

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

**MEMORANDUM OF COUNSEL FOR CHRISTCHURCH INTERNATIONAL
AIRPORT LIMITED IN RESPONSE TO MINUTE 9 DIRECTIONS**

Dated 23 February 2026

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MAY IT PLEASE THE PANEL

- 1 This Memorandum is filed on behalf of Christchurch International Airport Limited (**CIAL**) 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 CIAL files this memorandum in accordance with paragraph [23] of Minute 9¹ where the Panel sought advice on the following:
 - 2.1 What is the precautionary principle and what does it require of decision-makers?
 - 2.2 Is the precautionary principle available to consider by an Expert Panel when making a decision on an application under the FTAA?
 - 2.3 How does application of the precautionary principle influence the assessments required under section 81 and section 85 FTAA?
 - 2.4 What considerations are relevant to application of the 'Precautionary Principle' in the circumstances of this case?
- 3 CIAL acknowledges the Panel's offer at [24] of Minute 9, for it and Airways to provide a joint response. In the short time available the parties have elected not to do that. In the interests of efficiency, though, they have sought to coordinate responses and avoid unnecessary duplication.

(a) What is the precautionary principle and what does it require of decision-makers?

- 4 The overarching concept of the 'precautionary principle' has been expressed as:²

"...if there is scientific uncertainty, it is 'better to be safe than sorry' or 'take care' before proceeding without restraint." Uncertainty, or the absence of proof of causation, must not be used as a justification to delay action aimed at preventing harm.

¹ Minute 9 of the Expert Panel dated 3 February 2026.

² Severinsen, Greg "*Letting our standards slip? Precaution and the standard of proof under the Resource Management Act 1991*" [2014] NZJIEEnvLaw 7; (2014) 18 NZJEL 173, citing Alexander Gillespie "Precautionary New Zealand" (2011) 24 NZULR 364 at 365, and D Nolan and R Somerville Resource Management Update (New Zealand Law Society, October–November 2001) at 47.

5 The precautionary principle in New Zealand had its beginning in the 1992 Rio Declaration³ and has since developed in caselaw under the Resource Management Act 1991 (**RMA**).

6 The RMA does not expressly state a precautionary principle, but a precautionary approach⁴ is implicit in the RMA.⁵ In particular:⁶

6.1 section 104(1), which requires consent authorities to have regard to a range of considerations, including *any actual and potential effects on the environment of allowing the activity*; and

6.2 the corresponding meaning of “effect” under s 3, which relevantly includes:

(a) any positive or adverse effect;

...

regardless of the scale, intensity, duration, or frequency of the effect, and also includes—

*(e) any **potential effect of high probability**; and*

*(f) any **potential effect of low probability which has a high potential impact**.*

[emphasis added in **bold**]

7 The precautionary approach is adopted by decision-makers under the RMA as a risk management approach (i.e. managing uncertainty to prevent harm), rather than a risk assessment tool (i.e. determining what the likelihood and magnitude of potential adverse effects are).

8 Whether a decision-maker should take a precautionary approach and, if so, apply material weight to it⁷, is decided contextually on a case-by-case basis.⁸ The approach is generally adopted by decision-makers when the risk of potentially *significant adverse, or irreversible harm* cannot be adequately assessed due to

³ See Principle 15:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

⁴ “Precautionary approach” and “precautionary principle” are often used interchangeably, although strictly they are different things.

⁵ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, at [41]–[43], [316] and [334]

⁶ See also section 32(2)(c) RMA.

⁷ *McIntyre v Christchurch City Council* [1996] NZRMA 289, at page 24.

⁸ *Rotorua Bore Users Association Inc v Bay of Plenty Regional Council* NZEnvC Auckland A 138/98, 27 November 1998.

the *scientific uncertainty* about the nature and consequences of the proposed activity.⁹

Adequate information

9 Prior to considering whether and how to apply a precautionary approach or not, the Courts have recognised there always remains a first hurdle for applicants to address - providing adequate information for the decision-maker to evaluate (see 104(6)):

9.1 The Environment Court in *Telecom New Zealand Ltd v Christchurch City Council*¹⁰ agreed with the proposition set out in *McIntyre*¹¹ that before a decision-maker can embark on determining whether a precautionary approach is appropriate, it must first decide whether or not the scientific evidence before it is relevant and of probative value – “*there is no warrant at this stage for imposing a threshold test of some sort of general precautionary principle to be applied to the resolution of that issue.*”¹²

