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

Memorandum of counsel for Carter Group Limited

29 April 2026

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May it please the Panel:

1 This memorandum is filed on behalf of Carter Group Limited (**Carter Group** or **Applicant**), the applicant for the substantive application for the Ryans Road Industrial Development (**Application**) under the Fast-track Approvals Act 2024 (**FTAA**). It addresses comments received from persons invited to comment on the draft conditions under section 70(1) of the FTAA.

2 Comments on the draft conditions were received from:

(a) Christchurch City Council (**CCC**);

(b) Canterbury Regional Council (**CRC**);

(c) Waka Kotahi New Zealand Transport Agency (**NZTA**);

(d) Department of Conservation (**DOC**)

(e) Christchurch International Airport Limited (**CIAL**) and Airways Corporation of New Zealand (**Airways**) (jointly); and

(f) TWT Holdings Limited (**TWT**).

3 The Applicant acknowledges the comments received from each of the parties. In response, it has prepared a table summarising those comments (**Appendix 1** to the Joint memorandum of **Ms Clare Dale** and **Mr Jeremy Phillips**) and setting out its response to those comments in **green** text. The table records the Applicant's position on each comment and identifies (also in **green** text) any amendments made in response or explains why the Applicant does not agree with or accept the amendment proposed.

4 The Applicant's response has been prepared in consultation with its technical advisors. In support of its position, the Applicant also relies on the following expert material filed in conjunction with, and in support of, its response:

(a) the memorandum of **Mr Nick Fuller**, addressing matters relating to transport;

(b) the memorandum of **Mr Justin Evans,** addressing matters relating to lighting;

(c) the memorandum of **Ms Lizzie Civi**l, addressing matters relating to bird strike risk;

(d) the supplementary statement of evidence of **Dr Andrew Shelley**, addressing aviation safety matters; and

(e) the joint memorandum of **Ms Clare Dale** and **Mr Jeremy Phillips**, together with Appendix 1, which summarises the Applicant's responses to the comments received on the draft conditions.

5 The purpose of this memorandum is to provide further explanation of the remaining areas of disagreement and to set out the Applicant's legal analysis regarding the lawfulness of the amendments requested, including those conditions that the Applicant indicated in its section 70(1) response to the proposed conditions dated 2 April 2026 that it does not accept.

6 This memorandum begins by outlining the statutory framework for condition setting under the FTAA. Against that framework, it then addresses the specific areas of disagreement arising from the comments received, explaining why certain amendments sought by other parties are not necessary, or appropriate within the FTAA decision-making context.

CONDITION SETTING UNDER THE FTAA

7 The FTAA represents a conscious and deliberate departure from the traditional consenting regime under the Resource Management Act 1991 (**RMA**) which reflects Parliament's recognition that the RMA has often given rise to lengthy, complex, and costly approval processes, including overly onerous and detailed condition-setting, which can impede the timely delivery of projects with significant regional or national benefits. The FTAA is expressly designed to streamline approvals, reduce unnecessary procedural barriers, and enable more efficient and responsive decision-making.

8 In that context, the FTAA requires a proportionate approach to condition-setting which favours conditions that are directed to managing adverse effects and achieving defined outcomes, rather than prescriptive or process-driven conditions that add complexity without corresponding environmental benefit.

9 In relation to the resource consents sought under the FTAA, clause 18 of Schedule 5 of the FTAA applies. It provides that the relevant provisions of the RMA relating to the setting of conditions apply, subject to all necessary modifications. For ease of reference, that clause is set out in full below:

> **18 Conditions on resource consent**
>
> When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

(a) a reference to a consent authority must be read as a reference to a panel; and

(b) a reference to services or works must be read as a reference to any activities that are the subject of the consent application.

10 The starting point for condition-setting under the FTAA therefore must be the relevant statutory framework and case law under the RMA, including, in particular, sections 108 and 108AA of Part 6 of the RMA.

11 On that basis, this memorandum begins by discussing the relevant statutory provisions and applicable case law under the RMA, before turning to a more detailed discussion of the other provisions of the FTAA that are directly relevant to condition setting, including sections 83, 84A, and 85.

CONDITION SETTING UNDER THE RESOURCE MANAGEMENT ACT 1991

12 Resource consent conditions set by this Panel under the FTAA must meet the requirements of sections 108 and 108AA of the RMA (subject to all necessary modifications).

13 Section 108(1) provides a broadly framed power to impose conditions on a resource consent. However, this discretion is not unfettered.

14 The Panel will be familiar with the principles articulated in *Newbury District Council v Secretary for the Environment* (***Newbury***) that a condition must:[1]

(a) be imposed for a proper resource management purpose, not an ulterior one;

(b) fairly and reasonably relate to the development authorised by the consent; and

(c) not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it.

[1] *Newbury DC v Secretary of State for the Environment* [1980] 1 All ER 731 (HL) affirmed in *Housing NZ Ltd v Waitakere City Council* [2001] NZRMA 202 (CA); as cited in the draft record of decision of the Expert Consenting Panel for the Ryans Road Industrial Development [FTAA-2504-1505] (link) at [917].

15 Section 108AA, introduced by the Resource Legislation Amendment Act 2017, further limits a decision-makers discretion to impose conditions on resource consents. Section 108AA includes a requirement that: [2]

> … the condition must either be agreed by the applicant or be directly connected to an adverse effect of the activity on the environment or an applicable rule or be related to administrative matters that are essential for efficient implementation of the consent.

16 For ease of reference section 108AA(1) is provided in full below:

> **108AA Requirements for conditions of resource consents**
>
> (1) A consent authority must not include a condition in a resource consent for an activity unless—
>
> (a) the applicant for the resource consent agrees to the condition; or
>
> (b) the condition is directly connected to 1 or more of the following:
>
> (i) an adverse effect of the activity on the environment:
>
> (ii) an applicable district or regional rule, or a national environmental standard:
>
> (iii) wastewater environmental performance standard made under section 138 of the Water Services Act 2021:
>
> (iv) a stormwater environmental performance standard made under section 139A of the Water Services Act 2021:
>
> (v) an infrastructure design solution; or
>
> (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

17 The principles arising under sections 108 and 108AA of the RMA, together with the relevant case law, are discussed in further detail below to the extent necessary to address the specific areas of disagreement relating to the proposed conditions of consent.

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[2] *Far North Solar Farm Ltd v South Wairarapa District Council* [2025] NZEnvC 342 at [255].

