

**Before the Hearings Commissioner appointed
by the Invercargill City Council**

Under

the Resource Management Act 1991
(Act)

And

In the Matter

a notice of requirement for a designation
under Section 168 of the Act to place a
restriction on built form and
electromagnetic interference around the
Awarua Satellite Ground Station

**Legal Submissions on behalf of
Stewart Family Assets Limited**

Dated: 28 September 2026

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INTRODUCTION

1. These legal submissions are filed on behalf of Stewart Family Assets Limited (**SFAL**) which is owned by Stewart Family Holdings Limited and forms part of the group trading under the Calder Stewart name (**Calder Stewart**).
2. Calder Stewart own 513ha of land¹ in the Awarua Quadrant (**Calder Stewart Site**), which is zoned Industrial 4 (Awarua) (**Zone**) under the Invercargill City District Plan (**District Plan**).
3. The Calder Stewart Site is subject to a Notice of Requirement (**NOR**) by Space Operations New Zealand Limited (**Space Ops**), which seeks to place a restriction on built form (**Horizon Mask**) and electromagnetic interference (**EMI Restriction**) around the Awarua Satellite Ground Station located at 781 Colyer Road (**Satellite Ground Station**) (**Designation**).
4. Calder Stewart opposes the proposed Designation in its entirety and seeks that the Invercargill City Council (**Council**) recommend that the Notice of Requirement be withdrawn.
5. Calder Stewart recognises the Satellite Ground Station is significant infrastructure, and wishes to support the continued operation and growth of Space Ops, however, Calder Stewart needs to also protect its own interests and development rights on the land under the Zone. The Designation as currently proposed is contrary to the intention and enabling nature of the Zone for industrial activities, renders the Calder Stewart Site incapable of reasonable use and should be withdrawn.
6. Calder Stewart and Space Ops have been engaged in good-faith collaborative discussions leading up to this hearing in working to resolve their different positions and Calder Stewart hopes this can continue through this hearing process.

CALDER STEWART'S POSITION AND RELIEF SOUGHT

7. In the absence of any agreement and amendment to the conditions of the NOR, Calder Stewart's position is that the Council should recommend that the NOR is withdrawn on the basis of the following matters from section 171 RMA:

¹ Legally described as Lot 1 DP 347109 and Lot 1 DP 14239 and Section 30B, 34, Block III, Campbelltown Hundred (RT 193616), Section 7 Block II and Section 15, 45, Block III, Campbelltown Hundred (RT 193618), Part Section 6, Block II, Campbelltown Hundred (RT SL9C/524), Lot 2 DP 493747 and Section 2, Block II, Campbelltown Hundred and Part Section 5, Block II, Campbelltown Hundred (RT 720668), Section 8, Block II, Campbelltown Hundred (RT 371769), Section 9, Block II, Campbelltown Hundred (RT 371770), Section 1 Block II Campbelltown Hundred, Section 2 Block II Campbelltown Hundred, Section 22 Block II Campbelltown Hundred.

- (a) the commercial and economic effects of the NOR on Calder Stewart are more than minor, contrary to Part 2, and are contrary to the purpose, objectives and policies of the Industrial 4 (Awarua) Zone;
 - (b) adequate consideration to alternative sites, routes or methods has not been given which is a requirement of the RMA when a requiring authority does not have an interest in the land effected;
 - (c) the designation is not reasonably necessary for achieving Space Ops' objectives for which the designation is sought; and
 - (d) the conduct of Space Ops including a lack of proper regard to the interests to those affected and the environment is contrary to their responsibilities as a requiring authority under the RMA² and has led to procedural unfairness on Calder Stewart.
8. Furthermore, we consider the Designation will render the Calder Stewart Site incapable of reasonable use for the purposes of sections 179(3) and 185 RMA.
9. Calder Stewart purchased the Calder Stewart Site from the Invercargill City Council in 2021 due to the fact that it had been strategically zoned by Council for large-scale industrial and renewable energy development.³ Calder Stewart is disappointed that Space Ops, a council-controlled trading organisation,⁴ is now severely constraining that ability to develop the Zone for its intended purposes and has not considered the impact of the designation on the Calder Stewart Site both prior to the submission of the NOR and the time elapsed prior to this hearing.⁵
10. This Zone has applied to the Calder Stewart Site since 2009 after a public notification process to introduce the Zone into the District Plan (Plan Change 8). Space Ops is a wholly owned subsidiary of Great South, whose predecessor, Venture Southland, did not lodge a formal submission or seek protective planning controls through the Plan Change 8 process or later plan change processes. Space Ops' evidence⁶ explains that Space Ops did not seek planning advice during recent ICC District Plan Reviews and relied on ICC to inform them of how Zone changes could impact their operations.⁷ We consider this is contrary to the social and environmental responsibilities and sound business practice objectives required of council-controlled trading organisations under the Local Government Act 2002.⁸

² Resource Management Act 1991, section 167(4)(b).

³ Statement of Evidence of Huw Jones, 21 September 2026 at [10].

⁴ <https://www.southlanddc.govt.nz/council/role-of-council/council-controlled-organisations/>

⁵ Statement of Evidence of Huw Jones, 21 September 2026 at [33].

⁶ Statement of Evidence of Alex Dunn, 14 September 2026 at [310].

⁷ Statement of Evidence of Robin McNeill, 14 September 2026 at [23] – [24]

⁸ Local Government Act 2002, section 59.

11. The lack of consideration of the impact on the Calder Stewart Site is demonstrated in Space Ops' requiring authority application where the Space Ops site was described as being *"relatively remote and is located opposite a largely undeveloped Industrial Zone. Due to the lack of dwellings within the surrounding area, it is considered that there are very few (if any) sensitive receivers within the surrounding environment."*⁹ There has been disregard of the impact that Space Ops' requiring authority power could have on the Calder Stewart given the enabling of heavy industrial and electricity generation activities on in the Industrial Zone started a Designation process that in our submission has been flawed from the beginning.
12. The focus of Space Ops appears to have been to use their requiring authority privilege to irresponsibly control development on the Calder Stewart Site. This is demonstrated by the following statements in emails which Calder Stewart obtained through a LGOIMA request of Robin McNeill stating:

*"And Calder Stewart are soldiering on with their application which we need to head off on the pass as soon as possible with the airspace designation."*¹⁰

*"I don't see who they can install more than two of their turbines without upsetting us. I cannot share Chami's optimism that we can "amicably come to an agreement" with Calder Stewart as their operation is fundamentally adverse to ours. That's before we start on any EMI they may generate"*¹¹

13. Once becoming a requiring authority in March 2025, the subsequent NOR application was lodged which does not consider the effects on Calder Stewart against the anticipated environment and only limits the assessment of effects to a 4ha area of the 513ha Calder Stewart Site activities would be restricted by a height lower than the 35m permitted height limit and then makes no effort to assess how the EMI Limitation could affect activities in the Zone.¹²
14. This obvious rush to prevent Calder Stewart's wind farm application from proceeding and lack of thorough effects assessment of the NOR are contrary to the duties of both a requiring authority to give proper regard to the interests of those affected¹³ and the principal objective of a council-controlled trading organisation to *"exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and to endeavour to accommodate or encourage these when able to do so"* under the Local Government Act 2002.¹⁴

⁹ Form 17 Requiring Authority Application, SpaceOps NZ, June 2024

¹⁰ Correspondence dated 10 November 2025 *"Re Unrestricted RE Space Ops"*

¹¹ Correspondence dated 9 June 2025 *"[Unrestricted] RE: Awarua Quadrant Digital Elevation Mapping of 5degree Obstacle Free Zone"*

¹² Notice of Requirement Application updated 24 March 2026 at page 16.

