

BEFORE THE EXPERT PANEL

FTAA-2504-1054

Under the 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

JOINT MEMORANDUM OF COUNSEL FOR CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED AND AIRWAYS CORPORATION OF NEW ZEALAND AS TO DRAFT CONDITIONS OF CONSENT

Dated 2 April 2026

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MAY IT PLEASE THE PANEL

- 1 This joint memorandum is filed on behalf of Christchurch International Airport Limited (**CIAL**) Airways Corporation of New Zealand (**Airways**) in respect of Fast-Track Approvals Application FTAA-2504-1054, being the Ryans Road Industrial Development project (**Application**). Carter Group Limited is the **Applicant**.
- 2 This Memorandum responds to Minute 16 and the Panel's invitation to provide comments on the draft conditions of consent. In accordance with that invitation, CIAL and Airways do *not* comment on the draft decision except to say that CIAL and Airways do not endorse the draft decision to grant the approvals sought and have significant concerns the draft decision contains material errors of law.
- 3 CIAL and Airways maintain their position the aviation safety issues raised by this Application go to the acceptability of enabling development on this site at all, not merely to implementation detail. Therefore, nothing in this Memorandum should be taken as acceptance by CIAL and Airways that:
 - (a) The grant of the approvals sought is appropriate; or
 - (b) The draft conditions – particularly those relating to aviation safety - are lawful, appropriate, certain, or capable of curing the underlying deficiencies in the Application.
- 4 Notwithstanding that position and to assist the Panel in making the final decision, CIAL and Airways have sought to improve relevant draft conditions as much as possible. However, there are inherent limits to that exercise. Even with improvement:
 - (a) Some of the aviation safety conditions cannot be made lawful without also being inadequate; and
 - (b) As explained in CIAL's and Airways' previous comments, CIAL and Airways cannot responsibly condone the aviation safety conditions as adequate because the information required to properly assess aviation safety effects is not available and that is a fundamental exercise that should have been done upfront to determine whether approvals should even be granted in the first place, not at the back-end through conditions.
- 5 While maintaining the position they have consistently expressed since September 2025, CIAL's and Airways' comments and proposed amendments aim to bring the draft conditions closer to meeting relevant legal requirements and ensuring an

acceptable environmental outcome. The comments and proposed amendments are shown on the table **attached** to this Memorandum at **Appendix A**, CIAL's and Airways' proposed condition for a comprehensive aeronautical study is **attached** at **Appendix B**.

- 6 In respect of the draft conditions that Airways and CIAL have provided comment on, these have been provided with input from Mr Robert Grimm, Mr Ford Robertson and Mr John Kyle – each of whom have specialist knowledge and expertise as set out in their statements of evidence dated 12 March 2026, Mr Mike Weir (CIAL - Wildlife Manager), Mr Andrew Metherell (Stantec - Traffic Engineer), and Mr Jesse Aimer (CIAL - Senior Environment and Planning Advisor) also provided input to the comments.
- 7 The remainder of this Memorandum focuses on the suite of conditions referred to as the “aviation safety conditions”.¹

The requirements for a lawful condition under the FTAA

- 8 The FTAA does not relax the ordinary lawfulness requirements for resource consent conditions. A condition that would be unlawful under the RMA remains unlawful here, with the RMA requirements applying (via clause 18 of Schedule 5) alongside section 83 of the FTAA. Section 83 does not affect CIAL’s and Airways’ comments on the draft conditions.²
- 9 However, CIAL and Airways disagree that all of the conditions proposed would withstand scrutiny under the RMA. They therefore submit a number of relevant conditions are unlawful under the FTAA, including because they are:
 - (a) Uncertain as to outcome;
 - (b) Unclear as to what is being required;
 - (c) Unenforceable as a result of uncertainty and lack of clarity;
 - (d) Even where they are (or could be) clear and certain, they are inadequate for managing effects to the extent necessary; and
 - (e) Most fundamentally, the “aviation safety conditions” defer and unlawfully delegate the core evaluative question of whether this development is safe

¹ For the purposes of this memo, these are draft Conditions 6, 7B, 21C, 21 D and 21E of the CCC land use consent. CIAL comments on numerous other draft conditions in the attached table which are in some way relevant to CIAL and its safe operations.

² CIAL’s Memorandum of counsel dated 23 February, at [34] – [40] makes submission on the legal principles relevant to it and Airways’ comments on the draft conditions.

enough and/or internalises its adverse impacts enough, to a later process(es).

