acceptable level. The FTAA does not mandate a "bottom line" refusal simply because more than minor effects may arise; rather, it requires a balanced assessment within its own statutory purpose.

38 As noted at above, this is consistent with the approaches taken by the Expert Panel's in the decisions and draft decisions on:

(a) ***Waihi North:***[21]

(i) The Expert Panel's approach to the statutory test is outlined at paragraph 30 above. In *Waihi North*, the primary factor that "weighed against granting" the approvals was the cultural deficit. The Panel found that the cultural deficit may result from the application and that this was a central consideration in its evaluative assessment.

(ii) The Panel also noted that, under s 85(3), what must be assessed is the significance of the adverse impacts, and that giving the "greatest weight" to the purpose of the FTAA does not preclude a conclusion that adverse impacts may be

[20] THE ARATAKI EXPERT PANEL – [FTAA-2506-1083] (24 January 2026) at [193].

[21] THE WAIHI NORTH PROJECT [FTAA-2504-1046] EXPERT PANEL (18 December 2025) at pg 318.

sufficiently significant to be "out of proportion" to the benefits. In this regard, the Panel concluded that:[22]

(A) "less mitigation of the cultural deficit than may have been achievable with more time and under different statutory processes is largely a function of the way the FTAA operates"; and

(B) the "cultural deficit is not 'out of proportion' to the regional and national benefits, in the sense envisaged by s 85(3), ie as outweighing the benefits."

(b) ***Arataki:***[23]

(i) In Arataki, the Expert Panel reaffirmed the Waihi North approach, emphasising that clause 17(1) directs the Panel to give the "greatest weight" to the FTAA's purpose. As the Panel stated:[24]

> It is important to record that clause 17(1) gives express direction to the Panel regarding the weighting to be applied to the various matters it must take into account when considering a consent application. The greatest weight must be given to the purpose of the FTAA so that, if the Application achieves that purpose, that matter will be determinative even in the face of Panel findings as to adverse impacts (assuming they are not sufficiently significant as to warrant a decline under section 85 FTAA) or inconsistency with national, regional or local policy direction. Even failure to achieve the purpose of the RMA would be insufficient, on its own, to displace the weight to be given to the purpose of the FTAA.

(ii) The Panel also confirmed that decision-making under the FTAA requires weighing effects against benefits. It noted that the test differs from the RMA post-King Salmon, which rejected an overall-judgment approach. Under the FTAA, by contrast, "the Panel must compare the significance of any adverse impacts against the regional or national benefits of the project", applying

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[22] THE WAIHI NORTH PROJECT [FTAA-2504-1046] EXPERT PANEL (18 December 2025) at pg 319-320.

[23] THE ARATAKI EXPERT PANEL – FTAA-2506-1083 (24 January 2026) at [337]-[339].

[24] THE ARATAKI EXPERT PANEL – FTAA-2506-1083 (24 January 2026) at [331].

the proportionality test in s 85.[25] The Panel concluded there were "no adverse impacts of such significance as to be out of proportion to the Project's regional benefits", and therefore no basis to decline the approvals.[26]

(c) ***Homestead Bay:***[27]

(i) *Homestead Bay*, is particularly instructive.[28] In that case, while the Expert Panel were required to consider submissions from NZ Transport Agency Waka Kotahi (**NZTA**) on transport effects, including concerns about corridor operation and safety, the Panel:[29]

> nevertheless concluded that, when weighed against the scale and relative certainty of the regional benefits identified above, and taking into account the conditions and agreed modifications imposed to avoid, remedy, mitigate, offset and compensate for adverse impacts, these adverse impacts do not justify declining approvals under s 81(3) of the FTAA.

(ii) The Panel reached this view despite recording in its decision that:

> NZTA's comments on the transport condition suite, including its submission that the potential impacts of the Homestead Bay development on the operation and safety of the SH6 southern corridor could be significant, and that additional controls are required to align development with delivery of a wider programme of corridor works. NZTA did not address the benefits assessment under s 81(4) or provide economic evidence directed to the "out of proportion" test; however, we have treated its comments as raising potentially material adverse impacts that must be weighed in our overall evaluative judgment under ss 81(3)–(4) and 85(3), alongside the regional benefits we have identified.

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[25] THE ARATAKI EXPERT PANEL – FTAA-2506-1083 (24 January 2026) at [337].

[26] THE ARATAKI EXPERT PANEL – FTAA-2506-1083 (24 January 2026) at [338]-[339].

[27] THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026) at [541].

[28] THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026) at [417]-[421].

[29] THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026) at [417].

(iii) The Panel was not persuaded the measures sought by NZTA were "necessary or proportionate to address effects attributable to this project, or that [they] would be workable in the fast-track context."[30] Instead, the Panel "addressed transport effects through a defined and proportionate package of Applicant-delivered upgrades and clear development staging triggers, together with coordination mechanisms."

