

Dear Hearing Panel Members,

My name is Petrus Yen, and I am the owner of 169 Forbury Road. I respectfully oppose the proposed heritage listing of my property under Plan Change 1.

While I appreciate the opportunity to present my views to the Hearing Panel, I respectfully note for the record that the panel includes two sitting Dunedin City Councillors, Sophie Barker and Jim O'Malley, alongside independent commissioner and Chairperson Rob van Voorthuysen.

Although councillors are permitted to sit on hearing panels under the Resource Management Act, their participation in assessing a plan change proposed by the Council they represent raises an inherent concern regarding the perception of independence.

I trust that all panel members will approach this matter with a truly open mind, ensuring that the decision is based solely on an objective application of the established heritage criteria, free from any predisposition to uphold Council policy or staff recommendations.

Despite significant personal and professional demands, I have carefully reviewed the relevant legislation, the Dunedin City Council (DCC) heritage assessment, and Heritage New Zealand (HNZ) criteria. I have also reviewed the Council's latest evidence presented through Points 175 to 183. I respectfully submit that the proposed listing of 169 Forbury Road should be declined.

Failure to Meet Heritage Criteria

The Council may only schedule a property if it meets the established heritage criteria, requiring a place to demonstrate significance through at least one of the following:

- A genuine historic association,
- A demonstrable community connection, or
- Innovative or rare design significance.

In my original submission, I showed that 169 Forbury Road does not meet any of these thresholds, even under the Council's own criteria. Rather, the justifications advanced rely on associations so broad that they could capture a vast number of older properties in Dunedin.

If accepted, this approach would set a precedent where almost any property could meet the criteria, including properties owned by the Mayor, Councillors, and DCC staff, simply by being associated with notable individuals, without any direct link to their achievements. This is clearly not the intent of heritage protection under the Resource Management Act (RMA) or Heritage New Zealand guidelines.

Response to Council's Heritage Evidence (PC1-Heritage-Topic-s42A-Appendix-D1)

Point 175 - Integrity of the Assessment Process:

The Council acknowledges that the original heritage assessment contained factual errors, which were only corrected after submissions were made. This raises serious concerns about the robustness and impartiality of the assessment process. Proper peer review and quality control should have identified these glaring errors before public notification. Rather than reconsidering the proposal objectively after discovering the errors through my submission, the Council simply amended the assessment to preserve the original outcome. This retroactive correction undermines confidence in the process and suggests a predetermined outcome rather than an impartial reassessment based on accurate facts. In a fair process, the presence of material errors would have required an independent fresh review of the property's eligibility against the criteria, not merely minor amendments to justify the same conclusion.

Point 176 - Historic Association with William Brinsley:

The Council asserts significance based on association with William Brinsley. However, HNZ criteria clearly require a direct connection between an individual's notable achievements and the place. No such connection has been demonstrated here.

Point 177 - Rarity:

The Council claims the property is "rare" but provides no numbers, and no objective evidence. Without this evidence, the claim lacks credibility and should be rejected.

Points 178–180 - Reliance on Other Listings:

The Council relies on comparisons to other scheduled properties, suggesting that because others were listed through similar assessments, this property should be as well. This approach is fundamentally flawed. Every property must be assessed independently on its own merits. To accept otherwise would create a dangerous precedent where properties are listed by default due to owner passivity rather than genuine significance.

Point 181 - Design Significance:

The Council reasserts "design significance" without demonstrating that the property meets the HNZ aesthetic value criteria. HNZ guidelines require evidence that the wider public or a defined community values the place to such an extent that a sense of loss would be felt if altered. No public submissions support listing this property, and no such public valuation exists. Moreover, the house is a Revival style, a recreation of earlier forms, and does not reflect significant innovation or advancement in New Zealand's architectural history.

Points 182–183 - Speculative Category 1 Listing Potential:

The suggestion that the property "could meet" Heritage New Zealand's Category 1 Historic Place criteria is hypothetical and unsupported. The property is not currently listed as Category 1 by HNZ, and no evidence has been provided demonstrating that it would meet the significantly higher national standards required for such a listing. Furthermore, Heritage New Zealand has been involved in the submission process for Plan Change 1 and has neither opposed my submission nor supported the Council's proposal to list 169 Forbury Road. Their silence further indicates that the property does not meet the threshold for

Category 1 significance, and that the Council's claim remains speculative rather than evidence-based.