Conditions must be reasonable

Measures beyond what is necessary to mitigate effects

18 Applying the principles set out above, when setting conditions on resource consents under the RMA, conditions may only be imposed to the extent that they are necessary to address or mitigate adverse effects caused by the activity (unless such conditions are expressly volunteered by the Applicant).

19 In *Sampson v Waikato Regional Council*, the Environment Court confirmed, applying the *Newbury* principles, that requiring an applicant to undertake measures that go beyond what is necessary to mitigate the adverse effects of an activity is unreasonable.[3]

20 In *Sampson,* the Court accepted that the works in question would have an adverse effect on the neighbouring land. However, it found that the positive effects of the wider project would more than offset those adverse effects, such that there was an overall net benefit. In those circumstances, the Court held that it was not appropriate to impose additional mitigation measures designed to go beyond addressing the actual adverse effects requiring mitigation, stating that:[4]

> … The power contained in section 108 is to grant consent 'on any condition that the consent authority considers appropriate'. This is a very wide power, but of course any condition must nevertheless be reasonable: *Housing New Zealand v Waitakere City Council* [2001] NZRMA 202, applying *Newbury District Council v Secretary of State for the Environment* [1981] AC 578. To impose a condition requiring an applicant to take measures beyond what is required to mitigate effects caused by an activity would, in our view, be unreasonable.

21 Accordingly, where the evidence demonstrates that an activity does not result in an adverse effect requiring mitigation, it would be unreasonable for a decision-maker to impose conditions addressing effects that do not arise, or to require measures that go beyond what is necessary to manage the actual effects of the activity.

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[3] *Sampson v Waikato Regional Council* ENC Auckland A178/2002, 2 September 2002.

[4] *Sampson v Waikato Regional Council* ENC Auckland A178/2002, 2 September 2002 at [84].

Conditions must be certain and enforceable

Condition precedent

22 Conditions precedent, such as land use condition 21D (specific aviation risk assessment), require specified matters to be completed or confirmed prior to the commencement of an activity authorised by a consent and are a well-established and orthodox mechanism in resource consent condition setting. Such conditions are particularly common for large or complex developments, where it is appropriate for detailed matters of implementation to be addressed once the consent has been granted, but before works commence.

23 The validity of conditions precedent has been consistently confirmed in case law, provided they are framed appropriately and comply with the principles in section 108 of the RMA and the *Newbury* tests.

24 For example:

(a) In *Westfield (NZ) Ltd v Hamilton City Council* the High Court held that a condition which defers the opportunity for the applicant to embark on an activity until a third party carries out some independent activity was valid.[5] The Court held that there was a critical distinction between two ways in which a condition is framed. One requires an applicant to bring about a result, which is not within the applicant's power, and is invalid. The other stipulates that a development should not proceed until an event has occurred.

(b) In *Laidlaw College Inc v Auckland Council*, the Environment Court rejected a proposed condition precedent requiring road upgrades that depended on third-party approvals, where there was no evidence that the relevant road-controlling authority would agree to or support the works.[6] The condition was therefore found to lack certainty and enforceability.

(c) Similarly, in *Transit NZ v Southland District Council*, the Environment Court observed that concerns arising from third-party dependency can often be resolved through careful drafting of condition precedents, including by framing conditions in a way that avoids requiring the applicant to undertake works outside its control.[7] In that

[5] *Westfield (NZ) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254; [2004] NZRMA 556 (HC) at [56]-[60].

[6] *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248

[7] Transit NZ v Southland District Council [2008] NZRMA 379 (EnvC).

> case, Transit sought to impose conditions requiring intersection upgrades on the basis of potential safety concerns on the State highway network. The Court held that the conditions sought would not deliver material safety benefits and expressed concern that Transit was, in effect, seeking to shift the costs of addressing existing network deficiencies onto developers. The Court concluded that it would be inappropriate to impose such conditions where permitted activities in the area would give rise to comparable effects without similar obligations. The appeal was dismissed.

25 The principles outlined above are directly relevant to the draft conditions relating to transport, including the requirement for an intersection upgrade discussed further at paragraphs 53-82 below. They are also relevant to the amendments proposed by CIAL and Airways, in particular the replacement aeronautical safety conditions CIAL and Airways seek be imposed by the Panel.

Conditions requiring third party agreement

26 In addition to the above, case law has repeatedly confirmed that conditions which require the agreement or approval of third parties must be approached with caution, especially where there is no evidence that such agreement is likely to be obtained.[8] As such, conditions where implementation is dependent on third party co-operation or approval have consistently been found to be unreasonable. For example:

(a) In *Skyline Enterprises Ltd v Queenstown Lakes District Council* in which the Court noted that:[9]

> **[58]** As we are not in a position to find that undergrounding the powerline would be practicable, we also find that ZJV's proposed condition could potentially frustrate the consent. That is in the sense that it would rely on Skyline securing suitable arrangements with a third party, Aurora, that may prove impracticable. In addition,

[8] For example, in *McKay v North Shore City Council* (EnvC W146/1995; [1995] ELRNZ 382, the Planning Tribunal held that proposed conditions which sought to impose obligations on third parties were ultra vires and unenforceable. Similarly, in *Mount Field Limited v Queenstown Lakes District Council* [2012] NZEnvC 262 at [77], citing *Royal Forest and Bird Protection Society Inc v Gisborne District Council* (W26/2009) at [88], the Environment Court reiterated that conditions must be certain and must not delegate substantive decision-making power to third parties. This principle is also reflected in the Environment Court Practice Note 2023 at [10.4].

[9] *Skyline Enterprises Ltd v Queenstown Lakes District Council* [2017] NZEnvC 124.

we observe that the condition, as worded, would purport to bind a third party, QLDC. As such, it would likely also be ultra vires.

(b) In *Fletcher Challenge Forests Ltd v Whakatāne District Council*, the Environment Court held that a condition requiring the applicant, in consultation with Tranz Rail, to install barrier arms at a road rail intersection was unreasonable, as it would not be practical for the applicant to fulfil the condition in the event of Tranz Rail's non-cooperation.[10]

(c) Similar concerns arose in *Richmond v Kapiti Coast District Council*, where the applicant's agreement to a set of conditions was subject to the Ministry of Education being prepared to issue an operating licence on the basis of those conditions.[11] The Environment Court noted that if the consent were granted on those conditions and the licence were subsequently refused, the consent would effectively be nullified. For that reason, the Court declined to make a final determination until the Ministry had been given an opportunity to consider the proposed conditions

27 By contrast, the courts have accepted that conditions can lawfully require consultation with third parties, provided that such conditions are framed so they cannot be used to frustrate or indefinitely delay implementation of a consent. In T*e Rangatiratanga o Ngāti Rangitihi Inc v Bay of Plenty District Council*, the Environment Court reworded a consultation condition to require the consent holder to "make all reasonable endeavours to consult (and document the same)", recognising that a refusal to engage could not be allowed to vitiate the consent.[12]

28 Taken together, this authority confirms that conditions requiring third-party agreement, approval, or cooperation will be unreasonable where they are uncertain, unenforceable, or capable of frustrating or nullifying the exercise of the consent. Such conditions will not satisfy section 108, section 108AA, or the *Newbury* principles.