¹³ Resource Management Act 1991, section 167(4)(b).

¹⁴ Local Government Act 2002, section 59.

15. Since lodging their submission on the Designation in May 2026, Calder Stewart have been grateful for improved engagement from Space Ops including the recent (and ongoing) discussions regarding a mutually agreeable resolution to the Designation.

THE NOTICE OF REQUIREMENT

Space Ops' Notice of Requirement

16. The Notice of Requirement issued by Invercargill City Council¹⁵ listed the Designation as follows:
- (a) *a restriction on any built form that would protrude through an angle of 5 degrees as measured from 2 metres above the boundary of the physical site, extending out 3km in all directions excluding the coastal marine area and all public conservation land (referred to in the Notice of Requirement as a 'horizon mask'); and*
 - (b) *an Electromagnetic Interference (EMI) Limitation Area that will extend 2 kilometres in all directions (excluding the coastal marine area and all public conservation land) from the boundary of the physical site to limit emissions greater than –154 dBW/MHz at frequencies used for the reception of radio signals from spacecraft at the Awarua Satellite Ground Station, as set out in the Table of Radio Spectrum Usage in New Zealand (PIB 21) dated 11 June 2021 and any subsequent amendments and/or updates to this document.*

Invercargill City Council's Section 42A Position

17. Council released its Section 42A report on 31 August 2026. The key recommendations of the Section 42A report are as follows:¹⁶
- (a) the EMI Restriction be confirmed subject to conditions;
 - (b) the Horizon Mask be modified to exclude the Zone; and
 - (c) the conditions are modified to incorporate Council feedback.

Space Ops' Amended Conditions

18. Space Ops have suggested two changes to the conditions of the Designation as follows:¹⁷
- (a) changes to the Horizon Mask aspect of the designation, which provide a process for seeking Space Ops approval to breach the Horizon Mask with

¹⁵ <https://www.icc.govt.nz/news-events/public-notice?item=id%3A2xv6n3nnx1cxbyxhtml0>

¹⁶ Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [205]-[208].

¹⁷ Space Operations New Zealand Limited, Statement of Evidence of Alex Dunn, Appendix A, Proposed Conditions, 14 September 2026.

the proposed measure for approval being whether the penetration through the Horizon Mask will “not materially compromise...” the Ground Station; and

- (b) changes to the EMI Restriction aspect of the designation, which clarify that the EMI Restriction is intended to apply only to new intentional terrestrial radiocommunication service emitters of electromagnetic interference.
19. We submit that the changes to conditions proposed by Mr Dunn,¹⁸ which are intended to provide more certainty around the pathway for obtaining approval from Space Ops for breaches to the Horizon Mask, provide little in the way of certainty for the outcome of potential development which conflicts with the Designation. The conditions still contain a large degree of subjectivity as there are no objective limits or standards that must be achieved and there is uncertainty around what would or would not “materially compromise” the Ground Station. Space Ops still hold the ultimate power to decline an approval for an anticipated activity on Calder Stewart Land.
 20. We consider these conditions are not in an acceptable form for inclusion in the District Plan. It is fundamental that provisions of district plans are certain enough that they may be understood.¹⁹ We consider that best-practice condition drafting principles for resource consents which have previously determined by the Environment Court should be applied as, namely that a condition “*requires specificity, clarity and accuracy of expression leading to certain measure of certainty, before it can be enforceable,*”²⁰ The use of the term “*would not materially compromise the Ground Station*” is not an objective standard at all and there is no certainty for landowners affected by the Designation as to what possibly could be acceptable to Space Ops or not leading to the investment uncertainty for the Zone which Mr Jones describes.²¹
 21. Engagement between the parties on a refined set of conditions, applying to a refined Designation area remain ongoing.

LEGAL FRAMEWORK FOR COUNCIL RECOMMENDATION

22. The legal framework for the recommendation by the territorial authority is contained in in the Section 171 of the Resource Management Act 1991 (**RMA**). Section 171 states that:

¹⁸ Statement of Evidence of Alex Dunn, 14 September 2026 at Appendix A.

¹⁹ *Fonterra Co-Operative Group Limited v Manawatu-Wanganui Regional Council* [2013] NZEnvC 250 at [21]

²⁰ *Ferguson v Far North District Council* ENC Auckland A084/98, 16 July 1998 [1999] NZRMA 238 at 8-9.

²¹ Evidence of Huw Jones, 21 September 2026 at [23].

- (1) *When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*
 - (a) *any relevant provisions of—*
 - (i) *a national policy statement;*
 - (ii) *a New Zealand coastal policy statement;*
 - (iii) *a regional policy statement or proposed regional policy statement;*
 - (iiia) *an infrastructure design solution;*
 - (iv) *a plan or proposed plan; and*
 - (b) *if the requiring authority does not have an interest in the land sufficient for undertaking the work,—*
 - (i) *whether adequate consideration has been given to any alternative sites, routes, or methods of undertaking the work; and*
 - (ii) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
 - (c) *[Repealed]*
 - (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

(1B) The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority.

...

- 23. We submit that the consideration of the effects on the environment contained in section 171(1)(a)-(d) can be broken down into four separate matters which Space Ops must demonstrate the satisfaction of to the territorial authority. These four key matters for Council's consideration can be summarised as:

- (a) the effects of the designation on the environment subject to Part 2 with particular regard to national and regional policies statements, regional plans and district plans under section 171(1)(a);
- (b) the effects on the environment with regard to whether adequate consideration has been given to alternative sites, routes and methods under section 171(1)(b)(i);
- (c) the effects on the environment with regard to whether the designation is reasonably necessary for achieving the objectives of the requiring authority under section 171(1)(b)(ii); and

- (d) the effects on the environment with regard to any other matter the territorial authority considers reasonably necessary under section 171(1)(d).
24. Where Space Ops fails to demonstrate satisfaction of these matters, these failings must contribute to the territorial authority's recommendation on the NOR.
25. When the territorial authority is considering their recommendation under Section 171, the four key matters for Council's consideration above must be considered against the receiving and anticipated environment in order to provide a complete assessment of the effects of the proposed Designation. We consider these matters below.