Refinement of the aviation safety draft conditions

- 10 CIAL and Airways acknowledge the Panel has made some changes to the Applicant's suggested conditions - in particular, draft Land Use conditions 6, 7B, 21C, 21D and 21E - ostensibly in an attempt to address issues of lawfulness. Paragraph [70] of the draft decision provides some insight into the Panel's rationale in this regard.
- 11 With respect, the refinements made do not cure the problems of unlawful delegation, lack of certainty, lack of clarity, and unenforceability. The changes might go some way to refining the machinery of deferral; but they do not remove the core difficulty of deferral itself. If anything, they emphasise the information gaps which, in CIAL's and Airways' submission, are why this proposal cannot be approved.
- 12 As an overarching comment, draft Land Use conditions 6, 7, 21C and 21D require "aviation risk" and "technical safeguarding" assessments in circumstances where:
 - (a) It is unclear what the scope of those assessments are and whether they are the same thing;
 - (b) Construction could commence before those assessments have even been completed – by that point, it is simply too late;
 - (c) The roles of CIAL and Airways are limited to providing feedback, the incorporation and implementation of which is for the Applicant to decide – or perhaps³ a person accredited to make decisions under the Resource Management Act 1991.
- 13 CIAL and Airways consider there should be one all-encompassing, clearly scoped requirement for an aeronautical study. The scope of which should be agreed with Airways and CIAL at the outset and well before any construction commences.

³ For reasons explained later in this Memorandum, it is unclear whether draft condition 21E is intended to give this person a role in determining the scope of a "safety assessment" and the adequacy of it in identifying risks and stipulating mitigation measures; as well as decide what is to happen if an effect cannot be avoided or adequately mitigation (after first determining what level of mitigation is "adequate").

Land use draft conditions 6 and 7B

- 14 Draft Condition 6 is expressly qualified by later assessments. As drafted, lots 121 and 122 may depart from presently stated façade orientation and related controls if a later “technical safeguarding assessment” confirms the effects on air navigation equipment are of an “acceptable standard”. Likewise, the lot-specific controls for lots 121 and 122 are stated to apply “[u]nless specified otherwise” as a result of an assessment undertaken under condition 21D. In short, important built-form controls are provisional rather than final and the conditions only require "consultation" with Airways and CIAL - despite Airways and CIAL being potentially the most adversely affected by the proposal and despite these entities having specialist knowledge and expertise, their feedback can be wholly disregarded.
- 15 This leaves open, post-approval, the question of what built form is in fact acceptable on some of the lots most sensitive from an aviation perspective. CIAL’s and Airways’ earlier point was that aviation safety is a foundational issue, not a matter that can lawfully be resolved retrospectively by consent wording or later technical work. That point remains valid.
- 16 Under draft Condition 6 it is uncertain what the ultimate built form outcome might be, including because it is uncertain as to:
 - (a) When something different might be able to be constructed as a result of the words “unless specified otherwise”;
 - (b) What a “technical safeguarding assessment” is – including what matters it must address, what information must be taken into account, what it must “do” with the feedback from consultation;
 - (c) What effects would be “acceptable”;
 - (d) What the words “having regard to the findings of the Cyrrus Limited report...” mean and require;
 - (e) What the decision-maker (who could have no specialist knowledge of aviation safety matters) under Condition 21E might decide.
- 17 Draft Condition 7B suffers from the same flaws. In addition (and for the reasons more fully explained in the attached table), it:
 - (a) Attempts to enable outcomes that would otherwise be prohibited under Rule 6.7.4.1.6 of the District Plan which is entirely unlawful;

- (b) Impermissibly fetters the operation of section 176(1)(b) of the RMA and the requirement to obtain written approval from CIAL (as the requiring authority) where any action might prevent or hinder the Airport's operations; and
- (c) Introduce a dispute resolution process that is inconsistent with CIAL's statutory role as requiring authority and fundamentally leaves matters of disagreement to be determined by an independent person with no guarantee they have any knowledge or expertise in aviation safety matters.

Condition 21C

- 18 As a general comment, draft condition 21C serves to illustrate the problem identified by CIAL and Airways in their comments on the proposal – that being, the Panel has insufficient information before it to determine:
 - (a) Whether this development is appropriate from a safety perspective; and
 - (b) What burden it might place on its neighbours (particularly, CIAL and Airways).
- 19 Draft Condition 21C seeks to fill the information gap, but only after consent is granted. This is inappropriate. It should be the Panel, not the Applicant and not an accredited person under s39A of the RMA, evaluating what the potentially adverse impacts of the Proposal are and whether they are able to be adequately avoided or internalised. And it should be done now, before consent is granted.
- 20 The timing of the “aviation risk assessment” required by Condition 21C is not linked to development. Building could, conceivably, occur prior to completion of the assessment. This would be an inefficient use of all parties’ resources and has the potential to create unknown and unmitigated hazards. As noted in the attached table, the consent holder should be obliged to complete the assessment prior to s224(c) certification to ensure a holistic assessment is undertaken by the consent holder and prior to any building activity being undertaken.
- 21 Condition 21C requires the consent holder to invite the Civil Aviation Authority (**CAA**) to contribute to defining the scope of the assessment. With respect:
 - (a) The scope of the assessment ought to be made clear in the condition;