9.2 The Environment Court (by majority)¹³ declined to grant consent for a mussel farm in Beatrix Bay under s104(6):

- (a) The majority concluded that its own attempts to fill the evidential gaps through its own predictions/assessments were at risk of being inaccurate and found that the information provided by the applicant was insufficient to reliably determine that the proposed activity would not result in significant adverse effects¹⁴;
- (b) the minority disagreed, and took the view that the information provided was sufficient to allow the Court to make a reasoned assessment, and that consent could potentially be granted with appropriate conditions¹⁵;
- (c) the majority judgment was upheld on appeal¹⁶ and was not revisited in the later appeal to the Court of Appeal.¹⁷

⁹ *Wratten v Tasman District Council* NZEnvC Wellington W 8/98, 17 March 1998.

¹⁰ *Telecom New Zealand Ltd v Christchurch City Council* NZEnvC W164/96, 15 November 1996.

¹¹ *McIntyre v Christchurch City Council* [1996] NZRMA 289.

¹² Above n 12, at page 11.

¹³ *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81.

¹⁴ At [298].

¹⁵ At [333].

¹⁶ *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52, at [95]-[102].

¹⁷ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

9.3 In an unsuccessful appeal from declined applications for resource consents to take groundwater for irrigation, stream augmentation and wetland restoration, a key issue in respect of ecology effects was whether there was sufficient information upon which the experts could base an opinion.¹⁸ Despite joint witness conferencing there remained, for example, disagreement as to what metrics to use to predict instream habitat change,¹⁹ agreement that there was uncertainty as to existing trends²⁰, and disagreement as to where any tipping point was or whether it would be reversible.²¹ Overall the Court found it had insufficient information before it to properly assess ecological effects:

We find the evidence to leave considerable doubt as to whether ecological values and potential effects have been adequately identified and assessed in order to consider whether the Proposal results in significant habitats having been protected.²²

9.4 The Court was asked to apply the precautionary approach however the Court determined it had not reached a point where it could consider whether to apply a precautionary approach or not:²³

In terms of the risk of reaching a tipping point, Ms Gepp drew on caselaw describing the nature of a tipping point in ecological terms. The Appellants submitted that there is no evidence that a tipping point has been or will be reached. We find that there is insufficient evidence to enable us to conclude either way.

...In light of our findings on the inadequacy of the assessment of effects we do not need to focus on what justification there might be for a precautionary approach, and what that might involve.²⁴

9.5 No appeals ensued.

10 CIAL submits that decision-makers should always take care to not conflate a precautionary approach with the initial and sometimes complete question

¹⁸ *I&P Farming Limited v Hawke's Bay Regional Council* [2025] NZEnvC 328, at [293].

¹⁹ At [317]-[318].

²⁰ At [342].

²¹ At [343]-[347].

²² At [377].

²³ At [562].

²⁴ At [577]-[578].

of whether it has enough probative scientific evidence before it, to arrive at a conclusion.

(b) Is the precautionary principle/approach available to consider by an Expert Panel when making a decision on an application under the FTAA?

11 CIAL submits yes. While not explicitly referenced in the FTAA, there is scope for expert panels to consider and take a precautionary approach because of:

11.1 the FTAA's provisions directing decision-making on resource consent approval(s); and

11.2 the context of the FTAA generally.

The FTAA provisions that make the precautionary approach relevant

12 FTAA panels must apply clauses 17 to 22 in Schedule 5 of the FTAA in their decision making on whether to grant approval for resource consent(s)²⁵ and in doing so must *take into account* (as relevant) Parts 2, 3, 6 and 8-10 of the RMA. The Panel must therefore *take into account* ss 5, 17²⁶ and 104 RMA (amongst others). This incorporates the traditional RMA investigation into adverse effects, including the ability to adopt a precautionary approach to potential effects of high impact where uncertainty remains as to their probability and/or consequences.

13 While the greatest weighting is to be given to the purpose of the FTAA, expert panels must take care not to rely solely on that purpose at the expense of proper consideration of the matters in clauses 17(1)(b) and (c). To make sense of this weighting exercise, the expert panel in the Bledisloe North Wharf and Fergusson North Berth Extension project²⁷ adapted guidance from the Court of Appeal decision *Enterprise Miramar*²⁸ as follows:

- a. While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (c): *Enterprise Miramar*, at [41].
- b. Clause 17 requires us to consider the matters listed in clause 17(1)(a)-(c) on an individual basis, prior to standing back and conducting an overall

²⁵ Section 81(2)(b) FTAA.