(iv) Overall, the Panel found that, while NZTA's concerns formed part of the adverse effects assessment, after taking into account the conditions imposed and agreed modifications, "any remaining adverse transport impacts are not of a scale or character that are sufficiently significant to be out of proportion to the project's regional benefits for the purposes of s 81(3)(b)."[31]

(v) The Panel stated that this conclusion was "reached on the basis of the magnitude and management of effects, and not solely on the basis of consistency (or otherwise) with planning instruments or statutory documents."[32]

(d) ***Sunfield***:[33]

(i) *Sunfield* is also instructive as it addresses potential effects on Ardmore Airport and aircraft safety, specifically wind shear and turbulence, the potential for air discharges to generate turbulence, and effects arising from lighting and glare. The Panel, assisted by the evidence before it, concluded that these matters could be appropriately dealt with through conditions or addressed at the detailed design stage.[34]

NEW AND AMENDED CONDITIONS OF CONSENT

39 Notwithstanding the above, the Applicant recognises the Panel's concerns that:

(a) the Panel must be satisfied that the Applicant is not simply relying on actions by third parties (Airways, CIAL, or GCH) to ensure public

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[30] THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026) at [419].

[31] THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026) at [421].

[32] THE HOMESTEAD BAY [FTA-2506-1071] EXPERT PANEL (22 January 2026) at [420].

[33] SUNFIELD [FTAA-2503-1039] EXPERT PANEL (10 February 2026) at [546].

[34] SUNFIELD [FTAA-2503-1039] EXPERT PANEL (10 February 2026) at [331]-[361].

safety, given such parties cannot be bound by the Applicant's consent conditions; and

(b) there must be no credible risk that those third parties would bear significant indirect operational costs which are out of proportion to the projects benefits as a consequence of accommodating the proposed development including in complying with directions given by the CAA.

40 In response, the Applicant has carefully considered the Panel's concerns in preparing the amended proposal and updated condition set.

41 The updated condition set:

(a) addresses the DME-related matters raised by the Panel, with the Applicant having engaged Mr McPherson (Cyrrus) to assist in drafting the relevant technical conditions;[35]

(b) responds to the Panel's questions regarding a helicopter control area, including how helicopter operations will be managed to ensure aviation safety and to avoid displacement or cost externalisation for third-party operators; and

(c) ensures that any effects identified through further assessment that can reasonably and lawfully be internalised by the Applicant are managed by the Applicant's own obligations under the consent conditions

42 The proposed conditions have been drafted to be clear, certain, and enforceable, and to operate independently of actions by third parties. They are designed to ensure that:

(a) the development does not give rise to unacceptable interference with DME performance or instrument flight procedures;

(b) pre-construction certification and commissioning verifications occur before critical thresholds are reached; and

(c) management responses are available should monitoring identify any unanticipated adverse effect.

[35] Statement of evidence of **Mr McPherson** dated 5 March 2026.

43 Further detail regarding these conditions is set out in **Mr Phillips'** supplementary statement and in Appendix 1 to his evidence (showing the new or amended text).

44 While the Applicant maintains that such conditions are not required on the evidence, they have been offered on an "overly precautionary" basis to provide the Panel with additional assurance that aviation safety effects are internalised as far as practicable and lawful and appropriately managed and are therefore appropriate and acceptable in terms of the FTAA.[36]

45 In particular, the conditions are intended to give the Panel confidence that, any potential effects on aviation operations will be subject to further technical assessment and a clear pathway for mitigation action by the applicant.

46 To the extent that the new proffered conditions impose additional constraints on the Applicant's activities within the Project area, we rely on paragraphs 172 to 208 of the Applicant's legal submissions dated 23 February 2026 and the evidence of **Ms Maggie Hong (PhD) and Mr Greg Akehurst**.[37] In particular, the sensitivity analysis demonstrates that even a reduction in development capacity of approximately 40 per cent would still deliver significant regional benefits. There is nothing to suggest that the new proffered conditions that apply only to potentially affected lots come close to altering the overall balance under the s 85 proportionality assessment.

CONCLUSION

47 For the reasons outlined above, it is submitted that:

(a) Comparison with a non-complying activity being decided under RMA is not appropriate under the FTAA because of the express exclusion of s 104D; and

(b) Even under RMA, internalisation of effects is a matter of reasonable internalisation and robust conditions, not absolute elimination of all effects; and

(c) the Panel's task is governed by clause 17 of Schedule 5 to the FTAA, giving greatest weight to the purpose of the FTAA; and

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[36] Statement of evidence of **Dr Andrew Shelley** dated 23 February 2026.

[37] Statement of evidence of **Ms Hong (PhD) and Mr Akehurst** dated 20 February 202.

(d) the updated and technically supported condition set properly addresses aviation safety as required by the FTAA.

Dated this 9th day of March 2026

J M Appleyard / M E Davidson