

Form 7
**Notice of appeal to Environment Court against decision on proposed policy
statement or plan or change or variation**

Clause 14(1) of Schedule 1, Resource Management Act 1991

To The Registrar
 Environment Court

 Christchurch

We, the **Heart of Dunedin Incorporated** (26334453) ("**HOD**") appeal against parts of the decision of the Dunedin City Council ("**DCC**") on The Second Generation Plan ("**Proposed Plan**").

We made a submission on the Proposed Plan.

We are not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

We received notice of the decision on 7 November 2018.

The decision was made by **Dunedin City Council**.

The part of the decision that we are appealing relates to proposed Rule 18.3.4 and the associated Activity Status Table – whereby retail activity will be a permitted activity in the Warehouse Precinct Zone in Listed Buildings.

The reasons for the appeal are as follows:

1. HOD members consists of property and business owners from the Central Business District Zone (CBD). HOD seeks to support and promote retail activity in the CBD - North of the Octagon, along George Street, Moray Place and Filleul Street.
2. The Proposed Plan change the subject of this appeal poses a significant risk to the vibrancy of the CBD.
3. The Warehouse Precinct Zone is a large area spanning from Queens Gardens to Police Street. In that area, HOD calculates there to be over 50 listed buildings.
4. The Proposed Plan (at Policy 2.3.2.2) stated the intention to:

“ maintain or enhance a density and productivity of economic activity in the CBD and centres in order to provide a sufficient supply for the projected needs for retail and office development for a 15 year period, while avoiding oversupply and decentralisation of these activities in locations outside of centres, unless they are unlikely to contribute to, or may detract from the vibrancy of centres through... zoning rules that restrict the distribution of retail and office activities outside these areas.

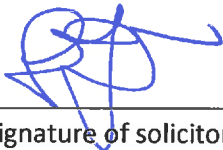
5. Currently there are significant vacancies within the Central Business District. These vacancies have remained consistent over the past 4 years. We attach at **Schedule 3** Adam Binn’s Fourth Quarter 2018 Vacancy Count.
6. The Proposed Plan will likely result in retail activity relocating from the CBD to the Warehouse precinct, with the potential for adverse effects being more than minor.

We seek the following relief:

7. That rule 18.3.4 of the Proposed Plan be amended so that retail activity is not permitted as of right in listed buildings in the Warehouse Precinct.

I attach the following documents to this notice:

- a. A copy of my submission or further submission (**Schedule 1**)
- b. A copy of the relevant parts of the decision (**Schedule 2**)
- c. Any other documents necessary for an adequate understanding of the appeal (**Schedule 3**)
- d. A list of names and addresses of persons to be served with a copy of this notice. (**Schedule 4**)



Signature of solicitor for appellant

Date: 18 December 2018

Address for service of appellant

Telephone: 03 4749434

Fax/email: 03 4749433 / sam@guestcarter.com

Contact person: Samuel Michael Dexter Guest (Solicitor and Member of HOD)

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- 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
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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.

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

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission and (*or or*) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

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

Schedule 1 – Original Submission/s

	Norman)	
Heart of Dunedin Inc. (OS454)	Sam Guest (Counsel) Adam Binns of Adam Binns Commercial Limited (Surveyor and Valuer)	Tabled property evidence by Adam Binns. Data and aerial maps tabled. Oral evidence given by both Adam Binns and Sam Guest.
Media & Research	Media Contact	Oral evidence

138. *Heart of Dunedin Inc.* (OS454.1) sought to have Rule 18.3.4 (activity status table) amended to require consent for retail activity within the Warehouse Precinct, Harbourside Edge, Princes, Parry and Harrow and Smith Street and York Place zones. This submission was opposed by *One Zeal Ltd and Zeal Land Ltd* (FS2269.1) and *Bindon Holdings Ltd* (FS2471.2).
147. *Heart of Dunedin* was represented by Mr Sam Guest and Mr Simon Eady. Mr Guest made oral submissions, noting that while the revival of the Warehouse area was seen as positive, the submitter disagreed that there was any justification for allowing retail in the area. He noted that the area is separated from the CBD retail area. Mr Guest estimated that the average tenancy size in George Street is 150m², and therefore an available 9,000m² for retail was "not insignificant". The group estimated that 46 businesses could start up there now. Any retail should require resource consent as a non-complying activity.
148. Adam Binns, a surveyor and valuer called by *Heart of Dunedin*, gave evidence on the vacancy rate on George Street between Moray Place and Frederick Street, using data he had collected between 2014 and August 2016. The data, which was based on unit vacancy (as opposed to vacancy by area), showed vacancy rates of 2% to 23% within individual blocks. Mr Binn's conclusion was that the overall vacancy rate in the three blocks increased from August 2014 to August 2016 from 8% to 12% (Evidence, para 25). Vacancy rates had increased particularly in the 'Golden Block' (between St Andrew and Hanover streets).
149. In response to a question, Mr Binns agreed that vacancy by land area was a more 'scientific way' of assessing vacancy.
150. The Reporting Officer, in her revised recommendations in December 2016, replicated the survey, but assessed the vacancy rate by area, rather than tenancy. The overall vacancy rate was 5.6% (Economic Evidence Analysis, p.8), which was within Mr Foy's 'healthy' vacancy rate of 5-8%, and we note, Mr Colegrave's 'natural rate of vacancy' (Revised Recommendations, p 6).