²⁶ Section 17(1) RMA relevantly says: *Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person, ...*

²⁷ Bledisloe North Wharf and Fergusson North Berth Extension project [FTAA-2503-1028](#), Decision of the Expert Panel dated 21 August 2025, at [121].

²⁸ Citing *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 54.

weighting in accordance with the specified direction: *Enterprise Miramar*, at [52] – [53].

- c. **The purpose of the FTAA is not logically relevant to an assessment of environmental effects.** Environmental effects do not become less than minor simply because of the purpose of the FTAA. **What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not:** *Enterprise Miramar*, at [55].

[emphasis added in **bold**]

- 14 Put another way, the purpose of the FTAA does not in and of itself enable expert panels to approach their effects assessments under clause 17(1)(b) and (c) of Schedule 5 (i.e. Parts 2, 3 and 6 RMA) any differently than the RMA already requires. It is only once that assessment is done (including applying the precautionary principle is relevant), that the approach differs – it is then up to the expert panel to step back and undertake the weighting exercise per clause 17(1)(a).
- 15 In addition to importing the precautionary discipline through Schedule 5 and the incorporated RMA provisions, the FTAA makes information inadequacy directly relevant under s 85 itself.
- 16 Here, the aeronautical assessment identified by CIAL and Airways has not been undertaken. The Panel does not have the information necessary to determine the scale of aviation safety risk or the cost and feasibility of mitigation. That counts against consent being granted under both the RMA and the FTAA assessments. As a matter involving public safety and nationally significant infrastructure, this information deficit must be a matter of real weight.

The context provided by the FTAA generally

- 17 The purpose of the FTAA is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. In this context the FTAA processes inevitably deal with complex proposals. In turn, there are detailed requirements for the level of information required to support

substantive applications²⁹ and the FTAA requires such information to be *specified in sufficient detail to satisfy the purpose for which it is required*³⁰.

- 18 Applications are vetted by the EPA at an early stage for completeness, but not merit and within a relatively short timeframe (15 working days).³¹ Expert Panels then have a relatively short timeframe within which to review all the material, decide who to invite for comments, receive and consider comments, make any further enquiries/further information requests, hold a hearing(s), undertake deliberations, potentially prepare and circulate draft conditions for comment and reach (and draft) a decision.
- 19 Because the FTAA establishes this expedited and constrained purposes, it necessarily assumes applications are lodged with the technical material required to enable a proper assessment under Clause 17(1)(b) and (c). The statutory timeframes and limited procedural steps leave little scope for fundamental investigation to occur later. The regime abbreviates process, not substance. Where foundational information is absent, the Panel must assess effects on the evidence before it, which will sometimes involve taking a cautious approach to uncertainty in accordance with the RMA framework.

²⁹ Refer s43(3)(a) FTAA, which requires applicants to include (amongst other things) the following matters:

- 1) listed in clause 5 of Schedule 5:
 - ...
 - (g) an assessment of the activity against [sections 5, 6, and 7](#) of the RMA;
 - (h) an assessment of the activity against any relevant provisions in any of the documents listed in subclause (2) – namely, a national environmental standard, national policy statement, a plan or proposed plan, a regional policy statement (amongst others);
- 2) listed in clause 6 of Schedule 5:
 - (a) an assessment the actual or potential effects on the environment;
 - (b) if the activity includes the use of hazardous installation, an assessment of any risks of the environment that are likely to arise from such use;
 - ...
 - (d) a description of mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect of the activity;
 - ...
 - (g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how the effects will be monitored and by whom, if the activity is approved;
- 3) listed in clause 7 of Schedule 5:
 - (a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects;
 - (b) any physical effect on the locality, including landscape and visual effects;
 - (c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity;
 - (d) any effect on natural and physical resources that have aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations;
 - (e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants;
 - (f) any unreasonable emission of noise;
 - (g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.

³⁰ Section 44 FTAA..

³¹ Section 46(1) FTAA.

(c) How does application of the precautionary principle influence the assessments required under section 81 and section 85 FTAA?

