

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

FTAA-2504-1054

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

AND

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

**JOINT MEMORANDUM OF COUNSEL ON BEHALF OF AIRWAYS CORPORATION
OF NEW ZEALAND AND CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED**

2 MARCH 2026

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MAY IT PLEASE THE PANEL:**Summary**

1. This joint memorandum is filed on behalf of Airways Corporation of New Zealand ("**Airways**") and Christchurch International Airport Limited ("**CIAL**") (together, the "**Parties**") in respect of the further information package provided by CGL on 23 February 2026 in response to the Panel's Minute 9 (dated 2 February 2026) ("**CGL Package**").
2. The CGL Package is extensive and includes legal submissions which are over 80 pages and seven new statements of evidence (which together run over hundreds of pages) relating to the aviation safety impacts of the Application. Airways and CIAL have serious concerns with the CGL Package, including that:
 - (a) the evidence is untested and contains material errors;
 - (b) neither CIAL or Airways have had an opportunity to respond to the evidence, yet there is plenty they wish to respond to and comment on; and
 - (c) the legal submissions misapply the legal tests under the FTAA.
3. For the reasons set out in this joint memorandum, Airways and CIAL respectfully seek that the Panel urgently sets down an urgent procedural conference to determine next steps.

Fundamental issues within the CGL Package

4. Counsel acknowledge the directions in Minute 9 enabled CGL to provide a "response to substantive matters regarding air safety / airport operation raised by CIAL and Airways should it wish to do so".¹
5. However, in our submission, the CGL Package goes *well* beyond what an applicant would be expected to file at this very late stage of the Application process. Filing such an extensive package of information without affording Airways and CIAL a proper opportunity to comment on it not only raises natural justice issues, but creates a material risk the Panel will make a decision based on erroneous information and/or incomplete information. Given the gravity of the impacts under consideration – public safety and costs to nationally

¹ Minute 9 of the Expert Panel dated 2 February 2026 at [21] and [22].

significant infrastructure – proceeding with inadequate information and an incoherent evidential basis would be inappropriate.

6. To date, CGL has failed to engage directly with Airways and CIAL on the aviation safety matters raised throughout the Application process. Instead, CGL has now filed a further significant volume of new information (again without consulting with Airways or CIAL) at the eleventh hour in an effort to convince the Panel that the "impacts" of the Application relating to aviation safety do not outweigh the benefits of the Application.
7. Given the sheer volume of information within the CGL Package, Airways and CIAL are still in the process of undertaking a detailed review of the information. Based on the Parties' review to date, and given we understand the Panel's decision is due on 8 April 2026,² counsel consider it is important to bring to the Panel's attention several fundamental concerns with the CGL Package:
 - (a) Airways and CIAL consider there are a number of significant and material errors and inconsistencies in the statements of evidence provided in the CGL Package which are being considered urgently by their internal technical teams.
 - (b) CGL's legal submissions focus heavily on the weight given to evidence under the Resource Management Act 1991 ("**RMA**"), submitting that assertions of significant adverse effects must be supported by expert evidence before a decision maker places any material weight on them.³ In CGL's submission, this principle should apply to the Panel's consideration of aviation safety effects of the Application and CGL must base its findings on the evidence produced by its independent experts not the "apprehensions or assumptions" advanced in the Airways and CIAL submissions without expert evidential foundation.⁴ With respect, counsel disagree with this submission, including for the critical reasons that:
 - (i) This process is nothing like that prescribed by the RMA – for example, there is not an orderly evidence exchange timetable set in place at the commencement of the decision-making process, a hearing has not been held and there has not been the opportunity to test evidence through

² Under ss 69 and 70 of the FTAA, the Panel is required to issue the draft decision / conditions to be prior to the final decision.

³ Legal Submissions on behalf of CGL, 23 February 2026 at [18].

⁴ Legal Submissions on behalf of CGL, 23 February 2026 at [18] and [29].

questions from the Panel and/or cross-examination like in the RMA process. Therefore, the "weight" to be given to any independent expert evidence produced by CGL needs to be considered in light of the different context and process of the FTAA.