THE PROPOSED
**SECOND
GENERATION
DISTRICT PLAN**

SUBMISSION FORM

This is a submission on the Proposed Second Generation
Dunedin City District Plan (2GP) for Dunedin pursuant to
Clause 6 of Schedule 1 of the Resource Management Act 1991

Once you have completed this form, include any supporting documentation and return to the Dunedin City Council.

MAKE YOUR SUBMISSION:

Online: www.2gp.dunedin.govt.nz

Email: planning@dcc.govt.nz

Post to: Submission on 2GP
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Deliver to: DCC Customer Services Agency
Ground floor
Civic Centre
50 The Octagon
Dunedin

Please note that all submissions are public information. Your name, contact details and submission will be available to the public and the media. The DCC will only use your information for the purposes of this plan review process.

All submissions must be received before 5pm on Tuesday, 24 November 2015.

SUBMITTER DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Full name of submitter or agent* Sam guest Law Limited

Organisation (if submission on behalf of an organisation) Heart of Dunedin Inc.

Address for service for submitter or agent* *Please provide an address where you would like correspondence sent to*

Email address Sam@samguestlaw.co.nz

Postal address* Po Box 5543, Dunedin Postcode* 9058

Phone number* 03 4749434 Mobile number 0274983820

TRADE COMPETITION *Fields indicated by an asterisks (*) are mandatory.*

Please note: If you are a person who could gain an advantage in trade competition through your submission, your right to make a submission may be limited by clause 6(4), Schedule 1 of the Resource Management Act 1991.

Please tick one of the following*

I could ☐ could not ☒ gain an advantage in trade competition through this submission.

If you could gain an advantage in trade competition through this submission, please tick one of the following*

I am ☐ am not ☐ directly affected by an effect of the subject matter of the submission that:

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition

HEARINGS *Fields indicated by an asterisks (*) are mandatory.*

Please tick one each of the following*

I would like ☒ would not like ☐ to be heard in support of my submission

If others submitters make a similar submission, I will ☐ will not ☒ consider presenting a joint case with them at a hearing

SUBMISSION DETAILS *Fields indicated by an asterisks (*) are mandatory.*

Please identify the specific provision(s) of the Proposed Second Generation Dunedin City District Plan that your submission relates to*.

Provision name and number (where applicable):

For example: Rule 15.5.2 Density

Rule 18.3.4

Section name (where applicable):

For example: the residential zones

Activity Status Table

Map layer name (where applicable):

For example: General Residential 1 Zone

Scheduled item number (where applicable):

For example: Reference #T147 - Scheduled Tree at 123 Smith Street

My submission is*

☐

I support the provision

☒

I oppose the provision

☐

I seek to have the above provision amended

Choose the most appropriate statement. If more than one applies, for example you support the provision in part but wish to have part amended (removed or changed), choose 'have the provision amended' and explain this in the 'decision I seek' field.

The decision I seek is that (please give precise details, such as suggested amended wording)*

The proposal to allow retail activity to be permitted within areas other than the central business district will have a direct impact on the viability of the Central Business District Zone. Retail activity should not be a permitted activity unless it is located within the Central Business District Zone.

Reasons for my views (you may attach supporting documents)*

By way of example we attach a map depicting the Schedule Heritage Buildings located within the Warehouse Precinct Zone. Under the wording of the 2GP it appears that retail activity will be a permitted activity in all of those buildings identified. Historically this area has been defined as the Large Scale Retail Zone.

Opening up such an extensive retail area will have a negative impact on the Central Business District Zone. There are a significant number of empty spaces located within the Central Business District Zone as it stands.