20 As explained above, CIAL submits that the precautionary principle influences the assessment of adverse effects under s 81(2)(b) and 3(a), the weighting of such effects under clause 17(1) of Schedule 5. Inadequate information is also directly relevant to the assessment under s85(3), because it is an adverse impact that weighs against granting a consent under s85(5).

21 The precautionary principle has been applied by previous FTAA expert panels where the information before them was inadequate or incomplete:

21.1 In *Taranaki*,³² the Panel made clear inadequate information may justify refusal within the structure of s85:

184. That is not to say that inadequate information cannot be a basis for declining consent. If: (i) information is inadequate or uncertain such that favouring caution is required, and 'favouring caution' cannot be achieved through conditions, or (ii) the Panel considers that it does not have adequate information to determine the application, these scenarios would meet the definition of an 'adverse impact' in s 85(5), which is "any matter considered by the panel in complying with s 81(2) that weighs against granting the approval". As such, the inadequacy of information could provide the basis for declining the approval if the panel considers that adverse impact, by itself or in combination with any other adverse impact, is sufficiently significant to be out of proportion to the project's regional or national benefits. This is addressed below in relation to s 85 FTAA.

(footnote omitted)

21.2 Although *Taranaki* concerned approvals under the EEZ Act, the reasoning at [184] is equally applicable here because it does not turn on any marine-specific feature of the EEZ regime, but on the structure of s 85 of the FTAA itself. The Panel's analysis of how information inadequacy operates within s 85(5) and feeds into the s 85(3) proportionality assessment is an interpretation of the FTAA, and therefore directly relevant to this Panel's task. The absence of adequate information may constitute an adverse impact for the purposes of s 85, capable of supporting decline if sufficiently significant in the s85(3) proportionality assessment.

³² In its draft decision to decline the Taranaki VTM project – [FTAA-2504-104](#).

21.3 In its draft decision to decline the *Delmore* residential development and highway interchange project³³, the expert panel identified gaps in the proposal relating to water supply, wastewater, transport infrastructure and ecological effects. Comments from the Council and responses from the Applicant disclosed uncertainty was to how (and when) transport, wastewater and drinking water services would be delivered. The panel said it had *no choice but to decline the Application* after having found a number of the adverse effects that were fundamental to the project could not be addressed by way of conditions.³⁴ Overall, and despite the favourable zoning, the Panel found the supporting information in the Application was not up to standard:

The Panel acknowledge that the zoning of the Site clearly indicated that at 'the appropriate time' a project such as this would be able to be granted. ... If the Applicant had provided a proposal that addressed all the concerns the Panel have about: water supply; wastewater management; transport infrastructure; and ecological effects, including the actual realisation of ecological benefits, then the Panel would have been more favourably disposed towards the granting the approvals sought. **In short, this Application was not at the requisite standard required for such a significant project** which is in a future urban zone with no infrastructure connectivity.³⁵ [emphasis added in **bold**]

21.4 The applicant withdrew its proposal and reapplied with an amended application a few months later³⁶, which proposed a wastewater treatment

³³ Delmore Project Fast-track Approval Application [FTAA-2502-1015](#).

³⁴ Delmore Project Fast-track Approval Application [FTAA-2502-1015](#), Draft Decision of the Expert Panel under the FTAA, dated 17 September 2025, at [13 a].

³⁵ Delmore Project Fast-track Approval Application [FTAA-2502-1015](#), Draft Decision of the Expert Panel under the FTAA, dated 17 September 2025, at [17].

³⁶ Delmore Project Reapplication [FTAA-2512-1164](#), re-applied on 12 January 2026.

for Stage 1, its own groundwater supply, and changes to the transport infrastructure (including two new collector roads).³⁷

22 The *King's Quarry* decline decision³⁸ under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTC) is also of assistance and persuasive:

22.1 The FTC panel in essence held that the proposal had failed to include adequate ecological information:³⁹

...there were a number of key gaps in the ecological information provided to us, which meant we are not able to determine the scale of effects on important flora and fauna, and therefore the appropriateness of the measures proposed to address those effects. ...

While we made a number of requests for further information, the responses we received were not sufficient to fill those gaps. Nor, given the nature of the gaps identified (which included a need for further field work), was there sufficient time left in the [FTC] process to enable that work to occur. ...