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[10] *Fletcher Challenge Forests Ltd v Whakatāne District Council* ENC Auckland A093/99, 10 September 1999.

[11] *Richmond v Kapiti Coast District Council* [2016] NZEnvC 1; In a subsequent decision, the Environment Court confirmed the consent after the proposed conditions were provided to the Ministry of Education to enable a preliminary determination. That process also facilitated agreement between the parties on an amended set of consent conditions, which were ultimately confirmed by the Court; see *Richmond v Kapiti Coast District Council* [2016] NZEnvC 41.

[12] *Te Rangatiratanga O Ngati Rangitihi Inc v Bay of Plenty Regional* Council ENC Auckland A128/09, 9 December 2009 at [7]-[12].

Conditions must achieve the purpose of the Act

29 In *Cookie Munchers Charitable Trust v Christchurch City Council* (**Cookie Munchers**) the Environment Court held that an assessment as to the validity of conditions will involve a two-stage process:[13]

(i) Firstly, an inquiry as to whether the conditions in question satisfy the *Newbury* tests (set out above); and

(ii) Secondly, if the conditions meet the *Newbury* tests, whether they are nevertheless the most appropriate conditions to achieve the purpose of the Act. This reflects the wording of s 108 of the RMA, which authorises the imposition of "any condition that the consent authority considers appropriate". The appropriateness inquiry is distinct from, and additional to, the *Newbury* tests.

30 The approach in *Cookie Munchers* was cited with approval in *Jones v Palmerston North City Council*, where the Court considered the relevance of the costs of implementing consent conditions.[14] In this case, the Court held that "the proportionality of the response in terms of cost is something to which we are entitled to have regard" when undertaking the assessment of whether a condition is the most appropriate means of achieving the purpose of the Act.[15]

31 While these authorities were decided under the RMA rather than the FTAA, the *Cookie Munchers* inquiry remains relevant. As discussed in previous submissions, clause 17(1) of Schedule 5 of the FTAA, requires that relevant provisions (and therefore associated case law) of the RMA be "taken into account", while giving greatest weight to the purpose of the FTAA.

32 Accordingly, while whether a condition would or would not be imposed under the RMA is a relevant matter to be "taken into account", it is not determinative. The ultimate question is the appropriateness of the conditions within the distinct statutory framework and purpose of the FTAA.

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[13] *Cookie Munchers Charitable Trust v Christchurch City Council* ENC Wellington W090/08, 22 December 2008.

[14] *Jones v Palmerston North City Council* [2014] NZEnvC 131.

[15] *Jones v Palmerston North City Council* [2014] NZEnvC 131.

APPLICATION UNDER THE FTAA

33 The FTAA decision-making framework was comprehensively addressed in the legal submissions for the Application dated 23 February 2026 and is not repeated here.[16]

34 As addressed in those submissions, the FTAA decision-making framework does not require a demonstration that adverse effects will be no more than minor, nor that adverse effects will not be significant. The FTAA expressly contemplates that projects with significant adverse effects may proceed, provided those effects are not so significant as to outweigh the benefits of the project when assessed under section 85(3).

35 In practical terms, this means that conditions which might otherwise be required under the RMA to mitigate adverse effects (either to achieve the sustainable management purpose of the RMA or to demonstrate that effects are no more than minor) may not be "appropriate" under the FTAA.

36 Unlike the RMA, the FTAA envisages an overall judgment that weighs adverse effects (after taking conditions into account) against the benefits of the project. It follows that conditions that impede or frustrate the delivery of a project with significant regional or national benefits may therefore fail the *Cookie Munchers* "appropriateness" test where the adverse effects they seek to address would not otherwise outweigh those benefits if those conditions were not imposed.

37 Equally, the FTAA also envisages that projects may be subject to conditions which would not typically be imposed under the RMA where such conditions are necessary to enable a project to proceed (i.e. to facilitate regional and national benefits), provided those conditions are directed at addressing the adverse effects of the project and do not go further than required. The touchstone remains proportionality and necessity, rather than the imposition of conditions as a proxy for effect elimination. By way of example, this is reflected in section 84A of the FTAA, discussed further at paragraphs 44-47 below.

No more onerous than necessary

38 Further guidance on condition setting is provided in section 83 which provides that:

[16] Legal submissions for the Applicant dated 23 February 2026 (link).

83 Conditions must be no more onerous than necessary

When exercising a discretion to set a condition under this Act, **the panel must not set a condition that is more onerous than necessary to address the reason for which it is set** in accordance with the provision of this Act that confers the discretion.

[**our emphasis**]

39 Section 83 introduces an additional and express limitation on the Panel's power to impose conditions under the FTAA, over and above the constraints arising under sections 108 and 108AA of the RMA and the associated case law.[17] That limitation reflects Parliament's intention that conditions imposed under the FTAA must be tightly focused on what is genuinely required to address the matters giving rise to the Panel's decision.

40 In particular, section 83 is directed at avoiding the imposition of over-engineered, precautionary, or punitive conditions which add cost, delay, or complexity that is disproportionate to the scale and nature of the effects requiring management. It guards against conditions that may render a project uneconomic, materially delay its delivery, or impair its viability where the adverse effects do not warrant such outcomes when assessed against the benefits of the project.

41 Accordingly, the Panel must be satisfied not only that a condition is lawful, certain, enforceable, and directed at an effect arising from the project, but also that the condition represents the *least onerous means* of addressing an effect that might otherwise be out of proportion to the significant regional or national benefits of the project. A condition which goes beyond what is required to manage such effects, or which purports to resolve issues that do not materially influence the Panel's decision to grant approval, will fail to comply with section 83.

