

Notice of Meeting:

I hereby give notice that an ordinary meeting of the Dunedin City Council will be held on:

Date: Tuesday 30 April 2019
Time: 1.00 pm
Venue: Council Chamber, Municipal Chambers,
The Octagon, Dunedin

Sue Bidrose
Chief Executive Officer

Council SUPPLEMENTARY AGENDA

MEMBERSHIP

Mayor
Deputy Mayor

Mayor Dave Cull
Cr Chris Staynes

Members

Cr David Benson-Pope	Cr Rachel Elder
Cr Christine Garey	Cr Doug Hall
Cr Aaron Hawkins	Cr Marie Laufiso
Cr Mike Lord	Cr Damian Newell
Cr Jim O'Malley	Cr Conrad Stedman
Cr Lee Vandervis	Cr Andrew Whiley
Cr Kate Wilson	

Senior Officer

Sue Bidrose, Chief Executive Officer

Governance Support Officer

Lynne Adamson

Lynne Adamson
Governance Support Officer

Telephone: 03 477 4000
Lynne.Adamson@dcc.govt.nz
www.dunedin.govt.nz

Note: Reports and recommendations contained in this agenda are not to be considered as Council policy until adopted.

ITEM TABLE OF CONTENTS		PAGE
REPORTS		
2	Public Forum - Diane Yeldon	4

REPORTS

PUBLIC FORUM - DIANE YELDON

Diane Yeldon wishes to address Council on Public Feedback on Roadworks and Public Forum, Standing Orders and Censorship.

Attachments

	Title	Page
↓A	Diane Yeldon Public Forum	5

From: [Diane Yeldon](#)
To: [Lynne Adamson](#)
Subject: Public Forum Submission to Dunedin City Council from D Yeldon 30th April 2019
Date: Tuesday, 30 April 2019 06:24:28 a.m.

Kia Ora, Lynne, below is my Public Forum submission to the Council for today. Could you please make sure that elected members receive copies and that public copies are available at the meeting including for the press.

I am happy to let my written submission stand and be present only to answer any questions.

I see Standing Orders still require people wishing to record the meeting to inform the Chair. Could you please give notice that I intend to make an audio recording of part or all of the meeting including public forum.

Nga mihi,
Diane

Public Forum Submission to Dunedin City Council 30th April 2019

To the Mayor and Councillors
Thank you for the opportunity to speak at Public Forum.

1) **Roading changes**

Regarding roading changes, such as the introduction of the roundabout at the Shetland St, Chapman St, Dale St intersection (which I live near and know to be extremely steep in two directions with poor visibility, potentially icy and also on a bus route) could you consider seeking input and feedback from the local community when such changes are proposed and executed. Local knowledge may be of great benefit. With respect to the above intersection, I think the present four compulsory stops are justified and the new give way signs may be hazardous. There is a Wakari Hills Community Association Facebook page where the matter has been discussed and it seems a pity there is little or no engagement between this geographical community of interest and the council over this matter.

2) **Freedom of expression, especially with respect to public engagement and any restrictions put on it by the DCC**

You are coming to the end of your term of office. However, there is still something you can do which is of great benefit to this community - and that is to act as champions of free speech and establish a policy of how the Dunedin City Council upholds the right of its citizens to free speech.

The Universal Declaration of Human Rights, Article 19, states the following:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Note that this includes online comments.)

The New Zealand Human Rights Commission explains this further as follows:

What is freedom of expression?

Freedom of opinion and expression are rights which uniquely enable us to promote, protect and fulfill all other human rights. The rights enable us to expose, communicate and condemn human rights abuses. They also permit the celebration of human rights achievements. Freedom of expression embraces free speech, the sanctity of an individual's opinion, a free press, the transmission and receipt of ideas and information, the freedom of expression in art and other forms, the ability to receive ideas from elsewhere, and the right to silence. Freedom of expression is one of a number of mutually supporting rights (including freedom of thought, of

association and of assembly, and the right to vote) and is integral to other civil and political rights, such as the right to justice, and the right to take part in public affairs. Equally, the right to freedom of expression impacts on social and cultural rights, such as the right to education. Debate about freedom of expression is both wide reaching and constantly evolving, in response to the development of the human mind, technological innovation and a globalised media, community practices and standards, and political and judicial responses. More constant is the fundamental idea that freedom of expression is designed to protect and enhance democratic ideals.