22.2 Applicants under the FTC were expressly required to provide *sufficient detail in their applications to correspond to the scale and significance of the effects that the activity is anticipated to have on the environment*.⁴⁰ The FTAA's corresponding requirement is that information *must be specified in sufficient detail to satisfy the purpose for which it is required*.⁴¹ When the Applicant re-applied under the FTAA, it had "*subsequently undertaken a large body of additional ecological monitoring and reporting to address those matters raised by the [FTC] Panel*."⁴²

(d) What considerations are relevant to application of the precautionary principle in the circumstances of this case?

23 A number of relevant considerations have been raised in memoranda and documents provided to the Panel already⁴³, particularly those filed in December by CIAL and Airways.

³⁷ AEE dated 23 December 2025, Section 2.1.2, at page 10.

³⁸ King's Quarry Project [FTC000095](#), Decision of Fast Track Hearing panel, dated 14 October 2024.

³⁹ At [11]-[12].

⁴⁰ Clause 14, Schedule 6, COVID-19 Recovery (Fast-track Consenting) Act 2020.

⁴¹ Section 44 FTAA.

⁴² King's Quarry, Applicant's AEE in support of substantive application under FTAA, dated 24 April 2025 at page 16.

⁴³ For CIAL:

Memorandum of Counsel addressing Minute 6 dated 18 December 2025;

Memorandum of Counsel in response to Minute 7 dated 26 January 2026; and

- 24 CIAL refers particularly to the following:
- 24.1 The potential impacts of allowing the proposal are not abstract or minor in character. They include the risk of catastrophic loss of life, serious injury, destruction of aircraft, and cascading operational and economic consequences for nationally significant infrastructures from a single point of failure;
 - 24.2 Aviation safety operates by reference to internationally recognised loss-of-life protection standards, under which even low-probability events must be treated conservatively where the potential consequence is catastrophic. The regulatory framework that reinforces that safety led approach inherently requires a conservative approach and ongoing vigilance against epistemic risk;
 - 24.3 The above impacts are not appropriate to be addressed by either pre-commencement monitoring and/or conditions of consent;
 - 24.4 This not a typical case of the Applicant being asked to prove the negative. It is being asked to undertake a standard investigation into known and quantifiable safety risks. The information is able to be gathered; it just has not been; and
 - 24.5 Without knowing exactly what changes or concessions the Applicant needs to make to its proposal in light of the (to be quantified) safety risks, the Applicant is in danger of having over-stated or significantly overstated its benefits.

Potential significant impacts

- 25 CIAL has previously undertaken detailed catastrophe loss modelling with its specialist global aviation insurance brokers to quantify the financial consequences of a range of worst-case aviation events for insurance stress-testing purposes. One such modelled scenario involved a fully laden A380 aircraft overshooting the runway on landing at Christchurch Airport, resulting in a total hull loss and the loss of all 489 passengers. On a maximum liability basis, that scenario produces a total estimated loss exposure of approximately USD1.49

Memorandum of Counsel responding to Minute 8 dated 16 February 2026.
For Airways:
Supplementary Submission dated 18 December 2025;
Memorandum of Counsel in response to Minute 7 dated 28 January 2026; and
Memorandum of Counsel responding to Minute 8 dated 16 February 2026.

billion, illustrating the scale of consequences associated with aviation system failure, even where the probability of occurrence is low.

- 26 The Panel has therefore not been put into a position where it can properly determine matters it must have regard to under s 81 FTAA, nor the question of whether the adverse impacts of the proposal are sufficiently significantly out of proportion to the benefits.

Aviation safety itself requires a precautionary approach

- 27 A precautionary approach is consistent with established aviation safety principles.
- 28 Aviation operates within a safety-critical framework in which single-point failures can give rise to cascading and catastrophic consequences. For that reason, aviation system integrity is maintained through conservative operating assumptions and the systematic elimination of uncertainty before changes that might affect safety-critical infrastructure.
- 29 Operators do not proceed on the assumption that safety is maintained where a material change is proposed within the operating environment without appropriate technical assessment.. The aviation industry approach to epistemic risk dictates the operator to apply conservative controls, and only remove conservative controls once the knowledge gap is closed. Where there is credible potential for interference with such systems, the resulting uncertainty is itself a matter requiring careful treatment. It is not neutral. It is a factor weighing in favour of caution.
- 30 Navigation aids and associated communications, navigation and surveillance infrastructure are safety-critical components of that system. Degradation or interference may not be immediately observable, yet may undermine certified instrument procedures and operational minima. Aviation operators do not assume continued safety where a material change is proposed within protected areas unless and until appropriate aeronautical assessment confirms that system performance will not be compromised.
- 31 Where there is credible potential for interference or degradation to these systems, resulting epistemic uncertainty must be treated as a safety risk in its own right. Unresolved uncertainty increases risk exposure, it does not neutralise it.