42 This interpretation is consistent with the overall decision-making framework and legislative purpose of the FTAA which was specifically designed to move decision-making away from approaches under the RMA that have resulted in protracted processes, unnecessary duplication, and conditions which undermine projects at the margins or frustrate implementation after approval has been granted.

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[17] Section 81(2)(d) of the FTAA provides that, for the purpose of making a decision under the FTAA, the Panel must comply with section 83 when setting conditions on an approval.

43 As recorded during Parliamentary debates on the Fast-track Approvals Bill, the FTAA was enacted to address inefficiencies within the RMA system, including the ability for decision-makers to impose "*overly punitive conditions*"[18] that have rendered projects uneconomic to the extent that they may never be built.[19] To that end, the FTAA deliberately adopts a different threshold for declining consents and a more disciplined approach to condition-setting, grounded in necessity and proportionality. As summarised by Hon Chris Bishop:[20]

> … the Government's view is that the status quo is unacceptable when it comes to speed, when it comes to condition setting, when it comes to environmental protections weighed against the economic interests. So we are disrupting that—we are quite explicit about that. We want more houses built more quickly, we want renewable energy built more quickly, we need more quarries, we need more mines, we need more infrastructure built. The status quo does not work; it fails New Zealand, and that is why we have fast track.

Section 84A

44 The same legislative intent is evident in the introduction of section 84A through the Fast-track Approvals Amendment Act 2025. That provision makes clear that an approval may be granted subject to conditions where infrastructure in the project area, or infrastructure on which the project will rely, is adequate or *can* be made adequate. The formulation of section 84A is deliberate: it does not require that infrastructure be adequate at the point or approval, but recognises circumstances where evidence establishes adequacy is capable of being achieved.

45 Section 84A was enacted to ensure that approvals under the FTAA are not rendered ineffective or unduly delayed by infrastructure funding programmes, approval processes, or internal requirements of councils or infrastructure providers, or by reliance on actions outside the applicant's direct control. For example, during Parliamentary debate on the Amendment Bill, these changes were described as establishing "a more efficient process for fast-track approvals", intended to avoid applicants

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[18] (17 December 2024) 780 (Fast-track Approvals Bill – Third Reading, Hon Chris Bishop).

[19] See for example (10 December 2024) 780 (Fast-track Approvals Bill – In Committee, Hon Chris Bishop discussing renewable energy projects that have been consented but have ever been built).

[20] (10 December 2024) 780 (Fast-track Approvals Bill – In Committee, Hon Chris Bishop).

being required to prepare extensive and speculative technical material "to demonstrate why every risk is managed down to the nth degree".[21]

46 Together, sections 83 and 84A reflect Parliament's intention that approvals under the FTAA must be capable of being exercised in a practical and timely manner. Conditions must facilitate, rather than unnecessarily impede, the delivery of projects with regional or national significance.

47 In that context, the Panel is required to take a disciplined approach to condition setting. Conditions that exceed what is necessary to address effects that would otherwise outweigh the significant regional or national benefits of the project, or that introduce dependency on uncertain future events or third-party cooperation, will not meet the statutory test imposed by section 83 and should not be imposed as a condition of consent.

Conditions proffered or agreed to by the Applicant

48 For the avoidance of doubt, it is well established that conditions that are volunteered or agreed to by an applicant are not subject to the same statutory constraints as conditions imposed by a decision-maker.

49 Proffered or agreed conditions need not independently satisfy the requirements that apply to imposed conditions, including that they directly address an adverse effect or represent the most appropriate means of achieving the purpose of the RMA/FTAA. This distinction is well-established in RMA case law,[22] codified in section 108AA(1)(a) of the RMA, and is also contemplated by s 85(3) the FTAA, which recognises a clear distinction between conditions imposed by the Panel and conditions proffered by an applicant.

CONDITIONS IN DISPUTE

50 Having regard to the framework for assessing conditions set out above, the following section addresses the draft conditions that the Applicant does not accept as well as the amendments sought by other parties invited to comment on the draft conditions.

51 Necessarily, this assessment considers first whether the conditions in question are valid in the sense that they satisfy the *Newbury* tests, before

[21] (9 December 2025) 789 (Fast-track Approvals Amendment Bill – Second Reading, Hon Simon Court).

[22] *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219 (QBD); *Re Site 10 Redevelopment Ltd Partnership* [2015] NZEnvC 173; and *Frasers Papamoa Ltd v Tauranga CC* (2009) 15 ELRNZ 279 (HC).

turning to whether they are appropriate and lawful within the decision-making framework of the FTAA.

52 For completeness, this section focuses on the key issues arising in relation to the conditions which are not agreed. It should be read in conjunction with the table provided summarising the Applicant's response to the proposed conditions, as well as the expert reports relied upon in support of the Applicant's response.

TRANSPORT CONDITIONS

Subdivision condition 3 (Staging)

53 The Applicant does not accept Draft Subdivision Condition 3, either as proposed by the Panel, or as amended by the parties who have commented on the draft conditions.

54 As proposed by the Panel, Draft Subdivision Condition 3 would limit the progression of the development by linking later stages to transport outcomes to be addressed to the satisfaction of CCC. In particular, it would defer completion of the subdivision unless either the Pound Road / Ryans Road intersection is upgraded, or further traffic modelling is undertaken and accepted by the Council.

55 The parties' positions on Draft Subdivision Condition 3 can be summarised as follows:

(a) CCC supports the inclusion of the condition but recommends amendments to clarify the staging triggers;

(b) NZTA supports the condition but seeks an amendment to provide that Stage 3 cannot occur until both the Pound Road / Ryans Road intersection upgrade has been completed and updated modelling has been undertaken to assess wider impacts on four neighbouring intersections;

(c) CIAL and Airways support the condition and propose amendments intended to clarify its operation; and

(d) TWT Holdings supports the condition.

56 While the Applicant acknowledges that the draft condition and the proposed amendments raise issues of clarity, the Applicant's objection is more fundamental. In substance, Draft Subdivision Condition 3 would require further traffic modelling and/or infrastructure upgrades as a prerequisite to later stages of development, in circumstances where the evidence does not

demonstrate that such requirements are necessary to address adverse effects arising from the project.

