

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

ENV-2025-CHC-

IN THE MATTER

the Resource Management Act 1991

AND

an appeal under clause 14(1) of the First
Schedule of the Act

BETWEEN

PETRUS YEN

Appellant

DUNEDIN CITY COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
AGAINST DECISION ON PROPOSED PLAN CHANGE 1 : MINOR
IMPROVEMENTS TO THE 2GP - HERITAGE DECISION**

Dated: 27 August 2025

Saunders & Co
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TO: The Registrar
Environment Court
Christchurch

Name of appellant

1. Petrus Yen (the **Appellant**) of Dunedin.

Decision appealed against

2. This is an appeal against a decision (the **Decision**, being the decision to which this appeal relates) of the Dunedin City Council (the **Respondent**) on a submission (the **Submission**) by the Appellant to the Dunedin City Council Proposed Plan Change 1: Minor Improvements to the 2GP – Heritage Decision (**Plan Change 1**).
3. The Appellant is a person who made a submission on the Plan Change 1.

Trade competition

4. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

Date of receipt of decision

5. The Appellant received notice of the Decision on or about 17 July 2025.

The part of the Decision being appealed

6. The parts of the Decision appealed relate to:
 - (a) The inclusion of the building at 169 Forbury Road, legally described as Allotment 1 and Allotment 2 and Allotment 3 DP 3918 (the **building**) in the heritage schedule at Appendix A1.1 of Plan Change 1.

Background

7. The building is situated on the corner of Forbury Road and Ings Avenue, with road frontage on both roads and is approximately 1939 square metres in area. The property is zoned General Residential 1 under the Dunedin 2GP and the

Appellant's Submission requested that the dwelling be removed from the heritage schedule Appendix A1.1 of Plan Change 1.

8. The Submission states that the scheduling of the building is based on a flawed and inconsistent assessment, with the four main reasons stated below:
 - (a) Factual errors: The heritage assessment incorrectly documents historical details, such as the familial relationships of the Speight family and the timeline of community contributions by former residents like Edward Falconer, weakening claims of historical significance.
 - (b) Lack of Specific Historical Events: The building's significance is tied to general social trends, like affluent families moving into St. Clair, rather than any specific event or contribution uniquely associated with the dwelling.
 - (c) Subjective Design Criteria: While the dwelling exhibits English Revival style architecture, it does not meet the architectural thresholds of uniqueness or innovation when compared to similar dwellings in Dunedin or nationwide.
 - (d) Negative Economic Impact: Research from comparable cases in New Zealand demonstrates that heritage listing can decrease property values and impose significant costs on owners. This creates an unjust financial burden that outweighs any public benefit.

Section 42A Officer Report

9. The s42A Officer's Report: Plan Change 1 – Minor Improvements Heritage (**Officer Report**) at section 6.2.29 responded to the Appellant's Submission as follows:

The DCC heritage advisors have updated the heritage assessment to correct some factual errors raised by submitters, but consider that these errors do not affect the outcome of the heritage assessment. The heritage advisors have reiterated that the house meets the criteria for design and historical significance under Policy 2.4.2.1.b of the 2GP and the 'protection required' should not be amended.

The DCC heritage advisors consider that if this house were to be assessed under HNZPT criteria, it could meet the threshold for a Category 1 historic place (Group A in Table 1 of the heritage evidence).

Decision on Submission

10. By Decision Report dated 17 July 2025, the Hearings Panel appointed by the Respondent (**Hearings Panel**) rejected the Appellant's Submission that the building be removed from Appendix A1.1 of Plan Change 1 on the following basis:

[187] In terms of Strategic Directions Policy 2.4.2.1(b) we find the building has no spiritual, technological or scientific significance. However, we find that it has social, historic and design significance that merits it being scheduled. Our finding is accentuated by the building's prominent location on a corner site, making it highly visible to the public, despite the fence and vegetation surrounding much of the site. It contributes positively to the heritage streetscape in the area. In that regard we concur with DCC's Heritage evidence that the overall form and composition of the dwelling, use of quality materials and restrained decoration all contribute to a magnificent presence on a substantial corner site.

[188] We accept the Mr Rawson's recommendation that the scheduling should exclude the L shaped garage to the east of the dwelling. That will enable some limited development potential to be realised.

Reasons for the appeal

11. Not every building which might be considered to be of some significance as historic heritage has, individually, become a building of national importance justifying protection (pursuant to s6(f) of the Act) through the district plan.
12. Put another way, the protection of historic heritage is not an end in itself. Factors under section 6(f) are to be weighed with other relevant factors to inform the decision-making process regarding whether including the building in Appendix A1.1 of Plan Change 1 achieves a better resource management outcome than excluding the building from this Appendix.
13. The Hearings Panel refers to achieving an "appropriate balance between the 'public good' of heritage protection and the 'private cost' resulting from scheduling of a building in the 2GP.¹

¹ Decision Report dated 17 July 2025 at [20]

