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## MINUTE 9 OF THE EXPERT PANEL

Suspension of Application under section 64 FTAA, engagement of legal advisor  
and request for further information

Ryans Road Industrial Area [FTAA-2504-1054]

(2 February 2026)

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- [1] This Minute addresses:
- (a) Responses received to Minute 7 of the Expert Panel (Panel);
  - (b) Decision on Applicant's request to suspend the application;
  - (c) Engagement of legal advisor to assist the Panel; and
  - (d) Request for further information.

### Responses received to Minute 7

[2] Minute 7 recorded that Airways and CIAL have significant concerns regarding the adequacy of consultation by the Applicant, and the sufficiency of the Applicant's safeguarding assessment. The Minute noted that these matters raise questions about the most appropriate way to progress this Application, and directed the Applicant is to provide its proposed approach, followed by Airways and CIAL providing their responses to that proposal.

[3] The Panel has received the following responses to Minute 7:

- (a) Memorandum for the Applicant dated 19 January 2026 (Applicant memorandum);

(b) Memorandum for CIAL dated 26 January 2026 (CIAL memorandum) and memorandum for Airways dated 28 January 2026 (Airways memorandum) in response to the Applicant memorandum; and

(c) Memorandum from the Applicant dated 30 January 2026 in reply to the CIAL memorandum and Airways memorandum (Applicant further memorandum).

### **Applicant's suggested next step and CIAL and Airways response**

[4] The Applicant memorandum suggested the next step is for "... informal technical discussions [to] occur in relation to the draft conditions between the Applicant's aeronautical experts (with planning input on any drafting), together with such representatives from CIAL and Airways who are best able to speak to the technical aeronautical matters raised in their respective Further Comments".<sup>1</sup>

[5] In support of this approach, the Applicant memorandum includes a proposed timetable for the above-mentioned technical discussions, filing of a Reporting Memorandum summarising the outcome of those discussions and filing of a memorandum by the Applicant advising on how any refinements to the Proposal and/or any remaining concerns regarding aviation safety should be addressed within the framework of the FTAA.<sup>2</sup>

[6] CIAL and Airways record their respective objections to Applicant's proposed approach. In particular, CIAL states that<sup>3</sup> "[t]he Applicant's proposed procedural steps cannot address the fundamental concerns identified by CIAL because:

(a) The steps proposed cannot transform a series of discrete safeguarding assessments into the aeronautical study required. The deficiency is not one of form, timing or sequencing, but of substance;

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<sup>1</sup> Memorandum for the applicant responding to Minute 7 dated 19 January 2026 at [10].

<sup>2</sup> Supra at [13]

<sup>3</sup> Memorandum for CIAL dated 26 January 2026 at [10]

(b) Even if the Applicant's proposed process were followed, the Panel would still lack a complete and reliable evidential basis on which to decide whether the proposal can be safely accommodated at all; and

(c) As noted in CIAL's earlier memorandum, CIAL cannot responsibly or constructively engage in discussions about conditions in the absence of an appropriately comprehensive aeronautical study."

[7] Airways states that:<sup>4</sup> "CGL's proposed approach fundamentally fails to take into account Airways (and CIAL's) detailed comments on 18 December 2025. Airways made it abundantly clear in its comments to the Panel that it is not possible to engage on conditions until further work is done by CGL in collaboration with Airways to demonstrate how the Application can proceed without compromising the safety, regularity or resilience of aviation services."

[8] In response, the Applicant accepts that it is now clear from the CIAL and Airways responses that the further technical discussions proposed by the Applicant will not occur.<sup>5</sup>

[9] In light of CIAL and Airways' positions, the Applicant now proposes to file a complete final package of:<sup>6</sup>

- (a) conditions;
- (b) expert commentary that the conditions are appropriate; and
- (c) legal submissions explaining how the application should be assessed in the framework of the FTAA.

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<sup>4</sup> Memorandum for Airways dated 28 January 2026 at [8]

<sup>5</sup> Memorandum from the applicant dated 30 January 2026 at [3]

<sup>6</sup> Supra at [4]

[10] Further, to enable the Applicant to prepare that package, the Applicant requests that the processing of the application be suspended pursuant to section 64 FTAA.<sup>7</sup>

[11] The Applicant anticipates that it will be in a position to file its final package by 16 February 2026 and at which time, it will ask for processing to resume. The Applicant's position is that the final package will provide the Panel sufficient information to issue its draft decision and conditions.<sup>8</sup>

### **Decision on Applicant's request to suspend the Application**

[12] Panels have a discretion whether to grant or decline a request to suspend processing of an application (s.64 FTAA). It is important that this discretion is carefully exercised and for the Panel to consider the implications of any suspension that might be granted. Once processing resumes, the Panel cannot amend the timeframe for a decision. Depending on the length of time an application is suspended, members of the Panel may be unavailable or, potentially, the balance of the time frame may not be sufficient to:

- (a) process further information or reports filed by an applicant; or
- (b) seek information or reports from participants in response (s 67 FTAA).