- (b) The Panel cannot be certain the CAA would be willing and able to participate in defining the scope of this assessment, given this is not part of their statutorily defined role;
 - (c) The scope should be developed in collaboration with and with involvement of all relevant aviation system participants and at the least, CIAL and Airways;
 - (d) 15 working-days for parties to respond is too short. The timeframe for initial written comments needs to at least double and the Applicant should be required to meet with contributing parties on as many occasions as they request;
 - (e) The conditions should require endorsement and approval of the scope from, at least, CIAL and Airways.
- 22 The purpose should be to:
- (a) Identify all potential aviation safety effects on Airways and CIAL's infrastructure (not just those “not already addressed by conditions”; because this introduces a layer of uncertainty and complexity which, in turn, introduces potential for unnecessary dispute); and
 - (b) Identify how those effects can be avoided and confirmation provided that no activities undertaken in accordance with this consent will cause any interference with Airways or CIAL's infrastructure and/or operations – not just what is “practicable” for the Consent Holder.
- 23 The condition establishes a regime where the consent holder can disregard any or all feedback from CIAL and Airways . In addition, the condition only requires the consent holder to implement mitigation measures:
- (a) Within its control; and
 - (b) That it chooses to include in the assessment.
- 24 The condition does not advise what is to happen if:
- (a) There are mitigation measures required that cannot be provided by the consent holder; and/or

- (b) There are mitigation measures required that the consent holder does not want to provide (for example, the consent holder does not consider them “practicable”); and/or
 - (c) There are potential adverse effects that cannot be adequately mitigated or avoided; and/or
 - (d) CIAL or Airways disagree with the findings of the assessment in terms of both the:
 - (i) Identification of potential aviation safety effects; and/or
 - (ii) Identification of the measures needed to avoid or ameliorate those effects so there is no adverse impact on safety or operations.
- 25 The Advice Note is not an operative part of the conditions and does nothing to assist with the uncertainties and frailties discussed above. Further, it begs the question – who is to decide whether the intent has been fulfilled; how are they to decide that and what are they able to do about it, if they consider it is not?

Condition 21D

- 26 As a general observation, the relationship between draft conditions 21C and 21D is unclear. The allotments discussed in 21D are a subset of those covered by the requirements of 21C. Why there might be different requirements and drafting in the two conditions is unclear. It is also not apparent why two different conditions are needed. As set out above, CIAL and Airways consider there should be one comprehensive aeronautical study undertaken.
- 27 In many ways the remarks made above apply equally to condition 21D and are not repeated. The drafting is slightly different in parts but the core deficiencies remain:
- (a) The scope is to be prepared in consultation with CIAL and Airways but there is no clarity as to what will happen if the parties cannot agree to scope or the work needed to fulfil that scope;
 - (b) The draft condition adopts a lot-by-lot approach that is not supported by the evidence and incorrectly assumes, as a starting point, that development on the identified lots is appropriate. Aviation safety effects, including effects on navigation equipment, helicopter operations (such as downwash and emergency manoeuvring), and cumulative or clustering effects, are not confined to those individual lots and cannot be reliably assessed in isolation.

These effects must be assessed across the site as a whole, prior to any development occurring.

- (c) There is an obligation to obtain feedback on the draft assessment but no obligation to incorporate or implement it. This provides CIAL and Airways no certainty of outcome;
- (d) The consent holder gets to choose the mitigation measures it has to implement (through having ultimate control of the assessment) and only has to implement those it is legally able to. The same questions arise about:
 - (i) What if mitigation measures are required that cannot be carried out by the consent holder; and
 - (ii) What if some effects cannot be mitigated at all?

Condition 21E

- 28 Draft condition 21E is incoherent and unclear in its scope, intent and application. Firstly, this draft condition does not apply to Condition 21C. It is unclear why not because, in CIAL's and Airways' submission, it should (if it remains at all).
- 29 It is also unclear what the words *disagreement as to the satisfaction of* mean. Is the draft condition meant to resolve disputes as to whether the necessary exchange of documents/feedback has occurred? Or is it meant to resolve disputes about:
 - (a) The scope of the safety/safeguarding assessments;
 - (b) What work needs to be undertaken;
 - (c) Who should be consulted;
 - (d) What the potential adverse effects are;
 - (e) How those potential adverse effects can be avoided/internalised/adequately mitigated.
- 30 It is not certain what expertise the independent person will have. It is not certain what process these disputes would be resolved by. The only firm procedural stipulation is for that person to provide a "written opinion" – the scope of that opinion is unclear and the Council is only required to have "regard" to that opinion.