57 The Applicant's reasons for opposing Draft Subdivision Condition 3 are addressed in detail in the joint memorandum of **Mr Fuller**, **Ms Dale** and **Mr Phillips** dated 2 April 2026.[23]

58 Since receiving the section 70(1) responses to the draft conditions, **Mr Fuller** has also undertaken additional survey work and traffic modelling and prepared a further supporting memorandum, responding to CCC's comments and confirming the Applicant's position.[24]

59 In summary, based on the additional survey work undertaken in response to CCC's concern regarding the lack of calibration of the earlier assessments (due to the road works at the intersection at the time that assessment was prepared), Mr Fuller concludes that:

> The model confirms that, based on Council's 2038 growth forecasts (plus additional increases specifically In the Dakota Park, Waterloo Park and Main South Road industrial areas), the average queue lengths with the full built development are 58.5m in the AM peak hour and 7.4m in the PM peak hour. These are both within the length of the 60m right turn facility. Therefore, it is considered the intersection operation is acceptable and no restriction on the staging of development relative to the timing of upgrades to this intersection is required. This is consistent with, and confirms, the outcomes of the modelling and the conclusions set out in my earlier evidence in relation to the Pound Road / Ryans Road intersection.
>
> This also confirms that the **effects of the development on the Pound Road / Ryans Road intersection will be no more than minor, both with and without an intersection upgrade**. In my opinion, **draft Subdivision Condition 3 goes beyond what is necessary to address the traffic effects of the development**. The modelling and evidence demonstrate that the intersection operates acceptably within the available right-turn stacking length under Council's 2038 growth forecasts (plus additional increases specifically In the Dakota Park, Waterloo Park and Main South Road industrial areas), and **accordingly there is no adverse effect requiring mitigation through the proposed condition**.
>
> [**our emphasis**]

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[23] Joint memorandum of **Mr Fuller**, **Ms Dale** and **Mr Phillips** dated 2 April 2026 (link).

[24] Statement of evidence of **Mr Fuller** dated 24 April 2026 at [2]-[12].

60 Mr Fuller further notes that, while the Panel appears to have accepted his queuing analysis, it nevertheless indicates that the function of the intersection "may require remarking and potentially seal extensions, as a minimum", and relies on that view as a basis for Draft Subdivision Condition 3. Mr Fuller does not agree with that conclusion. In his opinion, it is not apparent what evidential basis supports the proposition that such works would be required, and neither his original assessment nor the updated modelling demonstrates a need for remarking or seal extensions.

61 For completeness, it is also noted that:

(a) no party has provided alternative traffic modelling or expert evidence to support the proposition that an intersection upgrade is required, or that any staging threshold (including the proposed 50% or stage 3 trigger) is an appropriate response or effects-based; and

(b) Mr Fuller considers that the changes sought by NZTA to include references to the SH1 / Ryans Road intersection, Pound Road / SH73 intersection, George Bellew / SH1 interchange and the SH73 / SH1 intersection is not necessary to address any identified adverse effects arising from the development.

62 Overall, Mr Fuller concludes that the traffic effects of the development can be accommodated acceptably at full build-out, and that Draft Subdivision Condition 3 is not necessary and is not supported by the evidence and would therefore be onerous.

Does this condition meet the Newbury tests and the requirements of the RMA?

63 Applying sections 108 and 108AA of the RMA, together with the *Newbury* principles and associated case law summarised above, Draft Subdivision Condition 3 would not withstand scrutiny under the traditional RMA condition-setting framework. Critically, section 108AA(1)(b)(i) requires that any condition imposed without an applicant's agreement be directly connected to an adverse effect of the activity on the environment. On the evidence before the Panel, that threshold is not met.

64 As set out above, conditions imposed under the RMA may only go as far as is necessary to address or mitigate adverse effects arising from the activity, unless the condition is expressly volunteered by the applicant.

65 **Mr Fuller** has confirmed that:

(a) the development does not give rise to adverse traffic effects requiring mitigation through staging, further modelling, or intersection upgrading; and

(b) at full build-out, traffic effects at the Pound Road / Ryans Road intersection are no more than minor and that the intersection will operate acceptably within the available right-turn storage under Council's 2038 growth forecasts, including additional growth allowances.

66 In those circumstances, there is no adverse traffic effect that necessitates mitigation through a staging condition of the type proposed.[25]

67 Draft Subdivision Condition 3 would therefore fail the *Newbury* tests. In particular, it does not fairly and reasonably relate to the effects of the development in the sense that it:

(a) would amount to a measure going beyond what is necessary to manage the traffic effects of the development; and

(b) would require further modelling and/or infrastructure upgrades without an evidential basis, in circumstances where no adverse traffic effect has been established and no expert evidence supports the need for an upgrade or the proposed staging trigger (including the 50% or stage 3 threshold).

The appropriateness of this condition under the FTAA

68 Even if the Panel were to conclude that Draft Subdivision Condition 3 satisfies the *Newbury* tests (which the Applicant does not accept), the condition must still be assessed within the separate statutory framework of the FTAA.

69 As set out above, a condition under the FTAA will only be appropriate if it is confined to what is necessary to address an adverse effect that would otherwise weigh against approval in the overall evaluative judgment required by section 85(3) (unless the condition is proffered by the Applicant). In addition, section 83 expressly requires that any condition imposed must be no more onerous than necessary to address the reason for which it is imposed.

[25] *Sampson v Waikato Regional Council* ENC Auckland A178/2002, 2 September 2002.

70 **Mr Fuller's** evidence demonstrates that the traffic effects of the development are well below that threshold. Draft Subdivision Condition 3 cannot be said to address an effect that would otherwise outweigh the significant regional and national benefits of the project, nor can it be characterised as the least onerous means of addressing any identified risk.

71 Further, Draft Subdivision Condition 3 would operate to delay or potentially frustrate the exercise of the approval by making later stages of development contingent on further modelling and/or infrastructure outcomes that are not shown to be necessary and that may depend on third-party actions outside the Applicant's control. That outcome is directly contrary to the purpose and structure of the FTAA, including sections 83 and 84A, which were enacted to avoid precisely this type of uncertainty, delay, and over-conditioning. In effect, the condition would re-introduce the very inefficiencies the FTAA was designed to overcome and would be disproportionate to the effects it purports to address.

72 For those reasons, Draft Subdivision Condition 3 is not appropriate under the FTAA and the Applicant therefore opposes the condition and seeks that the subdivision proceed in accordance with the conditions as proposed by the Applicant.

Draft condition 82A (Footpaths)

73 For the reasons explained in the joint memorandum of **Mr Fuller**, **Ms Dale** and **Mr Phillips**, the Applicant does not accept proposed draft condition 82A which requires footpaths to be provided on both sides of internal roads.[26]

74 In summary, and as explained **Mr Fuller's** evidence the provision of footpaths on both sides of the internal road network is not necessary to address any adverse effects arising from the development.[27] The proposed provision of footpaths on one side of the internal roads and any effects associated with not providing footpaths on both sides are assessed as being no more than minor.