Receiving and Anticipated Environment

26. It is our submission that the proposed Designation must be assessed against the receiving but also the anticipated environment. This assessment involves looking at the Satellite Ground Station and the surrounding area (including the Calder Stewart Site), to understand the environment:
- (a) as it exists (both historic and current), including any permitted and consented activities already being conducted; and
 - (b) as it could potentially exist in the future, including as a result of:
 - (i) modification by permitted activities on the relevant site; and
 - (ii) currently unimplemented resource consents that are likely to be implemented.²²
27. While not part of the legal environment in a *Hawthorn* sense, the *anticipated* environment is also important to your assessment. The High Court in *Frost* endorsed a consideration of the anticipated environment supported by the objectives and policies of the district plan when determining effects.²³ The High Court relevantly held:

*"Effects must be assessed in context, and in light of what exists, and is anticipated in the zone. For example, leaving aside any permitted baseline considerations, the erection of a concrete tilt slab building would have different effects in a commercial zone from what it would have in a low density residential area, or in an outstanding natural landscape. It would be entirely artificial to assess effects without considering what exists and what is anticipated in the zone. In my view, that is all the Council has done here."*²⁴

²² *Hawthorn Estates v Queenstown District Council* [2006] NZRMA 424 at [84].

²³ *Frost v Queenstown Lakes District Council*, CIV-2021-425-0005 [2021] NZHC 1474 at [68].

²⁴ *Frost v Queenstown Lakes District Council*, CIV-2021-425-0005 [2021] NZHC 1474 at [68].

28. Additionally, in *Queenstown Central*, the High Court held that a ‘real world approach’ was required to be taken when considering the future environment against which effects were required to be assessed. The Court held that the objectives and policies of the district plan served as a guide to the future environment against which the effects of a proposal were to be assessed.²⁵

29. Although these cases determining what makes up the legal environment were determined in the context of resource consent decisions, the Environment Court has previously held:

*“There is no bright line distinguishing between the matters that may be properly regarded as “the effects on the environment of allowing the requirement” under s 171 and the consenting process under section 104 which is to consider “actual and potential effects on the environment of allowing the activity.”*²⁶

30. As such, we consider a real world approach to the anticipated environment must be the environment against which the effects of the Designation are assessed. In addition to more strictly defined permitted activities described by Ms McMillan below, that future environment is also guided by the objectives and policies of the Zone which “*establish and implement the Industrial 4 Zone and enable its use by industrial activities.*”²⁷ As the evidence of Ms McMillan describes, the permitted activity status for heavy industrial and energy generation activities creating an anticipation of these types of activities in the Zone.²⁸ Established heavy industry activities nearby such as dairy factories, fertiliser plants and the Tiwai Aluminium Smelter demonstrate that heavy industry with tall structure elements are feasible and realistic in this area.

31. It is our submission that the District Plan creates an anticipated environment which, in the case of the Calder Stewart Site, anticipates heavy industrial and electricity generation activities. It is this environment against which the effects of the designation must be assessed, in accordance with the criteria in Section 171.

²⁵ *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 815, [2014] NZRMA 239 at [84] – [85].

²⁶ *Re Queenstown Airport Corporation Limited* [2017] NZEnvC 46 at [50]

²⁷ Invercargill City District Plan, Policy IND4Z-P1

²⁸ Evidence of Christine McMillan, 21 September 2026 at [21].

KEY ISSUES

Section 171(1)(a) - Provisions of Relevant Planning Documents

Invercargill City District Plan

32. In our submission, the provision of the proposed Designation in the District Plan will be in direct conflict with the enabling zoning of the Calder Stewart Site.
33. We agree with Ms Spalding who concludes that she expects that, in relation to parts of the Calder Stewart Site, the proposed Designation would “*significantly limit the ability of this portion of the site to be developed in line with the purpose and intent of the zone*”.²⁹
34. The enabling provisions of the Zone clearly anticipate heavy industrial activity and the effect of the proposed designation will be to effectively sterilise large sections of the Zone.
35. Ms McMillan discusses in her evidence the objectives and policies of the Zone. Of particular relevance is IND4Z-O1 and IND4Z-P1, which seek to ensure sufficient land is which seek to ensure land is available for activities which, due to their scale, are encouraged to located outside the urban area and be enabled within the Zone.³⁰ Ms McMillan also states that IND4Z-P11 Height of Structures is relevant in that it seeks to enable heights of building within the Zone to meet the operational requirements of activities within the Zone.³¹
36. Ms McMillan’s evidence demonstrates the impact of the Horizon Mask restrictions on anticipated activities in the Zone such as large chimney stacks and wind turbines which could remove these activities from approximately 100ha and 240ha respectively of Calder Stewart’s total 513ha of land within the Zone.³² The Horizon Mask will clearly have a more than minor effect on the anticipated heavy industrial and electricity generation activities in the Zone.
37. Based on this evidence, we consider that the proposed impacts of the Horizon Mask and EMI Restriction will result in the limitation and dissuasion of heavy industrial and energy generation activities in the Zone which are anticipated by the objectives and policies of the Zone Designation.

²⁹ Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [170].

³⁰ Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [42].

³¹ Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [43].

³² Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [26] and Appendix 2.

Southland Regional Policy Statement

38. We agree with the evidence of Ms McMillan³³ that there is support in the SRPS for both Space Ops' nationally and regionally significant infrastructure,³⁴ but also support for the increase in renewable energy generation³⁵ which results in a conflict between the policies. However, we, have included a Part 2 assessment later in these submissions, as has Ms McMillan's evidence.³⁶

National Policy Statements

National Policy Statement for Renewable Electricity Generation

39. We agree with McMillan's evidence that the National Policy Statement for Renewable Energy Generation (**NPS-REG**) provides clear direction on the benefits of renewable electricity generation and both the Southland Regional Policy Statement and Invercargill City District Plan have made provision for it in their plans. The Designation will constrain the ability of the Calder Stewart Site to develop renewable energy in a zone that anticipates that activity.

National Policy Statement for Infrastructure

40. We do not agree with Mr Dunn and Ms Spalding that the Designation would be generally consistent with the National Policy Statement for Infrastructure (**NPS-I**) as we consider Policy 7 and its requirement for decision makers, when assessing and managing the effects of infrastructure activities, to have "*regard to the extent to which adverse effects have been avoided, remedied or mitigated through the selection of the route, site or method of undertaking the work.*"
41. As mentioned throughout these submissions, we do not consider that the adverse effects of the Designation on the Zone have been adequately considered and given weight to by Space Ops. As such, we consider the proposal is not consistent with the NPS-I.