Three overlapping arguments have historically been used to advance the right to freedom of expression: the search for truth, democratic self-government, and autonomy and self-fulfilment. The search for truth relates to the competition of arguments and ideals that leads to the discovery of truth. When all ideas have been freely heard, "the jury of public opinion will deliver its verdict and pick the version of truth it prefers".¹

The role of freedom of expression in democratic self government is best expressed by Lord Steyn:

The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice in the country.²

The democratic rationale has been prominently used in many major court decisions in recent years in the United States, Australia, the United Kingdom and New Zealand. For example, in cases involving former Prime Minister David Lange, in Australia, New Zealand and the UK, the Courts recognised that the democratic rationale for freedom of expression requires a limitation on defamation laws so that freedom of speech about public and elected officials is not chilled by potential liability.

https://www.hrc.co.nz/files/6914/2388/0492/HRNZ_10_Freedom_of_opinion_and_expression.pdf

I have quoted at length from this statement from the Human Rights Commission because I think the principles are extremely important. I urge you to familiarize yourself with the NZ court case, *Lange v Atkinson* where (quoting from the Wikipedia article):

The Court of Appeal's final hearing in Lange v Atkinson (No. 2) remains the leading case on the law of qualified privilege in New Zealand and affirmed that qualified privilege extends to publications concerning the conduct of publicly elected officeholders and those seeking such office. (ends).

In 2018, a decision of the Court of Appeal further upheld the right to freedom of expression with respect to public comment on public affairs. Quoting from a Radio NZ News report:

Sir Edward Durie and Donna Hall issued defamation proceedings in response to a Maori TV story, which was also published on its website. ...

In today's decision the Court of Appeal has concluded it is time to strike a new balance between the right to protection of reputation and the right to freedom of expression, by recognising a new defence wider than that in an earlier case, Lange v Atkinson. It did that by building on English and Canadian case law to replace the existing qualified privilege defence with a new public interest defence.

"The new defence is not confined to parliamentarians or political issues, but extends to all

matters of public concern."

The elements of the new defence are that the publication's subject matter must be a matter of public interest and that the communication must be responsible.

Both of those matters will have to be determined by a judge, not a jury, and the public interest defence will be available to all who publish material in any medium.(ends)

It is worth noting that both of these cases involved serious allegations of improper behaviour, arguably amounting to corruption on the part of those alleging defamation.

Therefore, the chances of any local authority succeeding with a court case for defamation brought against a critic posting material the council or some of its members or staff deemed offensive on a website would IMO be nil. Similarly, a local authority attempting to use the Harmful Digital Communication Act to censor critical web comment would also be nil, mainly because that law was written to protect individuals from online bullying and certainly not to limit public political engagement. Once more, I urge you to get legal advice on this.

It is worth noting that defamation can apply only to a living individual. For example, the defamation case between Andrew Little and Earl Hagaman ended with the latter's death: <https://www.nbr.co.nz/article/no-defamation-dead-andrew-little-wins-hagaman-suit-%C2%A0-vv-p-209500>

Here is a good guide to general principles of defamation in NZ law.
http://www.medialawjournal.co.nz/?page_id=273

It is highly doubtful as to whether a local authority can sue for defamation. A corporation can but only if they can prove financial loss. The possibility of a local body succeeding in a court case for defamation IMO is nil because such liability would significantly diminish public engagement and be contrary to democratic principles.