75 The Panel appears to have considered the condition appropriate on the basis that the proposed development has a higher density than development at Dakota Park. Mr Fuller clarifies, however, that his assessment was based on the actual density, layout, and design of the

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[26] Joint memorandum of **Mr Fuller**, **Ms Dale** and **Mr Phillips** dated 2 April 2026 (link).

[27] Statement of evidence of **Mr Fuller** dated 19 November 2026 at [9]-[10 (link); and Statement of evidence of **Mr Nick Fuller** dated 24 April 2026.

proposed development itself. The reference to Dakota Park was used solely as a contextual comparator to demonstrate consistency with surrounding development patterns, and was not relied upon as a justification for concluding that footpaths on both sides of the internal roads are unnecessary.

76 There is therefore no adverse effect requiring mitigation through the imposition of Draft Condition 82A.

Does this condition meet the Newbury tests and the requirements of the RMA?

77 Draft Condition 82A would not meet the requirements of section 108AA of the RMA. The condition is not agreed to by the Applicant and is not directly connected to an identified adverse effect of the activity on the environment. On the evidence before the Panel, no adverse pedestrian safety or accessibility effects arise that require mitigation through the provision of footpaths on both sides of the internal roads.

78 In the absence of an adverse effect requiring mitigation, the imposition of Draft Condition 82A would go beyond what is permissible under sections 108 and 108AA of the RMA.

The appropriateness of condition under the FTAA

79 Even if Draft Condition 82A were capable of meeting the *Newbury* tests and the requirements of sections 108 and 108AA of the RMA (which the Applicant does not accept), assessed through the lens of the FTAA, and in particular the requirement under section 83 that conditions be no more onerous than necessary, the condition would not be appropriate.

80 Draft Condition 82A appears to be based on an assumed relationship between residential density and the need for footpaths on both sides of the road, rather than on evidence of effects arising from the proposed development.

81 A condition that does not address an adverse effect that would otherwise influence the overall benefits-and-effects balancing exercise under section 85(3) cannot be imposed under the FTAA condition-setting framework and would be more onerous than necessary, contrary to section 83 of the FTAA.

82 Accordingly, the Applicant seeks the deletion of Draft Condition 82A.

AVIATION SAFETY CONDITIONS

83 In general, the Applicant has accepted the intent of the Panel's proposed amendments to the conditions relating to aviation safety. In its section 70(1) response, however, the Applicant noted that it would provide a final response to those conditions once comments had been received from other parties with an interest in, or responsibility for, those conditions.

84 The Applicant has now received comments from CIAL and Airways (jointly), as well as from CCC, as the consent authority responsible for administering and enforcing the conditions of consent.

85 Importantly, CCC has not raised any material concerns regarding the administration, enforceability, or clarity of the proposed aviation safety conditions. CCC has suggested a small number of amendments to improve the workability of the conditions, and, for the most part, those suggestions have been accepted by the Applicant and incorporated into the amended conditions set.

86 By contrast, CIAL and Airways have proposed a range of more substantive amendments to the aviation safety conditions. The Applicant's detailed responses to each of those proposed amendments are set out in the response table provided. This memorandum focuses on the key legal issues raised by the amendments sought by CIAL and Airways, including whether the proposed changes are lawful, necessary, and appropriate within the statutory condition-setting framework under the RMA as modified by, and applied within, the FTAA.

The replacement aviation safety condition

87 CIAL and Airways propose a replacement aviation safety condition, to which the Applicant strongly objects. The proposed condition has several fundamental flaws. In particular, the Applicant is concerned that the proposed condition would:

(a) require the endorsement or approval or agreement of CIAL and Airways;

(b) expand the identification of mitigation measures to include measures beyond the Applicant's legal control; and

(c) apply indiscriminately to all lots within the development, regardless of whether aviation safety effects have been identified and accepted by the Panel in its findings on the evidence it has available.

Conditions should "require endorsement and approval" of CIAL and Airways

88 CIAL and Airways propose amendments to the aviation safety conditions to require "endorsement and approval" by CIAL and Airways. In particular, the proposed replacement aviation safety condition provides that "Council must not grant certification unless CIAL and Airways confirm they have agreed, with the Applicant, as to the scope, content and recommendations of the study."

89 In substance, this would make compliance with the condition contingent on the agreement of third parties, with CIAL and Airways effectively assuming a certification role alongside the consent authority. The history of this application suggests that no such agreement would ever be such that the condition acts as a veto on the development ever proceeding.

90 Issues of endorsement, approval, and third-party involvement have been comprehensively addressed in relevant case law, including *Fletcher Challenge Forests Ltd v Whakatāne District Council, Richmond v Kapiti Coast District Council* and *Te Rangatiratanga O Ngati Rangitihi Inc v Bay of Plenty Regional* Council cited at paragraph 26 above.[28] That case law makes it clear that conditions requiring third-party agreement or approval will be unreasonable where such conditions are uncertain or capable of frustrating or effectively nullifying the consent. Here, the frustration of the consent would inevitably occur. By contrast, conditions requiring consultation may be permissible, provided they are properly framed so as not to give third parties the ability to veto or frustrate the consent.

91 The Applicant also refers to the decision of the Expert Panel on conditions on the Waitaha Hydro Scheme project. In that case, the DOC had sought dual/joint certification role with Council for RMA approvals on the basis that the relevant certification conditions would address both RMA effects and effects within DOC's remit.[29] The Panel rejected an approach that would have required both DOC and the consent authority to certify management plans, observing that certification is properly the role of the relevant consent authority. Instead, the condition ultimately imposed required management plans to be provided to DOC for comment, with those comments then supplied to the consent authority as part of the certification process. The condition also required an explanation where DOC's comments had not been incorporated into the version submitted for certification. In substance,

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[28] *Fletcher Challenge Forests Ltd v Whakatāne District Council* ENC Auckland A093/99, 10 September 1999; *Richmond v Kapiti Coast District Council* [2016] NZEnvC 1; and *Te Rangatiratanga O Ngati Rangitihi Inc v Bay of Plenty Regional* Council ENC Auckland A128/09, 9 December 2009.

[29] Decisions of the Expert Panel on the Waitaha Hydro Scheme (FTAA-2505-1069) at [1155]-[1169].

that condition framework is very similar to the approach proposed by the Applicant (as amended by the Panel).