[13] For this reason, the Panel has given consideration to the following matters when considering the Applicant's request for suspension:

- (a) Whether all tasks and workstreams that comprise "processing" need to be suspended;
- (b) Whether there are previously scheduled tasks or procedural steps that should be permitted to proceed regardless of a suspension that the

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<sup>7</sup> Supra at [5]

<sup>8</sup> Supra at [5]

Panel may be minded to grant, or that might be allowed to proceed prior to a suspension taking effect;

(c) What the cost recovery implications are of permitting some processing tasks or steps to proceed during a suspension;

(d) Whether the Panel wishes to continue with its evaluation or decision-making work during a suspension; and

(e) Whether the EPA administration staff are able to continue supporting the Panel with administrative tasks that do not constitute "processing" during the suspension.

[14] Further, the Panel considers that "processing" is not an exhaustive definition and may include the work of the Panel, Special Advisors, and other agencies in performing or exercising their functions, duties, or powers and who may recover costs through the EPA pursuant to s 104 FTAA.

[15] The Panel notes that:

(a) The timeframes specified in the FTAA are challenging and that there is limited time available to the Panel to complete a draft decision and issue its final decision by 16 March 2026, being the current due date that resulted from the previous suspension of processing requested by the Applicant and granted by the Panel.

(b) In order to accommodate Panel member's pre-existing commitments, the Panel (via the EPA) suggested that the period of the proposed suspension be increased by an additional week to 23 February 2026. We record that the Applicant has agreed to this.

(c) The period of the proposed suspension remains relatively short (3 weeks) and will not cause undue or any significant delay in determination of the proposal.

(d) The Panel considers that continuation of the following work should occur during the suspension period:

i Decision writing by the Panel regarding matters unrelated to air safety issues, including any administrative work by EPA staff required to assist the Panel with this work;

ii Work on advice regarding new National Directions requested by the Panel in Minute 8; and

iii Work on advice regarding the precautionary principle to be requested by the Panel (see below).

(e) The Panel (via the EPA) has enquired whether the Applicant is agreeable to continuation of the work noted above during the suspension period. We record that the Applicant has agreed to this.

(f) The ‘final package’ of material proposed by the Applicant together with the work noted above would assist the Panel in its evaluation of the proposal and assist us in providing a more informed decision.

(g) We consider that suspending the Application until 23 February on the basis set out above would be consistent with the purpose of the FTAA and the procedural principles at s10 FTAA.

[16] Having considered the reasons for the requested suspension, and the matters noted above, the Panel grants the requested suspension until 23 February 2026.

### **Appointment of legal advisor to assist the Panel**

[17] In 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.<sup>9</sup>

[18] In light of these comments and the various concerns raised by CIAL and Airways regarding aviation and airport related safety matters, we consider that the precautionary principle is potentially relevant to this application.

[19] We therefore direct the EPA to engage a legal advisor to provide advice to the Panel **by 5 pm on 23 February 2026** regarding 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?

[20] We reserve leave for the EPA legal advisor to raise with the Panel any other pertinent legal questions that may be relevant to add to the above brief.

### **Request for further information**

[21] Pursuant to section 67 of the FTAA the Panel directs that the Applicant file **by 5 pm on 23 February 2026** a complete final package of:

- (a) Consent conditions;
- (b) Expert commentary on whether the consent conditions are appropriate; and

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<sup>9</sup> Memorandum for CIAL dated 18 December 2025 at [15] and [20], and Attachment 3, page 4

- (c) Legal submissions explaining how the application should be assessed in the framework of the FTAA.

[22] For the avoidance of doubt, noting that our previous directions to the Applicant related to procedural matters only<sup>10</sup>, we record that the Applicant's final package may include the Applicant's response to substantive matters regarding air safety / airport operation raised by CIAL and Airways should it wish to do so.

[23] Pursuant to section 67 of the FTAA the Panel also directs that the Applicant, Airways and CIAL provide advice to the Panel **by 5 pm on 23 February 2026** regarding 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?

[24] We record that Airways and CIAL may file a joint memorandum addressing the above matters if they wish to do so.

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<sup>10</sup> See Minute 7 at [12]

[25] Finally, we are mindful that airport safety is a very specialist technical area and that considerable material has been filed by the Applicant, CIAL and Airways regarding this matter. In these circumstances the Panel considers that it is unreasonable and unrealistic to expect the EPA legal expert to familiarise themselves with this issue and the related material by 23 February, and so we have decided not to ask the EPA legal expert to advise on point (d) above.

A handwritten signature in black ink, appearing to read 'Chris Fowler', written in a cursive style.

Chris Fowler  
Expert Panel Chair