Economic and commercial effects

42. Space Ops have not given adequate consideration in either the application or evidence to the economic or commercial effects of the Designation on the limitation of activities within the Zone, and those effects are out of proportion to the benefits that the Satellite Ground Station will provide.

³³ Evidence of Christine McMillan, 21 September 2026 at [47].

³⁴ Southland Regional Policy Statement, Objective INF.1, Policies INF.1, INF.2, INF.3

³⁵ Southland Regional Policy Statement, Objectives ENG.3, ENG.4 and Policy ENG.2.

³⁶ Evidence of Christine McMillan, 21 September 2026 at [49].

43. Ms Spalding has concluded in her Section 42A report that the Horizon Mask will result in a significant reduction in the development potential of the Zone, undermining investment certainty and constraining future development opportunities. We agree.
44. The evidence of Mr Ballingall for Calder Stewart has used an economic model based on the proposed silicon smelter and wind farm not proceeding as a result of the Designation. Mr Ballingall's evidence is that the constrained model will result in:³⁷
 - (a) \$3.00b GDP forgone across Otago and Southland between 2027-2040;
 - (b) 990 fewer jobs;
 - (c) 2.794% lower wages in 2040; and
 - (d) \$1.84b forgone in household spending between 2027-2040.
45. This analysis demonstrates a clear economic loss to the region's economy should the Designation result in the prevention of heavy industrial and electricity generation activities.
46. Space Ops have not adequately considered the economic impact of the Designation as they have not provided any quantitative economic evidence showing the forecasted economic benefit or loss caused by the Designation. The only assessment of the adverse economic effects of the proposed Designation is provided in the evidence of Mr Dunn for Space Ops. This discussion is qualitative, and provides limited consideration of the effects of the proposed Designation on the Calder Stewart Site.³⁸
47. Mr Jones states in his evidence that despite the proposed amendments to conditions by Space Ops, potential occupiers of the Calder Stewart Site are still likely be put off development opportunities due to the burden of compliance, uncertainty around the technical nature of the compliance and lack of objective measures for decision-making.³⁹ As Mr Jones describes, for large industrial projects such as smelters and manufacturing, it can take 1 to 3 years and millions of dollars before plans and specifications are sufficiently advanced to be able to submit to Space Ops for their review in regard to whether the proposed operations would "materially compromise" their operations. It would be commercially irrational for potential investors to expend that time and money on feasibility where potential rejection by a third party where no objective standard for approval exists.⁴⁰

³⁷ Statement of Evidence of John Ballingall, Economics, 21 September 2026 at [25].

³⁸ Statement of Evidence of Alex Dunn, 14 September 2026 at [96] – [108].

³⁹ Statement of Evidence of Huw Jones, Commercial, 21 September 2026 at [32].

⁴⁰ Statement of Evidence of Huw Jones, Commercial, 21 September 2026 at [36] – [37].

48. It is our submission that despite Space Ops' view that their revised conditions provide greater certainty and takes an assessment trigger approach rather than an automatic prohibition for breaches of the Horizon Mask,⁴¹ there is still uncertainty that any approvals will be granted due to the use of subjective terms such as "*the penetration will not materially compromise the ability of the...Ground Station*"⁴² and a lack of any objective measures. Additionally, Mr McNeill's statements about Space Ops being contractually obliged to guarantee the unobstructed horizon for their clients⁴³ and Mr McNeill's internal correspondence about Calder Stewart's operations being "*...fundamentally adverse to ours...*"⁴⁴ does not allow the Commissioner to assume that approval will be granted by Space Ops for breaches to the Horizon Mask.
49. We acknowledge that there are positive economic effects associated with the continued efficient operation of the Satellite Ground Station, however, we submit that Space Ops have not quantified any positive economic impact.
50. We consider that, in light of the above, the adverse economic effects of the proposed Designation significantly outweigh any unquantified economic and commercial benefits.

Section 171(1)(b)(i) - Consideration of Alternative Sites, Routes or Methods

51. We consider that Space Ops have not given sufficient consideration to alternative sites or methods of undertaking the work for the Satellite Ground Station under Section 171(1)(b)(i). Space Ops has made unsupported claims that there is no suitable alternative site available in New Zealand, and that the EMI Restriction is already covered by other regulatory systems and therefore unnecessary.
52. The degree of impact on private land is a central part of the Council's considerations on their recommendation under section 171. The greater the impact on private land, the more careful an assessment of alternatives that would not affect private land needs to be.⁴⁵ The Environment Court in *North Eastern Investments Ltd* identified the need for a proportional response, where the greater the impact of the designation, the greater need for consideration of the alternatives available.⁴⁶ A similar approach was taken by the High Court in *Queenstown Airport Corporation v*

⁴¹ Statement of Evidence of Alex Dunn, 14 September 2026 at [39].

⁴² Statement of Evidence of Alex Dunn, 14 September 2026 at Appendix A, Condition 2.3.

⁴³ Statement of Evidence of Robin McNeill, 14 September 2026 at [18]

⁴⁴ Correspondence dated 9 June 2025 "[Unrestricted] RE: Awarua Quadrant Digital Elevation Mapping of 5degree Obstacle Free Zone"

⁴⁵ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [121].

⁴⁶ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [61].

Queenstown Lakes District Council, where the Court noted that NORs that affect private property must be afforded less tolerance.⁴⁷

53. Space Ops has not given consideration to alternatives as is required by Section 171. This is discussed in the following paragraphs in relation to both alternative sites and alternative methods.

Alternative Sites

54. The application contains only one paragraph with no analysis of alternative sites why they were discounted.⁴⁸ The NOR application justifies the alternatives assessment largely through existence of the Satellite Ground Station at its current location, and the selection process when the Satellite Ground Station was established 22 years ago.⁴⁹ The lack of detail into the process for determining any alternatives is contrary to case law which requires the Requiring Authority to give more than a cursory or arbitrary consideration to the alternatives.⁵⁰ This is clearly inadequate given the significant impact of the Designation on the Zone and the proportional response required in line with *North Eastern Investments*.⁵¹
55. The Section 42A author states that while Space Ops may have chosen the location for the Satellite Ground Station based upon specific characteristics, it may be useful for them to justify further the selection process, to demonstrate that there were no other suitable sites.⁵² We absolutely agree that further information should have been provided by Space Ops on their alternatives assessment.
56. Space Ops have attempted to backfill the lack of alternatives assessment in their application by including more detail in their evidence. However, Space Ops' evidence continues to rely on their length of time established at Awarua,⁵³ the difficulty in relocating⁵⁴ and have used their recently confirmed designation for Ground Station buildings (MIC/2026/19) as a partial justification for their lack of alternatives assessment.⁵⁵ The alternative sites assessment in evidence by Space Ops, and supported by John Kyle,⁵⁶ has still not provided a robust comparative analysis of sites⁵⁷ as required from a NOR with such an impact on surrounding

⁴⁷ *Queenstown Airport Corporation v Queenstown Lakes District Council* [2013] NZHC 2347 at [97].