Systemic Overreach: The EAG Report on Resource Management Reform

The Government's Expert Advisory Group (EAG) Report (2025) on Resource Management Reform clearly states:

"Heritage matters have become confused with special character protection under the RMA, and this has created significant barriers to enabling urban development."

This confusion is evident in this case. The attempt to list 169 Forbury Road reflects:

- Reliance on indirect historic association without clear achievement linkages,
- Absence of meaningful community attachment,
- Standard architectural style without innovation or rarity.

This is not what the RMA intended when protecting truly significant heritage.

Listing properties like this distorts the purpose of heritage protection and risks undermining public trust in the planning system, exactly as the EAG has identified.

Principles of Fairness and Natural Justice

I respectfully remind the Hearing Panel that the principles of natural justice, protected both at common law and under Section 27(1) of the New Zealand Bill of Rights Act, require a fair, impartial, and evidence-based evaluation of all submissions.

Decision-makers must not simply defer to official recommendations, especially where material errors have been admitted, where objective evidence is weak or incomplete, and where significant private harm is shown.

A decision to schedule 169 Forbury Road must be based on robust evidence, careful evaluation, and genuine consideration of the public interest as balanced against serious private consequences.

This approach is consistent with well-established legal principles. In *New Zealand Rail Ltd v Marlborough District Council [1994] NZRMA 70*, the Court confirmed that the matters listed in Section 6 of the RMA, such as the preservation of natural character and heritage, are not ends in themselves but serve the Act's overarching purpose of sustainable management under Section 5. As Justice Greig stated:

"That means that the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose."

More recently, in *Environmental Defence Society v New Zealand King Salmon [2014] NZSC 38*, the Supreme Court emphasized that decision-makers must carefully apply specific protective obligations under the RMA and related policy statements, and cannot simply balance these away without proper justification. Together, these authorities reinforce that decisions must be based on clear, robust evidence, and must genuinely weigh both the benefits of protection and the real social and economic consequences for the people and communities affected, as required by Section 5 of the Act.

Conclusion and Formal Request

- The property fails to meet the established heritage criteria under both DCC's framework and HNZ's national standards.
- Accepting the Council's reasoning would create a precedent allowing virtually any older property to be listed based on superficial associations.
- The broader context of reform highlights the need for caution, restraint, and adherence to strict evidential standards.

We are not asking for special treatment or for the rules not to be applied to us. We are simply asking that our case be looked at carefully, based on the correct application of the criteria and an objective review of the facts. I respectfully invite the Hearing Panel to read my full submission, alongside the Council's original proposal, to fully understand the basis of my opposition.

While this may appear to be just another case among many, the consequences of a heritage listing are very real and significant for myself and my family with very young children aged 1, 3 and 5 years old. Based on the Council's own Market Economics Report (Appendix D3) and the calculations in the Section 42A report (6.2.28), the impact on our property could amount to a loss of up to \$286,000. For a young family with three children, and a property carrying \$1.76 million of debt, such a loss would put us into negative equity.

We would lose not just our savings, but also our home.

The Council's own Market Economics report concludes:

"Ultimately, to ensure an economically rational approach to heritage protections, further primary research and robust cost-benefit analysis are recommended. This would facilitate balanced policy decisions aligned with both public preferences and clearly articulated economic principles, reflecting the diversity of stakeholder interests and promoting more informed, transparent decision-making by the Dunedin City Council."

Proceeding with a heritage listing in the absence of this recommended analysis not only ignores expert advice, but also risks making decisions that are economically and socially unjust.

Accordingly, I respectfully request that the Hearing Panel recommend that 169 Forbury Road not be scheduled as a heritage building under Plan Change 1.

For completeness, I have also attached a more detailed supporting statement setting out further reasons for my opposition.

Thank you for your time and careful consideration.

Yours sincerely,

Petrus Yen