Increasing retail activity will not encourage growth but instead will weaken the vibrancy of central Dunedin. Enlarging the retail activity without there being a necessity poses significant risk to the town centre.

Applications for retail activity in other areas should be subject to an assessment under the Resource Management Act 1991 including those cumulative and floodgate considerations which have developed through recent case law.

Samuel Guest

**Solicitor
Dunedin**



Signature of submitter (or person authorised to sign on behalf of submitter)
(A signature is not required if you make your submission by electronic means.)

Date



BEFORE THE DUNEDIN SECOND GENERATION PLANS INDEPENDENT HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991 ('the Act')

and

IN THE MATTER of the Proposed Dunedin Second Generation District Plan – Chapter 18:
Commercial and Mixed Use Zones

EVIDENCE of ADAM ALISTAIR McLEOD BINNS

on BEHALF of HEART of DUNEDIN INCORPORATED

Dated: 26 August 2016

INTRODUCTION

- 1 My name is Adam Alistair McLeod Binns.
- 2 I obtained a First Class Honours degree in Land Management (BSc (Hons)) from De Montfort University, Leicester, United Kingdom in 2000.
- 3 I qualified as a Chartered Surveyor (MRICS) with the Royal Institution of Chartered Surveyors in 2002.
- 4 I qualified as New Zealand Registered Valuer in 2007.
- 5 I was elected as an Associate of the New Zealand Institute of Valuers (ANZIV) in 2011.
- 6 I was elected as a Senior Member of the Property Institute of New Zealand (SPINZ) in 2011.
- 7 I was elected Chairman of the Otago Branch of the Property Institute of New Zealand in 2015.
- 8 I have been a Councillor on the New Zealand Institute of Valuers Council since 2016.
- 9 I have 15 years' pre-qualification and 14 year post-qualification experience in property, of which the last 12 have been in Dunedin.
- 10 I am the director of Adam Binns Commercial Limited, a property valuation and advisory firm, based in Dunedin. The firm was established in 2009.
- 11 The bulk of my work is valuing and advising on commercial property in Dunedin including retail, office, industrial, mixed use and specialist properties.
- 12 I have read the Environment Court's Code of Conduct and agree to comply with it.
- 13 My qualifications as an Expert are set out above.
- 14 The issues addressed in this Statement of Evidence are within my area of professional expertise.
- 15 The information, facts, data and assumptions I have used in making my statements herein and in forming my opinions are set out as part of the evidence in which I state my opinions.
- 16 I have not omitted to consider material facts known to me which may alter or detract from the opinions I have stated.

SCOPE of EVIDENCE

- 17 The purpose of this evidence is threefold:
- (i) To detail why the level of vacancy of retail units within Dunedin's three main George Street blocks (the Farmers Block, the Golden Block and the Edinburgh Way – the "three main blocks") has been assessed;
 - (ii) To explain how the level of vacancy has been arrived at;
 - (iii) To detail the amount of vacancy since 2014;

RETAIL VACANCY COUNT

- 18 In August 2014, I personally started (on behalf of my company) to record the number of vacant retail units in Dunedin's three main retail blocks (the Farmers Block, The Golden Block and the Edinburgh Way) in order provide informed market commentary discussion in Market Value and Market Rental valuation reports by providing data on the percentage of space vacant.
- 19 The three main blocks were chosen, as opposed to all retail locations in Dunedin, as they are in a tight geographical area and are therefore easy to survey, and the market commentary was limited only to those properties being valued in those three blocks.
- 20 The count has been undertaken approximately every three months since August 2014.
- 21 The count relates solely to ground floor units within the three main blocks. It does not include basement or upper floor space.
- 22 The count considers each single tenancy as being a retail unit for the purposes of counting, regardless of size. Therefore the large Farmers store and the small Mou Very bar are both considered as being single units.
- 23 The count is undertaken on the same basis each period (ie a unit is counted as being either occupied or vacant) and on the basis of the total numbers of units remains constant in the three main blocks, the data methodology therefore remains consistent.
- 24 Vacancy can be counted in a number of different ways (including vacancy by area or vacancy by rental value). It was decided to undertake the George Street vacancy count on the number of vacant units basis as it is the trend which is being established rather than the actual number of vacant units.