92 By contrast, an amendment requiring the agreement of CIAL and Airways prior to certification would operate in a manner analogous to a form of dual certification and would frustrate the consent. That approach has been expressly rejected in the FTAA context.

93 The evidence of **Dr Shelley** also confirms that it is neither necessary or appropriate to require Council or the consent holder to obtain the agreement of CIAL or Airways in the manner proposed by CIAL or Airways.[30]

"Practicable" mitigation measures

94 CIAL and Airways take issue with the absence of express direction in the condition as to how mitigation measures are to be addressed where such measures are outside the control of the consent holder.

95 In particular, CIAL and Airways suggest that uncertainty arises where mitigation measures might be required that cannot be implemented by the consent holder because they relate to land, infrastructure, equipment, or operations outside the consent holder's control.

96 The law is very clear that a condition purporting to require a consent holder to carry out mitigation measures over which it has no control, and in circumstances where there is no indication that CIAL and/or Airways would agree to such measures being implemented, would be ultra vires and would plainly fail the *Newbury* tests. This is especially so where the Applicant's evidence is that such mitigation measures will not, in fact, be necessary for the development to proceed.

Application of the proposed condition to all lots

97 There is no evidence before the Panel that it is necessary or proportionate to apply the aviation safety condition to all lots within the development.

98 The Applicant's evidence demonstrates that it is appropriate for the condition to be focused and tailored to specific lots, rather than expanded in the manner proposed by CIAL and Airways, which would stretch the condition beyond what is justified by the evidence and in a manner inconsistent with the Panel's decision-making to date.

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[30] Statement of evidence of **Dr Shelley** dated 28 April 2026.

99 The evidence of **Dr Shelley** dated 28 April 2026 supports a targeted application of the conditions relating to aviation safety. His assessment confirms that aviation-related effects are geographically constrained and that the supporting technical analysis has already identified where such effects may arise.[31]

100 On that basis, the Applicant's proposed approach appropriately delineates the area within which additional controls may be warranted. Extending the condition to all lots would go beyond that defined scope and would impose requirements in areas beyond where potential effects been not identified, resulting in a response that is disproportionate to the effects which require a response through the imposition of conditions.

Does this condition meet the Newbury tests and the requirements of the RMA?

101 Applying sections 108 and 108AA of the RMA, together with the *Newbury* principles, the replacement aviation safety condition proposed by CIAL and Airways would fail to withstand scrutiny. In particular, a condition that requires the consent authority to obtain the agreement of third parties as a prerequisite to certification is unreasonable, uncertain, and incapable of assured implementation. Such a condition would impermissibly expose the exercise of the consent to factors outside the consent holder's control and risks effectively frustrating or nullifying the approval.

102 Further, the proposed condition would not satisfy section 108AA of the RMA. It is not agreed to by the Applicant and extends beyond what is necessary to address any identified adverse effects arising from the project. The evidence before the Panel does not establish that the agreement or approval of CIAL or Airways or the extension of the condition to all lots within the development, is required to manage aviation safety effects, nor that such an obligation would have a sufficient causal connection to any adverse effect of the development.

The appropriateness of condition under the FTAA

103 For the same reasons, the replacement aviation safety condition is not appropriate under the FTAA. Even if the condition were capable of meeting the *Newbury* threshold (which is not accepted), it would still fail the additional statutory constraints imposed by sections 83 and 85 of the FTAA. The condition would extend beyond what is necessary to address any adverse effect that might otherwise weigh against approval in the overall

[31] Statement of evidence of **Dr Shelley** dated 28 April 2026 at [7]-[8].

evaluative judgment required by section 85(3), and would be more onerous than necessary, contrary to section 83.

104 The evidence of **Dr Shelley** confirms that the aviation safety conditions proposed by the Applicant already represent a cautious and precautionary response to the matters raised by CIAL and Airways. While the draft conditions may go beyond what could ordinarily be imposed under a strict application of FTAA condition-setting principles, those conditions remain available to the Panel as they have been proffered by the Applicant. By contrast, the replacement aviation safety condition proposed by CIAL and Airways would introduce an unnecessary and unlawful layer of third-party control.

105 The Applicant therefore submits that the Panel should reject the replacement condition proposed by CIAL and Airways and retain the draft conditions relating to aviation safety as amended in the Applicant's response.

OTHER MATTERS RAISED BY CIAL AND AIRWAYS

Condition 21E: Disputes resolution

106 CIAL and Airways submit that a dispute resolution clause is not appropriate. The Applicant notes that this clause was included at the suggestion of the Panel but, the Applicant's experts do not consider it necessary.

107 The Applicant is agreeable to the deletion of Condition 21E as its technical advisors have consistently advised (as explained in previous evidence) that the suite of aviation safety conditions are not strictly necessary, and are an overly precautionary response to matters raised by CIAL and Airways. In his statement of evidence dated 28 April 2026, **Dr Shelley** confirms that the deletion of Condition 21E would not alter the conclusions of his evidence and that, in his view, the aviation safety conditions as proposed by the Applicant would remain appropriate.[32]

108 However, should the Panel wish to retain the condition, CCC has suggested that, if any such mechanism were to be retained, the appointment of an independent third party would be appropriate. The Applicant accepts that this would be preferable to any form of dual or joint decision-making by CIAL and Airways. This approach is also supported by **Dr Shelley.**[33]

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[32] Statement of evidence of **Dr Shelley** dated 28 April 2026 at [15].

[33] Statement of evidence of **Dr Shelley** dated 28 April 2026 at [13].

"Misplaced reliance on CAA"

109 CIAL and Airways submit that the draft conditions evidence an expectation that the Civil Aviation Authority (**CAA**) will "take care" of aviation safety, and contend that such reliance is misplaced and creates a risk of false assurance.

110 The role of the CAA has been addressed at length in the Applicant's prior submissions and is supported by the evidence of its technical advisors. Those submissions and evidence are repeated by reference only. In summary, the Applicant does not accept CIAL and Airways' characterisation of misplaced reliance on the CAA

111 As reflected in **Appendix 1** to the joint memorandum of **Ms Dale** and **Mr Phillips** (table of responses to conditions), this aspect CIAL and Airways position is captured in comments on Condition 21A, which were simply intended to record the separate requirement to obtain Part 77 determination and comply with conditions of any such determination the event of Part 77 notification surfaces (i.e. for a temporary crane which are a separate permitted activity under the District Plan) rather than to elevate or expand the role of the CAA beyond its statutory functions.