⁴⁸ *Notice of Requirement for Space Operations New Zealand Limited*, Space Operations New Zealand Limited, Restrictive Airspace and Land Designation, 24 March 2026 at 11.1.

⁴⁹ *Notice of Requirement for Space Operations New Zealand Limited*, Space Operations New Zealand Limited, Restrictive Airspace and Land Designation, 24 March 2026 at 11.1.

⁵⁰ *Sustainable Matatā v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [194]-[197].

⁵¹ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [61].

⁵² Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [177].

⁵³ Statement of Evidence of Alex Dunn, 14 September 2026 at [303].

⁵⁴ Statement of Evidence of Alex Dunn, 14 September 2026 at [305].

⁵⁵ Statement of Evidence of Alex Dunn, 14 September 2026 at [303].

⁵⁶ Statement of Evidence of John Kyle, 15 September 2026 at [11(c)].

⁵⁷ *Sustainable Matatā v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [195].

private land.⁵⁸ We do not consider that Space Ops have undertaken a more than cursory and arbitrary alternative sites assessment as part of this NOR process.

57. Ms McMillan states in her evidence that there appear to be several similar sites within Awarua itself that presumably have similar characteristics, and are further away from the Zone.⁵⁹ Space Ops have not provided any analysis of such other alternative sites within the Awarua area.
58. Based on the evidence of Ms McMillan, the lack of detailed alternative sites assessment provided by Space Ops themselves, and the scale of effects that the proposed Designation will have on the Zone, we submit that adequate consideration has not been given to the ability for the Satellite Ground Station to be located elsewhere under section 171(1)(b)(i).

Alternative Methods

59. The original NOR application is also lacking in any analysis of alternative methods and only includes one brief paragraph explaining that the Designation is deemed by Space Ops to be the most appropriate method.⁶⁰
60. Again, Space Ops has backfilled the lack of alternative methods analysis in their application by supplying further detail in Mr Dunn's evidence. Ms McMillan's evidence is that she is not satisfied that Space Ops has adequately considered alternatives to the Designation, particularly in relation to the extent and application of the blanket Horizon Mask.⁶¹ Ms Spalding's evidence is that Space Ops have not considered alternative options such as a Horizon Mask based on directional sensitivities which depend on particular requirements that different orbiting spacecraft need.⁶²
61. Mr Dunn's evidence in response to concerns about alternative options for the Horizon Mask not being adequately considered is that in order to determine whether a bespoke Horizon Mask is more appropriate, it would have to be known whether an affected landowner's proposal "*would actually materially compromise Ground Station operations.*"⁶³ This goes to the heart of Calder Stewart's concerns, which Mr Morely supports,⁶⁴ this being that Space Ops don't understand the potential effects that activities on the Calder Stewart Site will have on their operation.

⁵⁸ *Queenstown Airport Corporation v Queenstown Lakes District Council* [2013] NZHC 2347 at [97].

⁵⁹ Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [52].

⁶⁰ *Notice of Requirement for Space Operations New Zealand Limited*, Space Operations New Zealand Limited, Restrictive Airspace and Land Designation, 24 March 2026 at 11.2.

⁶¹ Evidence of Christine McMillan, 21 September 2026 at [66].

⁶² Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [184].

⁶³ Evidence of Alex Dunn, 14 September 2026 at [342].

⁶⁴ Statement of Evidence of Craig Morley, 21 September 2026 at [57].

Section 171(1)(b)(ii) - Reasonable Necessity for the Designation

62. It is our submission that both the Horizon Mask and the EMI Restriction are not reasonably necessary for Space Ops to achieve their objectives for which the Designation is sought. We consider that the blanket application of the Horizon Mask Designation will have more than minor effects on the Calder Stewart Site and the evidence of Mr Morley has demonstrated that there are many circumstances where an obstruction of the Horizon Mask will not necessarily affect the reasonable operation of Space Ops.⁶⁵ Additionally, in relation to the EMI Restriction, Space Ops has not justified the proposed Designation with reference to its objectives, and is seeking the EMI restriction out of caution rather than necessity.
63. Space Ops states that the objectives of the proposed Designation are as follows:^{66,67}
- (a) *Ensure that the satellite ground station can continue to run in an efficient manner by sending and receiving radiotelecommunications as defined in the Radiocommunications Act 1989;*
 - (b) *Ensure that activities on surrounding land do not interfere with the already established protection zone for space research, space operation and Earth exploration-satellite services; and*
 - (c) *Ensure that the District Plan is aligned with the RSM protection zone.*
64. As referred to in Invercargill City Council's Section 42A Recommendation, "reasonably necessary" is discussed in *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council*.⁶⁸ The meaning of reasonably necessary "*falls between expedient or desirable on the one hand, and essential on the other, and the epithet reasonably qualifies it to allow some tolerance.*"⁶⁹ Flexibility is built into the term "reasonably necessary" which grants the Court the ability to apply a threshold proportional to the particular circumstances before them.⁷⁰ In their assessment, the High Court in *Queenstown Airport* confirmed that when a NOR derogates private property rights, greater scrutiny on the reasonable necessity of the designation is required.⁷¹ This position has been affirmed and expanded upon

⁶⁵ Statement of Evidence of Craig Morley, 21 September 2026 at [57].

⁶⁶ *Notice of Requirement for Space Operations New Zealand Limited*, Space Operations New Zealand Limited, Restrictive Airspace and Land Designation, 24 March 2026.

⁶⁷ Statement of Evidence of Alex Dunn, 14 September 2026 at [368].

⁶⁸ [2013] NZHC 2347.

⁶⁹ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [94].

⁷⁰ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [95].

⁷¹ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [96].

with an assessment of what work is deemed reasonably necessary for achieving the objectives of the requiring authority:⁷²

“reasonably necessary” encompasses a designation of land that goes beyond the bare minimum of what is physically required to give effect to the notified objectives of that designation, as long as the extent of the designation is nevertheless justifiable for its scope. That the concept of what is “reasonably necessary” can be taken to include works or land beyond the “essential” work required is also clear from the broader RMA designation scheme in general.”