- 32 Often in environmental cases where the precautionary approach has been applied, the uncertainty has concerned the extent, timing, or reversibility of ecological effects. By contrast, where uncertainty bears upon the integrity of aviation systems designed to prevent catastrophic loss of life, the consequences of failure are immediate and undoubtedly irreversible and therefore warrant particularly conservative treatment of the uncertainty.
- 33 Put simply: any proposal with a potential but unquantified impact on aviation safety infrastructure and operations is treated as a significant risk until proven safe, not the reverse.

Not appropriate to be controlled by conditions

- 34 The nature of the information gap in this case is foundational rather than peripheral.
- 35 Pre-commencement monitoring or certification conditions cannot substitute for the aeronautical assessment required to determine whether interference effects may arise and, if so, their scale. Such conditions would defer the core evaluative task of quantifying the extent of potentially catastrophic risks to a post-approval stage.
- 36 The Applicant is today submitting an updated final package including proposed conditions. Without seeing the updated condition set, CIAL is unable to comment further than it already has.⁴⁴ In any event, CIAL's position would and does remain:
- 36.1 The significant risks of the proposal and potential impacts – as discussed above – cannot be appropriately addressed by conditions; and
- 36.2 It cannot responsibly engage in a discussion about conditions until risks are identified and discussed with all relevant aviation system participants, per paragraph 41 of its December Memorandum:

As to Minute 6's request for CIAL to comment on the proposed conditions and otherwise suggest amended or further conditions, CIAL cannot responsibly do so in the absence of a comprehensive aeronautical study. To engage with conditions in the absence of an adequate evidential

⁴⁴ Memorandum of Counsel for CIAL addressing Minute 6 dated 18 December 2025, at [19], [32], [42]-[45]; Memorandum of Counsel in response to Minute 7 dated 26 January 2026; and Memorandum of Counsel responding to Minute 8 dated 16 February 2026.

foundation would risk proceeding on untested assumptions the relevant safety issues are:

41.1 known and fully characterised;

41.2 capable of reliable quantification; and

41.3 able to be appropriately managed through conditions of consent.

37 Given the nature of the risks here, any pre-commencement monitoring (if proposed) could only be an attempt to ascertain the necessary baseline information as to impacts on CIAL and other aviation operators' operations and infrastructure.

38 The Supreme Court has criticised failures to obtain the baseline information as to effects and the use of pre-commencement conditions to rectify information deficits – such conditions ought not be a mechanism to collect the very information that would have been required to assess and draw conclusions as to the scale of effects and impacts.⁴⁵ The Court has found that doing so failed to meet the NZCPS requirement to favour caution and environmental protection.⁴⁶ Glazebrook J said:

... I think it is strongly arguable that in this case the pre-commencement monitoring conditions (conditions 48 to 51) were ultra vires as they went well beyond monitoring or identifying adverse effects and were for the purpose of gathering totally absent baseline information.⁴⁷

39 This position was echoed by the expert panel on the Delmore Project⁴⁸, the Taranaki project⁴⁹ and the expert panel on the King's Quarry (FTC decline).⁵⁰

⁴⁵ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, at [275].

⁴⁶ At [131] and [274].

⁴⁷ per Glazebrook J at [276].

⁴⁸ Delmore Project Fast-track Approval Application [FTAA-2502-1015](#). Draft Decision of the Expert Panel under the FTAA, dated 17 September 2025, at [367]:

It is the Panel's view that to grant a consent with significant pre-conditions is not genuinely granting a consent at all. The Panel does not have adequate information available to provide it with certainty that it can impose appropriate conditions to mitigate potential adverse effects noted by the Council.