112 The Applicant also refers to case law confirming that conditions of this nature that simply refer to other legislation are lawful and appropriate. For example, in *McBride v Westland District Council*, the Environment Court considered an appeal against conditions imposed on a consent to use land for helicopter aviation.[34] Those conditions included a requirement that the activity be exercised in conjunction with an aerodrome determination by the CAA, as well as a separate condition requiring flight operations to be undertaken in accordance with CAA requirements.

113 Counsel for the appellant argued that those conditions impermissibly involved the Council assuming jurisdiction over matters of over-flight and flight operations, which fall outside its statutory remit. While the Court accepted that such matters were not within the Council's jurisdiction, it held that it is possible for "the Council to impose conditions that mirror requirements of other authorities, provided they do not seem to take on jurisdiction the Council does not have, or of course, derogate from the requirements of the Civil Aviation Authority".[35]

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[34] *McBride v Westland District Council* ENC Christchurch C97/05, 29 June 2005.

[35] *McBride v Westland District Council* ENC Christchurch C97/05, 29 June 2005 at [17].

114 The Court ultimately found that, because the conditions in question merely paralleled CAA requirements rather than attempting to supplant or expand them, they were lawful and appropriate. Similarly, Draft Condition 21A does no more than recognise the existing Part 77 regulatory framework.

115 For those reasons, the Applicant considers the comments of CIAL and Airways to be unfounded and seeks that Draft Condition 21A be retained. This position is supported by the evidence of **Dr Shelley** dated 28 April 2026.[36]

Unlawful Delegation?

116 CIAL and Airways state that the Draft Conditions relating to aviation safety "defer and unlawfully delegate the core evaluative question of whether this development is safe enough and/or internalises its adverse impacts enough, to a later process(es)."

117 The issue of deferral and delegation have already been discussed at length in the legal submissions for the Applicant dated 23 February 2026 and are not repeated here except to note that the expert evidence already confirms that it is not necessary for additional technical work to be undertaken in order to establish the acceptability of aviation safety effects, nor is the ability of the Project to proceed contingent on the outcome of any future assessment.[37] Rather, the conditions have been proffered as an appropriately precautionary response to the concerns raised by CIAL and Airways, and are intended to provide an additional margin of assurance which is unnecessary but nevertheless proffered.

118 In that context, there is no unlawful delegation of the Panel's function. The Panel has undertaken a careful assessment of the evidence relating to aviation safety effects and is entitled to be satisfied, on the evidence before it, that the application can be approved subject to conditions, and that those conditions will ensure that the project will not result in unacceptable or more than minor effects on aviation safety.

ADDITIONAL AMENDMENTS PROPOSED BY THE APPLICANT IN RESPONSE TO SECTION 70(1) COMMENTS

119 The Applicant has proposed a number of amendments to the draft conditions in response to matters raised by parties invited to comment under section 70(1). These amendments are explained in more detail in

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[36] Statement of evidence of **Dr Shelley** dated 28 April 2026 at [27]-[28].

[37] Legal submissions for the Applicant dated 23 February 2026 at [127]-[149] (link).

Appendix 1 to the joint memorandum of **Ms Dale** and **Mr Phillips** dated 28 April 2026. To the extent that the amendments relate to aviation safety matters, the evidence of **Dr Shelley** confirms his support for the amended approach.[38]

120 In summary, the proposed amendments include:

(a) Amendments responding to comments from CIAL and Airways regarding implementation responsibility and sequencing. While the evidence confirms that the draft conditions as proposed by the Applicant are appropriate, if the Panel is minded to prefer additional certainty around long-term implementation, the Applicant has proposed an enduring management condition (subdivision condition 1AA). That condition would provide for the establishment of an entity (such as an incorporated society or similar body) of which future owners and occupiers would be required to be members, and which would be responsible for the ongoing implementation of relevant management plans and conditions and in particular, the conditions with ongoing responsibilities relating to wildlife management.

(b) Amendments to clarify that the proposed conditions do not override CIAL's Designation or the prohibited activity rules that apply to the REPA;

(c) In relation to building height controls, amendments to clarify that:

(i) compliance with the District Plan controls is required in addition to obtaining any necessary Part 77 approvals;

(ii) for temporary activities (such as temporary cranes for construction):

(A) temporary buildings and structures within the REPA are not authorised by the consent (and in any event would require approval under s 176); and

(B) temporary buildings or structures (outside of the REPA) may only breach the Airport Protection Surfaces, if the permitted activity rules for temporary activities in the District Plan are complied with and all relevant approvals under the Civil Aviation Act 2023 are obtained.

[38] Statement of evidence of **Dr Shelley** dated 28 April 2026.

(d) In relation to lighting, amendments to address CIAL and Airways' comments regarding the absence of measurable performance criteria to control potential effects on aircraft operations. In particular, with the assistance of **Mr Evans**, who prepared the assessment of environmental effects for artificial lighting, the Applicant proposes:[39]

(i) A new land use condition (Condition 9A) to introduce a consolidated "universal exterior lighting" condition applying to all exterior lighting within the site, with measurable performance criteria in addition to the existing conditions requiring compliance with District Plan standards; and

(ii) Other consequential amendments to improve the clarity and workability of conditions relating to lighting controls.

(e) Minor drafting amendments to improve certainty, enforceability, and consistency across the conditions set.

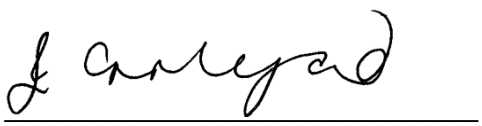
CONCLUSION

121 For the reasons set out in this memorandum, and having regard to the expert evidence of **Ms Dale**, **Mr Phillips**, **Dr Shelley**, **Mr Fuller**, **Ms Civil** and **Mr Evans,** the Applicant submits that the proposed draft conditions, as amended by the Applicant in response to the comments received, satisfy the applicable statutory requirements and are appropriate within the condition-setting framework of the FTAA.

122 Where amendments have been proposed by other parties, the Applicant has either accepted those changes where they improve clarity and workability, or explained why they are not lawful, necessary, or proportionate having regard to the evidence and the purpose of the FTAA.

123 The Applicant therefore seeks that the Panel impose the draft conditions as amended by the Applicant and provided as part of this section 70(4) response.

Dated this 29th day of April 2026



J M Appleyard / M E Davidson

[39] These changes are explained in more detail in the supplementary statement of **Mr Evans** dated 28 April 2026.