31 There is no guarantee the parties will be heard in respect of the disagreement and not even an indication that this is possible. It may be the most appropriate course is to allow parties to be heard so their opinions and concerns are understood and tested. It is unclear as to what happens after the opinion is provided and how the issues in dispute will be resolved. From Airways and CIAL's perspectives, the process is wholly unclear and inadequate for an issue of such gravitas and potential impact.

Misplaced reliance on CAA

32 The draft conditions evidence an expectation on the CAA to “take care” of aviation safety. CIAL and Airways submit this expectation is misplaced and creates a risk of false assurance.

33 The Civil Aviation Authority’s statutory function is to promote aviation safety through the setting and enforcement of technical and operational standards under the Civil Aviation Act 2023 and the Civil Aviation Rules.⁴ It is not a land use decision-maker and does not undertake the comprehensive effects-based assessment required under the RMA or the FTAA. While the CAA has functions in relation to airspace protection (including under Part 77), those functions are limited and do not extend to determining or validating whether a proposed development is appropriate in land use planning terms or whether its broader effects on airport operations and infrastructure are acceptable.

34 The CAA regulates *participants* (which includes CIAL and Airways as certificate holders under their respective Civil Aviation Rules Parts),⁵ not land use. Part 77 is not the panacea. Under Part 77, CAA is notified of some structures (depending whether they meet the prescribed criteria) but it does not assess cumulative development, the implications of operational constraints on participants or broader CNS effects in a land use sense.⁶

35 If a safety risk was drawn to CAA’s attention, it is CIAL and/or Airways who will be affected.⁷ They will be required to make changes that avoid the risk materialising. This could come at material cost to those entities, despite the creation of risk being entirely beyond their (or CAA’s) control.

⁴ Civil Aviation Act 2023, section 22 and 23(a) and (b).

⁵ Civil Aviation Act 2023, sections 23(l).

⁶ Civil Aviation Rules 2025, Part 77.5-15 and Appendix A.

⁷ Evidence of Mr Grimm, 12 March 2026 at [5.4].

Ownership and timing

- 36 Appendix 1 of the Application includes a letter from the Applicant's representative, confirming the development is intended to be sold to numerous parties, particularly smaller businesses looking for an owner/occupier arrangement. This compounds the concerns CIAL and Airways have with the draft conditions and makes the timing of safety assessments vis a vis the sale of allotments and/or construction of buildings, all the more important.
- 37 The proposal will enable a fragmented pattern of development by multiple parties over time. The draft conditions seem to assume a coherent and coordinated process of assessment and mitigation. In reality, aviation effects — including effects on CNS systems, lighting, and bird hazard — are cumulative and interdependent. They cannot be appropriately assessed or managed on a site-by-site basis.
- 38 Unless aviation safety effects are addressed by the consent holder before any subdivision and development occur, no mechanism will exist to assess or control cumulative effects and no one property owner will be able to manage safety outcomes. This reality belies the various comments of Airways and CIAL to the effect all assessments and mitigation measures have to be known before the land can be subdivided or developed.

Conclusion

- 39 Consistent with their earlier memoranda and evidence in relation to this Application, between them CIAL and Airways are concerned with a range of adverse effects arising from the proximity of industrial development to the Airport, including effects on communication, navigation and surveillance systems, lighting effects that may distract or confuse pilots, bird strike risk, and physical and operational interference with aircraft movements. These effects are safety-critical, may arise cumulatively across the site and have the potential to constrain both current and future operations. Where not avoided, they will manifest either as direct safety risks or as operational and capital costs to CIAL and Airways, including the need to modify infrastructure or alter operations to maintain safe aviation outcomes.
- 40 In the end, the difficulty for CIAL and Airways is not one of drafting. It is that the draft conditions are being asked to do work they are not capable of doing. They attempt to regulate effects that have not yet been properly identified, assessed or

understood, and in doing so defer the central question of whether the development can safely occur in this location at all.

- 41 That question cannot be answered through conditions. It requires a coherent, upfront assessment of aviation safety effects — including their cumulative and operational implications — so the Panel can be satisfied the development is acceptable before consent is granted. In the absence of that assessment, the remaining uncertainty cannot be cured by further refinement. It follows that, despite Airways and CIAL's efforts to assist, it is not possible to formulate a suite of conditions that would both meet legal requirements and adequately address the aviation safety risks arising from the proposal, unless the Applicant agrees to not proceeding until CIAL and Airways have approved the scope, adequacy and mitigation outcomes of aeronautical study.

DATED this 2nd day of April 2026



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