⁴⁹ In its draft decision to decline the Taranaki VTM project – [FTAA-2504-104](#) – at [1819]:

... pre-commencement monitoring cannot be used to provide additional detail to either clarify or better quantify an impact(s) and/or effect(s). Further, we are also clear that such monitoring cannot be employed to determine if an effect will arise at all, and where its impact will be felt. We consider that conditions that seek to address any of these outcomes are ultra vires, for more than the reason cited by the Supreme Court. In that regard, we consider that it is unlawful for a condition to defer the substantive decision as to the actual and potential impacts of the project to a subsequent time and process...

⁵⁰ King's Quarry Project [FTC000095](#), Decision of Fast Track Consenting Hearing panel, dated 14 October 2024, at [13].

While the Applicant suggested we could simply include conditions to require further monitoring, or recalculations of offsets etc at a later stage, we consider it is not possible or appropriate to impose

40 It is acknowledged that conditions may authorise a person or entity to certify a condition of consent has been met or complied with or otherwise settle a detail of that condition. However a condition must also not delegate the making of any consenting or other arbitrary decision to any person. CIAL submits that neither is appropriate for matters of aviation safety.

Incomplete information

41 This is not a case in which the potential risks are speculative in kind. The nature of risks associated with interference with aviation navigation systems is well understood in international aviation practice. What is unknown, because the Applicant has not investigated it, is the extent to which this particular proposal may generate such effects.

42 If uncertainty exists around the extent of safety risks and curtailment of aviation operations, lack of full scientific certainty cannot be a reason to ignore or downplay them. Especially when there is a known body of work that is typically done, to explore the extent of these matters and quantify the impacts.

43 Absence of an aeronautical study does not equal an absence of risk and attempts should not be made by the Applicant to downplay such risks. The information is obtainable, but has simply not been provided. Applicants who have not provided adequate information to allow the Panel to properly assess the impact of their proposals should not be rewarded with Fast Track approvals.

44 This is not a case of the Applicant being asked to prove the negative. An aeronautical study is the standard body of work required to remedy this information gap. But to do that requires time which the Applicant and Panel simply do not have available to them.

45 The Panel has no expert evidence disputing CIAL and Airways' position that an aeronautical study – of the kind addressed in their December comments is required to properly quantify these risks.

Conclusion

46 CIAL's position remains an aeronautical study must be done before the aviation safety and efficiency of the proposal can be properly assessed. That work has not been undertaken. As a result, the Panel does not have the technical material

conditions where there is insufficient baseline information to determine effects, and which leave the determination of the scale of mitigation or offsetting required to a conditions process.

necessary to determine the extent of the adverse aviation effects or whether they are proportionate to the *project's* (asserted) *regional benefits*. Those benefits are themselves incomplete, as the economic case does not account for any costs associated with avoidance or mitigation of identified adverse safety impacts.

47 CIAL maintains its submission the Panel ought to decline the application under s85(3) of the FTAA because:

47.1 the precautionary principle should be applied because there remains scientific uncertainty as to how frequent and how severe the potential impacts of high consequence would or could be; and/or

47.2 because the gap in information is such that the impacts (and potentially the benefits) of the proposal have not been properly quantified and therefore the Panel has not been put into a position where it can properly turn its mind to and weigh:

(a) whether the adverse impacts of the proposal are or are not sufficiently significant to be out of proportion to the project's benefits; and/or

(b) whether proposed conditions would avoid, remedy or mitigate the adverse impacts.

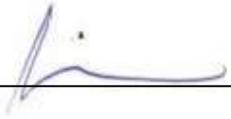
48 This is not a situation where the nature of risk and/or potential consequences of an adverse impact is not known – the types of risks and potential significant consequences are known – it is that the scale and extent of those risks are not (yet) quantified, but they both could and should be.

49 The FTAA process provides for fast-tracked decision-making, enabling regionally or nationally significant proposals to obtain multiple approvals faster. While expert panels are not required to decline projects that have adverse or even significant adverse impacts, they still need to know what they are in order to discharge their responsibility under s85(3). This must be especially so when the matter at hand involves potential significant risks to persons and existing, nationally significant infrastructure. The fast-track process is designed to be efficient, but not cursory.

50 It remains open to the Applicant to withdraw its application and reapply once the information gap has been addressed. Other applicants have had to do this over

the various iterations of Fast-Track regimes, including the 2025 Act. There is no impediment to that course being taken here – and every reason why it should be.

DATED this 23rd day of February 2026



A C Limmer KC
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