- (ii) Airways and CIAL reacted promptly to the significant volume of technical material filed in November 2025, in compliance with the Panel's directions. They have now received a further and more extensive tranche of evidence, without procedural guidance as to how it is to be addressed. It is not appropriate for the value of their contributions to be questioned when CGL has chosen to introduce substantial new material at a stage when meaningful response is constrained by the FTAA timetable.
 - (iii) Airways and CIAL comments are not apprehensions or assumptions. Airways and CIAL have internal technical and operational expertise in matters of aviation safety that relate to their regulatory responsibilities. The comments provided to the Panel (including the substantial responses by both parties to CGL's safeguarding assessments on 18 December 2025) have been prepared with significant input from internal experts.
- (c) CGL submits that any remaining safety aviation concerns are to be determined by the regime under the Civil Aviation Act 2023 ("**CAA**"), and that process would follow the RMA (or in this case, FTAA) process.⁵ Airways and CIAL disagree and are concerned this risks the Panel taking into account irrelevant matters in making a decision on the Application. The CAA process would not require CGL to address aviation safety effects as a result of the Application being granted (which are adverse impacts for the purposes of the FTAA that must be addressed as part of the Application). The onus would fall to Airways and/or CIAL to reduce or change their operations to minimise potential impacts on aviation operations. This would be entirely inappropriate, and Airways and CIAL have fundamental concerns with CGL's attempt to side-step the need to address fundamental aviation safety effects in this way.

- (d) The FTAA is a front-loaded regime. It assumes applications are supported by the necessary technical material at lodgement, so that the Panel's confined statutory timeframe can be used to test that material — not to generate it. The filing of extensive new aviation evidence at this late stage, without meaningful opportunity for response, is inconsistent with that statutory design and risks leaving the Panel to determine the application on an inadequately scrutinised evidential record.
- (e) The CGL Package misapplies the test under section 85(3) of the FTAA that adverse impacts are sufficiently out of proportion to the Application's proposed benefits by relying on the further economic evidence and monetary costs.⁶ Section 85(3) imports an obligation that goes much further than just a fiscal assessment and the new economic evidence introduced by CGL fails to mention the significant risks to the lives of passengers and communities if the navigation equipment is compromised by the proposal and / or the risk of flight operations needing to cease.⁷ All adverse impacts must be assessed by the Panel in its assessment under section 85(3) of the FTAA, including the safety impacts which are yet to be determined by appropriate aviation safety assessments.
- (f) The immediate contest and area of expert dispute is mischaracterised by the Applicant – CIAL and Airways respectfully submit this Application is not even at the point of expert dispute as to what safety effects might arise or how they might be addressed. CIAL and Airways submit the Panel have an even more fundamental and primary problem – inadequate information to determine what the potential safety risks are and how they might be addressed (including at what cost). CIAL and Airways have consistently maintained the Panel is not armed with the information it needs to determine effects on safety and they submit that remains the position now. Inadequate information to determine the scale of adverse impacts, may itself constitute an adverse impact under section 85(5) and, if sufficiently weighty, justify decline under section 85(3). The FTAA does not require the Panel to proceed in the face of evidential deficiency; it accommodates refusal where the information gap prevents a proper proportionality assessment.

⁶ Legal Submissions on behalf of CGL, 23 February 2026 at [194].

⁷ As outlined in the Memorandum of Counsel on behalf of Airways, 23 February 2026 at [22].

- (g) The CGL evidence includes hearsay evidence in relation to a conversation that CGL says occurred between CGL and Mr Nick Jackson from the Civil Aviation Authority.⁸ CGL has failed to produce any affidavit from Mr Jackson to verify these conclusions nor is it clear from the evidence what questions were asked of the Civil Aviation Authority representative. As unverified and unsubstantiated statements, this evidence should not be relied on and is irrelevant to the Panel's decision.

Direction sought

8. Airways and CIAL respectfully consider that they should be afforded an opportunity to respond in writing to the critical issues within the CGL Package, including those outlined at a high level in paragraph 7 above. Affording Airways and CIAL the opportunity to respond to the CGL Package is necessary in the interests of natural justice and to ensure the Panel's decision does not include material errors of law.
9. However, in the interests of efficiency Airways and CIAL respectfully seek that the Panel urgently sets down an urgent procedural conference to determine next steps.

DATED 2 March 2026



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⁸ Supplementary Statement of Evidence of Mr Phillips, 23 February 2026 at [8] to [37].