14. In this case the Decision reaches the incorrect conclusion in terms of weighing these factors because:
 - (a) The historic heritage values of the building have been over estimated such that the public good arising from the proposed protection of the building is considerably less than assessed by the Respondent;
 - (b) The private costs of listing the building have been under-estimated such that private cost to the Appellant are considerably greater than assessed by the Respondent; and
 - (c) Overall, the proposed heritage listing of the building does not meet the statutory requirement of sustainable management of resources under the Act.
15. The Appellant considers that the building does not meet the necessary threshold for historic and social significant or design significance under policy 2.4.2.1(b) of the Second Generation Dunedin District Plan (**2GP**).
16. The Hearing Panel's reliance on historical significance, based on the association with wealthy families and the migration of affluent businessmen into St. Clair, does not align with the Heritage New Zealand Pouhere Taonga (**HNZPT**) historic criteria, which require a building or place to contribute to a significant aspect of New Zealand's or in this case Dunedin's history. If applied broadly, any dwelling in an affluent area could meet this criterion, diluting the value of heritage protection.
17. Similarly, the Hearing Panel's reliance on social significance, based on the residence of prominent families, fails to meet HNZPT's social threshold, which requires strong community attachment. By this logic, many dwellings could qualify under this criterion, leading to overextension of heritage protection in the 2GP.
18. Aesthetically, while the building may have some appeal, it does not evoke a strong emotional response from the public or hold the distinctive value required by HNZPT's aesthetic criteria.

19. Architecturally, the English Revival style is neither unique nor innovative, and if design criteria relied upon by the Hearings Panel were applied, many dwelling with similar features could qualify for heritage listing.
20. Furthermore, the lack of significant community or market interest in the dwelling further demonstrates the absence of strong social or aesthetic value. The property was listed in 2015 and remained on the market for five years and it was only finally sold in 2020. This lengthy timeframe, coupled with a lack of demand, shows that the dwelling does not foster the community attachment or hold the market appeal necessary to justify heritage listing.
21. Additionally, the financial impact on the Appellant, combined with the loss of potential housing and amenities for the community that could arise from an alternative use of the property, does not support heritage listing for the building.
22. Overall the limited historic heritage value of the building is outweighed by the potential private cost to the Appellant and the community that arises from the proposed listing of the building.
23. The Operative Regional Policy Statement (**ORPS**) and the Proposed Regional Policy Statement (**PRPS**) each contain significance criteria for the identification of historic heritage values. The ORPS and the PRPS significant criteria are markedly more nuanced than the significance criteria included in the 2GP at policy 2.4.2.1(b).
24. For example, ORPS contains 11 separate significance criteria. Criteria (1) and (11) each refer to "The extent to which the item, place and area...". Criteria (3) and (6) refer to the "The potential of the item, place or area ...". Overall these criteria require a careful qualitative assessment of the level of significance of each item, place or area. They invite a broader consideration of whether the item, place or area under consideration qualifies as being of national importance requiring protection under s6(f) RMA.

25. The PRPS significant criteria² go a step further and provide a two-stage process for assessment. The first stage involves determining whether a place or area is considered to have "historic heritage" by reference to 10 different criteria.
26. The second stage requires a qualitative assessment of the "significance of areas and places with historic heritage" by reference to a separate suite of criteria. The criteria at this second stage are the same or similar to the 11 criteria in the ORPS.
27. By comparison the historic heritage criteria in the 2GP are disarmingly simple and do not contain the qualitative elements present in the ORPS and PRPS. Policy 2.4.2.1(b) seeks to identify heritage buildings and structures based on the following criteria:
 - (i) *historic and social significance;*
 - (ii) *spiritual/cultural significance, including significance to Māori;*
 - (iii) *design significance; and*
 - (iv) *technological/scientific significance.*
28. The Appellant considers that the absence of qualitative elements in these criteria means that there is a risk that buildings with some historic heritage values are protected by scheduling in the 2GP when such buildings or places do not qualify as being of national importance under s6(f) RMA. The Appellant considers that this has occurred with respect to the dwelling at 169 Forbury Road.
29. For the reasons discussed above the Appellant considers that the building at 169 Forbury Road is one of many similar buildings in Dunedin and that there are already a number of examples of Edwardian buildings scheduled in the 2GP. In this regard it is noteworthy that the Respondent is second only to Wellington in terms of the number of non-NZHPT private residences listed for district plan protection pursuant to s6(f) of the Act.
30. Overall, the Appellant considers that removal of the building from the heritage schedule at Appendix A1.1 of Plan Change 1 will better achieve and implement

² Proposed Regional Policy Statement at Appendix 8 – Identification criteria for places and areas of historic heritage

the objectives and policies of the 2GP, Plan Change 1, the ORPS, the PRPS, and the National Policy Statement for Urban Development 2022, and will also better address the statutory tests at section 32 and Part 2 of the Act.

Relief sought

31. The Appellant seeks the following relief in relation to the dwelling at 169 Forbury Road (legally described as Allotment 1 and Allotment 2 and Allotment 3 DP 3918):
- (a) The removal of the dwelling on the property from the heritage schedule Appendix A1.1 of Plan Change 1, and
 - (b) Any further or other relief as may be just or necessary to address the matters raised in this appeal.

Attached documents

32. The Appellant attaches the following documents to this notice:
- (a) a copy of the Appellant's Submission on Plan Change 1;
 - (b) a copy of the Notice of Decision notified by the Respondent dated 16 July 2025;
 - (c) a copy of the Decision Report of the Respondent dated 17 July 2025; and
 - (d) a list of names and addresses of persons to be served with a copy of this notice.

DATED this 27 day of August 2025



C S Fowler
Counsel for the Appellant

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Note to appellant

You may use this form for any appeal for which you cannot identify a prescribed form.

You must lodge the original and 1 copy of this notice with the Environment Court. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

If you wish to become a party to the appeal, you must,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (*see* form 38).

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.