- 25 Since 2014, overall retail vacancy in the three main blocks has increased from 8% to 12%.
- 26 The Golden Block, which is considered Dunedin's prime retail block demonstrated by it attracting the highest retail rents, showed the biggest increase in vacancy from 2% in August 2014 to 13% in August 2016.
- 27 Vacancy in the Farmers Block has fluctuated over the period, but has generally been constantly high in comparison with the other two blocks.
- 28 The Edinburgh Way has seen the lowest level of vacancy (between 7% and 9% over the period).

Table 1: Retail Vacancy Count

Farmers Block

<i>Date</i>	<i>Occupied Units</i>	<i>Vacant Units</i>	<i>Total</i>	<i>% Vacant</i>
12/08/14	22	4	26	15%
3/12/14	24	2	26	8%
21/08/15	20	6	26	23%
30/11/15	20	6	26	23%
1/02/16	21	5	26	19%
3/05/16	21	5	26	19%
1/08/16	21	5	26	19%

Golden Block

<i>Date</i>	<i>Occupied Units</i>	<i>Vacant Units</i>	<i>Total</i>	<i>% Vacant</i>
12/08/14	45	1	46	2%
3/12/14	42	4	46	9%
21/08/15	41	5	46	11%
30/11/15	42	4	46	9%
1/02/16	41	5	46	11%
3/05/16	40	6	46	13%
1/08/16	40	6	46	13%

Edinburgh Way

<i>Date</i>	<i>Occupied Units</i>	<i>Vacant Units</i>	<i>Total</i>	<i>% Vacant</i>
12/08/14	51	5	56	9%
3/12/14	51	5	56	9%
21/08/15	52	4	56	7%
30/11/15	52	4	56	7%
1/02/16	51	5	56	9%
3/05/16	52	4	56	7%
1/08/16	52	4	56	7%

TOTAL

<i>Date</i>	<i>Occupied Units</i>	<i>Vacant Units</i>	<i>Total</i>	<i>% Vacant</i>
12/08/14	118	10	128	8%
3/12/14	117	11	128	9%
21/08/15	113	15	128	12%
30/11/15	114	14	128	11%
1/02/16	113	15	128	12%
3/05/16	113	15	128	12%
1/08/16	113	15	128	12%

Schedule 2 – Parts of Proposed Plan Decision

Activity Status Table

10.	General retail not in a scheduled building and less than 1500m ² in gross floor area	NC	NC	NC	NC	
11.	General retail not in a scheduled building and 1500m ² or more in gross floor area	P	NC	NC	NC	i. Minimum car parking ii. Minimum vehicle loading (WP-only) {CMU cl.16}
12.	Entertainment and recreation	P	P	P	P	

(the “P” in this Table is in reference to the Warehouse Precinct Zone)

4.1.3.1 Decision and reasons

151. All panel members, including the two members resident outside Dunedin, are very familiar with the CBD, the Warehouse Precinct Zone and the other central city zones. We reject the submissions from *Ms Elizabeth Kerr*, *Mr Robert Wyber* and *Heart of Dunedin* to amend the objectives, policies and rules that provide for retail, office and other centres activities in the CBD edge mixed use zones. We were convinced by the evidence of the DCC that the activities provided for in these zones are limited, and are necessary for the development of a vibrant Harbourside area or are sufficiently close to the CBD to add to the vibrancy there, rather than detract from it (e.g. entertainment and exhibition in the WP Zone).
152. In relation to the Warehouse Precinct, we agree with Mr Foy and Mr Forbes that the risk of retail businesses relocating from the George Street area is relatively low due to the constraints of the buildings, and that the benefits in terms of the Plan’s objectives

around reuse of heritage buildings is high. We also agree that requiring consent for all retail development outside the CBD would be inefficient.