65. We now turn to applying the “reasonably necessary” test to the EMI Restriction and Horizon Mask below.

Reasonable necessity of the EMI Restriction

66. It is our submission that the EMI Restriction is not reasonably necessary for Space Ops to achieve their efficient operation as the Radio Spectrum Management Decision (**RSM Decision**)⁷³ already provides adequate protection to Space Ops. Space Ops have not justified the proposed Designation with reference to their objectives and appear to have applied for the EMI Restriction out of caution rather than *necessity* which is the test required in section 171. No evidence has been provided before the Panel that they have received harmful emissions. It is the regulatory role of RSM to manage those harmful emissions should they occur.⁷⁴
67. Mr Morley’s evidence states that it is unlikely that activities on the Calder Stewart Site will even cause harmful emissions due to the very specific circumstances required to align in order to cause those emissions and therefore the EMI Restriction is unlikely to result in any gain in protection to Space Ops.⁷⁵ Mr Morley’s evidence is also that the EMI Restriction is based on an arbitrary distance which does not protect the efficient operation of the Satellite Ground Station as there are many sources of harmful emissions outside of the 2km radius.⁷⁶
68. As described earlier in these submissions, Mr Jones has provided evidence that the NOR, which includes the uncertainty around the EMI Restriction, is already turning away potential buyers from the Site, based on the uncertainty it causes.⁷⁷

⁷² *Aokautere Land Holdings Ltd v Palmerston North City Council* [2024] NZHC 2870 at [51].

⁷³ *Table of Radio Spectrum Usage in New Zealand* (PIB 21), Issue 11, June 2021.

⁷⁴ Radiocommunications Act 1989, section 116.

⁷⁵ Statement of Evidence of Craig Morley, Electromagnetic Interference, 21 September 2026 at [36].

⁷⁶ Statement of Evidence of Craig Morley, Electromagnetic Interference, 21 September 2026 at [36].

⁷⁷ Statement of Evidence of Huw Jones, Commercial, 21 September 2026 at [23].

69. In light of Mr Morley's evidence and the lack of clear rationale for the EMI Restriction and lack of gain in protection for Space Ops, and the evidence of Mr Jones that the EMI Restriction is creating a burden and discouraging potential occupiers and customers from the Calder Stewart Site, we submit that Space Ops has not justified the EMI Restriction as reasonably necessary to meet their objectives.
70. The Section 42A author considers that, due to the clarification provided by Space Ops on the intention of the EMI Restrictions application, the EMI Restriction will not result in adverse effects on the ongoing use and development of the land.⁷⁸ We consider that requirements of section 171 require more than just an assessment of the level of effects of the EMI Restriction, section 171 requires an assessment of effects while having particular regard to whether the designation is reasonably necessary. So while Ms McMillan accepts the Section 42A author's conclusion that effects on activities on the Calder Stewart Site are less than minor,⁷⁹ we say that this conclusion must be tempered with the particular regard to the fact that Space Ops have not shown that the EMI Restriction is *reasonably necessary*.

Reasonable necessity of the Horizon Mask

71. While it is accepted that the Horizon Mask as currently proposed may result in the most *efficient* outcome for Space Ops, we submit that Space Ops has not shown that this is *reasonably necessary* to impose development restrictions on private land in order for the continued operation of the Satellite Ground Station.
72. The evidence of Mr Morley is that there can be many circumstances where an object or structure can protrude through the Horizon Mask and not affect the reasonable operation of Space Ops due to the very specific characteristics and materials that particular object or structure.⁸⁰
73. Calder Stewart's evidence is that the blanket application of the Horizon Mask as a uniform height restriction does not account for all the different characteristics and materials of structures, and it creates an assumption that any obstruction of the Horizon Mask will interfere with the efficient operation of Space Ops.⁸¹ Our submission is that Space Ops has not proven that it is *reasonably necessary* to apply the blanket Horizon Mask in order to prevent harmful interference to their operations.
74. We agree with Ms Spalding that the Horizon Mask does not appropriately balance the operational requirements of the Satellite Ground Station and the significant adverse effects on the Calder Stewart Site.⁸²

⁷⁸ Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [87].

⁷⁹ Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [8].

⁸⁰ Statement of Evidence of Craig Morley, 21 September 2026 at [57].

⁸¹ Statement of Evidence of Craig Morley, 21 September 2026 at [64].

⁸² Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [193].

75. The evidence of Ms McMillan⁸³ and Mr Jones⁸⁴ is that despite the amendments to the conditions of the Horizon Mask by Space Ops, the use of the subjective term “*will not materially compromise...the Ground Station*”⁸⁵, the lack of objective standards and discretionary third-party decision making power of Space Ops still render the conditions unsatisfactory.
76. Calder Stewart are also concerned that despite this pathway for discretionary approval for Horizon Mask breaches being added to the conditions, Space Ops’ evidence before this hearing is that “*customers demand that their elevation horizon agreed to at contract signing remains unobstructed.*”⁸⁶ This indicates to Calder Stewart that any breaches of the Horizon Mask are unlikely to be approved by Space Ops through the proposed condition pathway due to the contractual obligations Space Ops has irresponsibly entered into without due consideration of the anticipated environment enabled by the Zone.
77. As explained in Mr Jones’ evidence, these factors combined will all lead to Calder Stewart not being able to demonstrate to potential occupiers or investors any certainty for proposals which require a large amount of time and capital expenditure to be able to be at a point where they could attempt to submit designs and data to Space Ops. These factors will continue to discourage investors and occupiers from undertaking any material due diligence for proposals in the Zone⁸⁷ all the while the Zone has been created specifically anticipating the kinds of heavy industrial and electricity generating activities that often involve tall structures.

Section 171(1)(d) – Any Other Matters

Conduct of the Parties

78. As considered in *North Eastern Investments Limited*⁸⁸ and *Queenstown Airport*,⁸⁹ the conduct of parties and the concept of fairness is relevant under section 171. Furthermore, Space Ops, as a requiring authority and council-controlled trading organisation, has a statutory responsibility to give proper regard to those affected and to the interests of the environment^{90,91} as well as a duty to consult.
79. Space Ops has not acted in a manner consistent with the responsibilities of a requiring authority. In particular, it elected not to obtain planning advice at an earlier

⁸³ Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [51].

⁸⁴ Statement of Evidence of Huw Jones, 21 September 2026 at [36].

⁸⁵ Statement of Evidence of Alex Dunn, 14 September 2026 at Appendix A, condition 2.3.

⁸⁶ Statement of Evidence of Robin McNeill, 14 September 2026 at [18].

⁸⁷ Statement of Evidence of Huw Jones, 21 September 2026 at [23].

⁸⁸ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [191].

⁸⁹ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [146] – [148].

⁹⁰ Resource Management Act 1991, section 167(4)(b).

⁹¹ Local Government Act 2002, section 59.

stage, and even with advice then subsequently seeking to impose development restrictions on private landowners without necessary consultation both prior to becoming a requiring authority and lodging the NOR, and has not adequately considered alternative locations or methods. These matters are relevant to Council's decision under section 171 and are explored further below.