If an individual member feels himself to be defamed, IMO it is none of the Council's business. It is his or her responsibility alone to take defamation proceedings if he or she wishes and not the council's business to act on his or her behalf or incur any expense.

In contrast, if it is the individual member who is **being** sued for defamation and the matter has arisen in the course of that member discharging his duties as an elected representative, then he or she can reasonably be insured by the local authority against the risk and can, of course, make a defence of qualified privilege. Otherwise, people would be deterred from standing for office. However, the qualified privilege, which you have as local body reps, is indeed qualified, or limited. Being an elected rep at local government level is not a carte blanche to defame people.

Regarding Standing Orders, I refer you to Section 14 on Public Forum. An important principle in law is that what the law does not prohibit it can be assumed to allow.

Nowhere in Standing Orders does it say that speakers may not criticise the Council, that is to say the Council as a collective deliberative or decision-making body. To not be allowed to make any public criticisms of any level of government in NZ would be totally contrary to the principles of participatory democracy. And of all the places where criticisms of the council might be made here in the council chamber face to face with elected reps is the most constructive arena. Muttering about the 'bloody Council' over the back fence is unlikely to promote positive change.

Standing Orders do make provision, at the chair's discretion, for criticism of individual members or staff to be disallowed. There is also provision, at the discretion of the chair for remarks deemed offensive to be disallowed. I think the latter provision is justified and covers any problems which might arise regarding individuals, making the first provision superfluous. So I would like to see the first abolished. I would also like to see any future DCC meeting chairs use their powers of discretion to shut speakers up with great tolerance and patience - on account of the great value of public engagement.

I urge you to seek legal advice on this matter of the balance of championing freedom of expression, critically linked as it is with engagement in public affairs, and, before the end of your term of office, pass a resolution establishing how the DCC will manage the matter in the future. IMO, it has not at all been managed well in the past, a notable low point being the suspension of all public forums arguably to muzzle public debate during the controversy over the decision to build the Stadium and an

arguably draconian and bullying use of the law to bankrupt a public interest protest group. Such measures do not stop dissent -they merely drive it underground.

When it comes to lawyers and courts, a local authority has deep pockets, far deeper than that of most individuals. It is up to elected reps, like yourselves, to ensure that such legal firepower is not used to threaten and bully people. There was a case, which no doubt some of you are very familiar with, where the DCC was entirely at fault over a traffic management issue and, in my opinion, did not at all behave ethically with respect to litigation. As elected reps you can stop this kind of legal bullying by passing a carefully worded resolution, with respect to any legal proceedings that the operational side of the council might decide to undertake. This could be as simple as a resolution to act impeccably ethically in all legal proceedings and to get a third party, such as a conflict resolution expert, to give an opinion where there is any doubt about the ethics of a case.

Finally, you will no doubt be aware of the rise of the climate change action movement, Extinction Rebellion. These young people will no doubt be engaging with local government, just as groups with older memberships like Seniors Against Climate Change and Wise Response have done. However, the young may not be so polite and IMO have good reason not to be, as many of them see no future for themselves and hold older generations responsible. I urge you to be patient with them. Do not censor them.

Dmitry Orlov has written about collapse, having experience the political collapse of the Soviet Union. <https://www.newsociety.com/Books/F/The-Five-Stages-of-Collapse>
The 'five stages of collapse' are, first, financial, commercial and political which may be followed by social and then cultural collapse. Quoting from review above: *He suggests that if the first three stages are met with the appropriate responses, further breakdown may be arrested before the extremes of social and cultural collapse are reached.* (ends)

Mayor Cull and others have made public statements about how much climate change adaptation is going to cost us. Do not imagine for a second that central government will bale the regions out - it simply does not have the money. Local communities will have to save themselves, indeed, will have to be leaders of central government, rather than its followers.

For this, widespread public engagement of citizens is essential. Please help ensure that happens by giving residents of this city no reason to fear the Council, regardless of how they vigorously they express themselves, as long as they do it without malice.