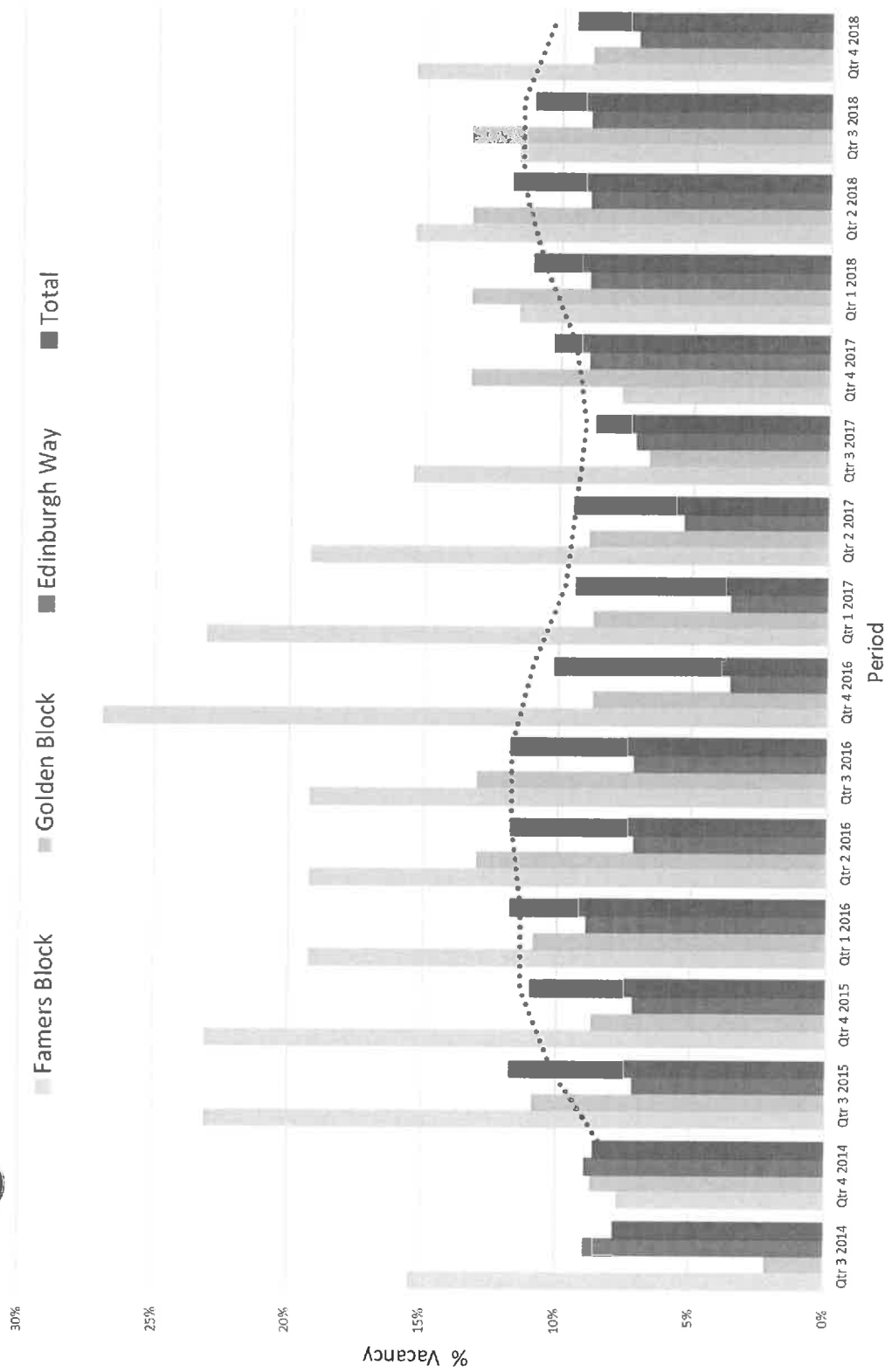
Schedule 3 – Other Document/s

1. Updated Vacancy Survey



Adam Binns
Commercial Limited
Property Agents and Real Estate Advisors

Adam Binns Commercial Limited George Street Retail Vacancy Survey



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Notes:

The count is of the numbers of vacant retail units in Dunedin's three main retail blocks: the Golden Block, the Farmers Block and the Edinburgh Way.

Counting method - the count is undertaken on the number of vacant retail units rather than on vacancy per square metre or vacancy on a rental basis. Units with temporary or "pop up" occupancies are not considered to be occupied units. Please contact Adam Binns Commercial Limited for further details.

The data provided is entirely for information purposes only and shall not be relied on.

Schedule 4

Names and addresses of persons to be served with a copy of this notice

Submitter Number	Submitter Name	Address	Address for Service
743	Elizabeth Kerr	5 Pitt Street, North Dunedin, Dunedin, New Zealand, 9016	ejkerr@ihug.co.nz
2269	One Zeal Ltd and Zeal Land Ltd	PO Box 552, Dunedin, New Zealand, 9054	zealsteel@xtra.co.nz
2471	Bindon Holdings Ltd	Bindon Holdings Ltd, Attn: Simon Johnston, PO Box 660, Christchurch 8140	
394	Robert Francis Wyber	18 Brownville Crescent, Maori Hill, Dunedin, New Zealand, 9010	bwyber@xtra.co.nz