Lack of involvement in the Zone

80. As noted by the Section 42A author⁹² and in the evidence of Robin McNeill,⁹³ Space Ops have been aware of the Zone and its provisions for upwards of 15 years. Satellite tracking activities were considered in the development of the Zone as Mr McNeill was involved in the facilitating of a report in 2007⁹⁴ on Space Ops' (then Venture Southland) activities which contributed to Council's section 32 evaluation requirements for Plan Change 8 where the Calder Stewart Site was rezoned from Rural to Industrial. This report from Venture Southland did not make any recommendations for areas of protection and accordingly the section 32 report for the rezoning states that space research and communication facilities can be located at the southern end of the industrial site *as long as they do not affect development and use of land for industrial purposes*.⁹⁵
81. This further demonstrates that there has been clear awareness by Space Ops of the adjacent Industrial 4 (Awarua) Zone and opportunity to be involved in the District Plan review process which included the Calder Stewart Site and the ability for industrial development potential on the Calder Stewart Site was known when the Satellite Ground Station expanded materially in 2019 and 2023.⁹⁶
82. Space Ops has had the opportunity to be a commercially diligent council-controlled trading organisation and obtain planning advice as to how the Zone might affect Space Ops' operations in the past but they chose not to.^{97,98} Mr McNeill cites cost of professional advice as a reason not to obtain planning advice on the implications of the District Plan Review,⁹⁹ however, we find this difficult to reconcile when Space Ops are constructing a \$4.55 million headquarters at the Satellite Ground Station.¹⁰⁰
83. We also consider that Space Ops is now attempting to "back fill" previous guarantees to customers by lodging the NOR as a result of their earlier lack of

⁹² Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [178].

⁹³ Space Ops New Zealand Limited, Statement of Evidence of Robin McNeill, Commercial, 14 September at [20].

⁹⁴ *Some Matters Concerning the National and International Importance of Awarua for Radio Science, Radio Astronomy and Space Research*, Venture Southland, 6 September 2007.

⁹⁵ *Plan Change 8: Industrial A Sub-Area – Awarua Section 32 Report* at 4.10.

⁹⁶ Evidence of Robin McNeill dated 14 September 2026 at [23].

⁹⁷ Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [178].

⁹⁸ Evidence of Alex Dunn, 14 September 2026 at [310].

⁹⁹ Evidence of Robin McNeill dated 14 September 2026 at [24].

¹⁰⁰ Evidence of Robin McNeill dated 14 September 2026 at [37].

involvement in the District Plan review. As an example in a contract provided by Mr McNeill,¹⁰¹ Space Ops have contracted to take “*all practical endeavours to ensure that no new permanent mask is set up in order to protect whole visibility of the antennas.*”

84. Mr McNeill states that when contemplating the implications of the District Plan review, Space Ops “*at no stage envisaged any object greater than 35m would be contemplated*”.¹⁰² As discussed in the evidence of Ms McMillan, activities that are permitted within the Zone (including heavy industry and renewable energy generation) which could regularly exceed the 35m permitted height limit.¹⁰³ We submit that Space Ops’ reliance on no activities exceeding 35m based on a permitted height limited is unrealistic and naïve.

Failure to consult

85. As mentioned in Mr Jones’s evidence, Calder Stewart and Space Ops had been engaging in good faith regarding each other’s plans for Awarua prior to the lodgement of the NOR on 31 July 2025 and had sought to find a way where both parties could progress their respective activities. Despite these good faith conversations, Calder Stewart were not given prior warning or consulted before Space Ops sought Requiring Authority or before Space Ops had lodged their NOR.¹⁰⁴
86. The Environment Court has previously held this is a relevant consideration under section 171¹⁰⁵ and is fundamentally a breach of Space Ops’ responsibilities as a requiring authority including their duty to give proper regard to the interests of Calder Stewart under section 167.¹⁰⁶ The level of accountability for requiring authorities to consult is further compounded by the fact that notices of requirement have immediate legal effect and the requiring authority then has the power to decline any breaches to their designation¹⁰⁷.
87. As Mr Jones has confirmed, this immediate legal effect of the NOR is already having an effect on their potential occupiers and investors who cite uncertainty of the restrictions imposed and the third-party approval process as concerns.¹⁰⁸

¹⁰¹ Space Ops New Zealand Limited, Statement of Evidence of Robin McNeill, Commercial, 14 September at Appendix “L Service Contract”.

¹⁰² Space Ops New Zealand Limited, Statement of Evidence of Robin McNeill, Commercial, 14 September at [24].

¹⁰³ Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [16]-[20].

¹⁰⁴ Evidence of Huw Jones, 21 September 2026 at [25].

¹⁰⁵ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [78]

¹⁰⁶ Resource Management Act 1991, section 167.

¹⁰⁷ Resource Management Act 1991, section 178.

¹⁰⁸ Statement of Evidence of Huw Jones, 21 September 2026 at [23].

Part 2

88. The four relevant matters to Council's decision under section 171 are subject to Part 2. The Environment Court has found that even if all the elements of section 171 are satisfied, the Council could strike down the NOR if it did not satisfy Part 2 matters.¹⁰⁹ This was confirmed by the High Court in *Queenstown Airport Corp.*¹¹⁰
89. In our submission, Space Ops has failed to prove satisfaction of all four matters under section 171 as:
- (a) the restrictions on development on the Calder Stewart Site would result in significant effects contrary to the Zone provisions enabling heavy industrial and electricity generation activities under section 171(1)(a);
 - (b) adequate consideration has not been given to alternative sites and methods under section 171(1)(b)(i);
 - (c) the Designation is not reasonably necessary for achieving the objectives of the requiring authority under section 171(1)(b)(ii); and
 - (d) Space Ops has failed in its responsibilities as a requiring authority to give proper regard to the interests of Calder Stewart and failed to dutifully consult.
90. Accordingly, unless agreement is reached with Space Ops regarding changes to the Designation, we consider the Commissioner should recommend withdrawal of the NOR due to the significant effects on the environment under section 171. Our submissions above are consistent with Part 2 as it is clear the NOR does not enable people and communities, other than Space Ops, to provide for their social and economic needs under section 5.
91. This is best demonstrated by the evidence of Mr Ballingall who quantifies the economic loss of the NOR constrained model as a \$3.00b GDP loss across Otago and Southland between 2027-2040 with 990 fewer jobs.¹¹¹ Space Ops has not quantified the economic impact of the NOR on the Zone at all and so we have no evidence to contrary on economic benefits or losses caused by the NOR. The Environment Court has held that community wellbeing under section 5 in the context of NORs can be satisfied on the basis of the numbers of people benefiting from each use.¹¹² In this case, the economic evidence of Calder Stewart has demonstrated the

¹⁰⁹ *Te Runanga o Ati Awa ki Whakarongotai v Kapiti Coast DC* (2002) 8 ELRNZ 265 at [147].

¹¹⁰ *Queenstown Airport Corp v Queenstown Lakes DC* [2013] NZHC 2347 at [68].

¹¹¹ Statement of Evidence of John Ballingall, Economics, 21 September 2026 at [25].

¹¹² *Villages of NZ (Mt Wellington) Ltd v Auckland CC* EnC Auckland A023/09 at [100].

greatest benefit to the Southland and Otago communities is to be able to develop the Zone in an unconstrained manner without the NOR in place.

Reasonable Use of the Calder Stewart Site

92. While outside the scope of the Commissioner's current decision making, it is relevant that Calder Stewart has the ability to seek that the Environment Court make an order for compulsory acquisition under the Public Works Act 1981 should the Designation proceed if the land will be rendered incapable of reasonable use.

93. Section 179(3) of the RMA states that if a requiring authority refuses consent to another party to use the land in contravention of a designation, the party may appeal to the Environment Court. In considering that appeal, the Environment Court will have regard to:¹¹³

(...)

(b) whether the decision appealed against would render the land which is subject to the designation or requirement incapable of reasonable use;

(...)

94. The 'incapable of reasonable use' test is also the test applicable to the Environment Court's ability to make an order to take the land under the Public Works Act 1981¹¹⁴ requiring the Space Ops¹¹⁵ to purchase the Calder Stewart Site under section 17 of the Public Works Act 1981. The valuation of the land would be assessed in terms of its 'Highest and Best Use' which is an estimated market value considering the highest and best use of the subject property "...because it is assumed that a prudent and well informed vendor will not willingly part with his or her land for a price less than that appropriate to its highest and best use, and the well informed buyer would not expect to be able to purchase it for less."¹¹⁶

95. We consider that the Highest and Best Use of the Calder Stewart Site is an enabling heavy industrial zone which will have a significant market value.

96. The High Court has helpfully determined what is considered "reasonable use":

"...the effect of the definition of 'reasonable use' is that activities that would cause significant effects on the environment or on any person are not within the scope of the reasonable use..."¹¹⁷

¹¹³ Resource Management Act 1991, Section 179(3).

¹¹⁴ Resource Management Act 1991, section 185.

¹¹⁵ Resource Management Act 1991, Section 185(6)

¹¹⁶ *Hall v Chief Executive of Land Information New Zealand* [2009] LGHNZ 30 at [34].

¹¹⁷ *Redmond Retail Ltd v Ashburton District Council* (Redmond Retail) [2021] NZHC 2887 at [48].

“...neither the need for a resource consent nor the availability of a consenting pathway is determinative of whether the land is incapable of reasonable use. Where the potential use is not a permitted activity, a consenting pathway is a prerequisite for the land to be found to be capable of reasonable use. Non-complying activities are excluded...”,¹¹⁸

97. If SpaceOps, in their capacity as a requiring authority, limit the activities SFAL would otherwise be allowed to undertake, either as permitted activities or activities subject to a resource consent, the decision to decline SFAL’s request would be inconsistent with the enabling Zone provisions. We consider that this would render the land as being incapable of reasonable use.
98. This restrictive effect of the Designation is demonstrated in Ms McMillan’s evidence where she confirms that anticipated activities in the Zone such as large chimney stacks and wind turbines which could remove these activities from approximately 100ha and 240ha respectively of Calder Stewart’s total 513ha of land within the Zone.¹¹⁹ Furthermore, the evidence of Mr Dunn for Space Ops confirms that the Designation is going to reduce the area of land within the Calder Stewart Site on which activities can be undertaken which reach the permitted height of 35m.¹²⁰ We consider this is a gross overstep of Space Ops’ requiring authority status and is further evidence of the rendering of the Calder Stewart Site as incapable of reasonable use.
99. The Section 42A author agrees that the effects of the height restriction are significant for landowners where the horizon mask materially affects anticipated development potential and would result in the Zone being deemed incapable of reasonable use.¹²¹

CONCLUSION

100. For the reasons set out in these submissions and as supported by the evidence filed on behalf of Calder Stewart, our submission is that the Notice of Requirement should be withdrawn on the following grounds:
 - (a) The effects of the Designation on the Calder Stewart Site are significant and contrary to the enabling objectives and policies of the Industrial 4 (Awarua) Zone, which anticipates heavy industrial and electricity generation activities.

¹¹⁸ *Redmond Retail Ltd v Ashburton District Council* (Redmond Retail) [2021] NZHC 2887 at [48].

¹¹⁹ Statement of Evidence of Christine McMillan, Planning, 21 September 2026 at [26] and Appendix 2.

¹²⁰ Statement of Evidence of Alex Dunn, 14 September 2026 at [331].

¹²¹ Invercargill City Council, Section 42A Recommendation Report, 31 August 2026 at [106].

- (b) Space Ops has not given adequate consideration to alternative sites or methods as required under section 171(1)(b)(i), having not provided a detailed analysis that is sufficient given the scale of effects on private land.
 - (c) Neither the Horizon Mask nor the EMI Restriction is reasonably necessary for achieving the objectives of the Satellite Ground Station under section 171(1)(b)(ii). The EMI Restriction is duplicative of existing protections under the Radio Spectrum Management framework, and the Horizon Mask applies a blanket restriction that does not account for the many circumstances where obstructions will not materially affect Space Ops' operations.
 - (d) The conduct of Space Ops, including its failure to engage in the District Plan review process, its failure to consult with Calder Stewart on the lodging of the NOR, and its inadequate assessment of effects on the Zone, is contrary to its responsibilities as a requiring authority and as a council-controlled trading organisation.
 - (e) The economic evidence demonstrates that the constrained model resulting from the Designation would result in \$3.00 billion in GDP and 990 fewer jobs forgone across Otago and Southland between 2027 and 2040, against which Space Ops has provided no quantitative economic evidence of the benefits of the Designation. The commercial evidence demonstrates that the Designation will continue to discourage investors and occupiers of the Calder Stewart Site due to the uncertainty of third party approvals required.
 - (f) The Designation, if confirmed, would render the Calder Stewart Site incapable of reasonable use for the purposes of sections 179(3) and 185 of the RMA, with anticipated large-scale industrial activities being restricted on a large portion of the Calder Stewart Site.
101. Calder Stewart acknowledges and is grateful for the improved engagement from Space Ops in recent months, and the parties have been engaged in constructive and good-faith discussions with a view to reaching a mutually agreeable resolution regarding the Designation. Calder Stewart remains hopeful that those discussions will result in an agreed outcome which appropriately balances the operational needs of the Satellite Ground Station with the development rights enabled by the Zone on the Calder Stewart Site.

102. In the absence of such agreement, however, Calder Stewart respectfully submits that the Commissioner should recommend that the Notice of Requirement be withdrawn pursuant to section 171 of the RMA, on the basis that the Designation as proposed is contrary to Part 2 and is not justified under the section 171 assessment.

Dated this 28th day of September 2026

A handwritten signature in blue ink, appearing to read 'Joshua Leckie'.

Joshua Leckie / Hayley Mahon

Counsel for Stewart Family Assets Limited