

COMPLAINT NUMBER	17/128
COMPLAINANT	V Harrod
ADVERTISER	Horowhenua District Councillors
ADVERTISEMENT	Horowhenua District Councillors, Print
DATE OF MEETING	23 May 2017
OUTCOME	Settled in part/Not Upheld in part

SUMMARY

The Horowhenua District Councillors' print advertisement appeared in the Horowhenua Chronicle, was headed "The Truth about the Council Building" and contained photos of nine councillors. The advertisement said that three reports had confirmed the safety of the Horowhenua District Council building for normal occupancy. The advertisement said differing details in the reports were yet to be discussed and the issue of the building being used as a Civil Defence headquarters was unrelated to its day to day council use. The advertisement said future weekly personally-funded half-pages in the Horowhenua Chronicle would "keep you informed about what is really going on."

The Complainant was concerned that the three separate engineering reports were being peer reviewed and no decision had been made on the safety of the council building. Further, the Horowhenua Chronicle had accepted advertising stating facts that might prove false. The Complainant was also concerned that the Mayor had been publicly undermined in the advertisement.

The Complaints Board said the advertisement was an advocacy advertisement and thus the Advertiser was entitled to express a robust view, but the identity of the councillors advertising their view was not clear. The publisher confirmed to the Complaints Board that future advertisements from the councillors would be correctly labelled.

Accordingly, the Complaints Board ruled the complaint was **Not Upheld** in relation to Basic Principle 4 and Rule 2 of the Code of Ethics and **Settled** in relation to Rule 11.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rules 2 and 11 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement had been prepared with a due sense of responsibility to consumers and to society and whether it contained any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim was misleading or deceptive, was likely to deceive or mislead the consumer, made false and

misleading representation, abused the trust of the consumer or exploited their lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading.) The Complaints Board was also required to determine, given that expressions of opinion in advocacy advertising are an essential and desirable part of the functioning of a democratic society and that such opinions may be robust, whether opinion in the advertisement was nevertheless clearly distinguishable from factual information and whether the identity of the advertiser in a matter of public interest or political issue was clear.

The Complaints Board ruled the complaint was Not Upheld in part and Settled in part.

The Complaint

The Complaints Board first addressed the Complainant's concern that the differences in the three separate engineering reports referred to in the advertisement were being peer reviewed and no decision had been made regarding the veracity of the claims the council building was safe. The Complainant said in part: "It is also a disturbing development that nine councillors have been allowed to publicly undermine the Mayor by saying in an advert that 'The Mayor refused to release his report to councillors until a day after it had been released to the media' after also acknowledging in the advert the Mayor paid for the last engineering report out of his own pocket. In the event the Mayor paid for the report then what he does with it is therefore his decision to make. Overall though the advert and planned subsequent adverts (as stated in the advert) is a disturbing element." The Complainant asked how a community newspaper could claim to be independent in reporting about an important and ongoing community matter of great public interest while "accepting money for advertisements stating facts that may indeed prove to be entirely false and misleading." The Complainant said the truth of the advertisement was unknown "because no results have been released yet about the peer review process so, in that sense, this advert is not only misleading but potentially incorrect and a liability in the event there is a major earthquake is also an issue."

The Advertiser's Response

Ross Brennigan, on behalf of the councillors, said the advertisement referenced three reports to do with the safety of the building. The Advertiser said the Opus International Report 2014 gave the council building a rating of 86% New Build Standard (NBS) as an IL2 (Importance level) and a rating of 50% NBS as an IL4 building. The ISPS report quoted the Opus figure of 85 NBS for an IL2 building and the Mayor's Structural Concepts report gave the building a 50% NBS rating at IL2 and minus 30% as an IL4 building. The Advertiser said for normal use the IL2 rating was the relevant measure and an IL4 rating applied to a Civil Defence building. The Advertiser said an earthquake prone building was classified as under 34 % NBS so even at the lowest reported level of 50% the building, as the advertisement said, was safe for normal occupancy.

The Advertiser said, regarding the issue of social responsibility, that democracy entitled the proffering of different viewpoints particularly when elected representatives were divided over an issue. The Advertiser said the Mayor had expressed his viewpoints in various media including in the Horowhenua Chronicle and the nine elected representatives featured had a community responsibility to make their differing views known. The Advertiser said the failure of a newspaper to publish both sides of a story would be a form of censorship. The Advertiser believed the photos in the advertisement, used on the District Council website, made the nine councillors more identifiable in the community than names.

The response from the media

The Complaints Board then turned to the response from NZME on behalf of the media. NZME said the advertisement was received and published in good faith as normal. NZME noted that the names and addresses of councillors who paid for the advertisement were not

included with their images and NZME had ensured that this would be clearly done in future advertisements.

The Complaints Board discussion

The Complaints Board first discussed whether the advertisement was an advocacy advertisement and thus able to express a robust opinion in keeping with what was an essential and desirable part of the functioning of a democratic society. The Complaints Board understood the motivation of councillors who wanted to put their position, that they did not have concerns about the safety of the council building in the way that the Mayor did, on record. The councillors' advertised view on an issue that had prompted much local debate was that they did not agree with the Mayor but did have confidence in the chief executive. They were expressing their opinion as individuals. The Complaints Board agreed the advertisement was an advocacy advertisement. The Complaints Board also agreed in light of this, the matters raised in the advertisement did not meet the threshold to be misleading or in breach of the requirement for a due sense of social responsibility.

Was the advertisement clearly attributed?

However, the Complaints Board said that the Advertiser was required, in expressing a robust view in an advocacy advertisement, to clearly identify whose view it was and this had not been done. The Complaints Board believed that though some people would know the names of the councillors pictured in the advertisement, others would not. There was also a risk that readers may infer the advertisement came from the council. The response from the publisher acknowledged that the names of the councillors pictured in the advertisement should have been included and NZME committed to ensuring this was done in future advertisements.

The Complaints Board agreed that as an advocacy advertisement, it did not breach Basic Principle 4 and Rule 2 of the Code of Ethics but that, it had failed to clearly identify the individuals whose views were expressed.

Accordingly, the Complaints Board ruled the complaint was **Not Upheld** in relation to Basic Principle 4 and Rule 2 and **Settled** in relation to Rule 11.

DESCRIPTION OF ADVERTISEMENT

The Horowhenua District Councillors' half-page print advertisement appeared in the Horowhenua Chronicle on April 5, 2017, and was headed "The Truth about the Council Building." At the bottom of the advertisement was a line of small head-and-shoulders images of nine unnamed councillors. On the right of the advertisement were six bullet-point sub-headings, the first saying: "We have three reports that confirm the building is safe for normal occupancy" followed by: "2014 -Opus International (HDC) 2016 – ISP Consulting (HDC), 2017 – Structural Concepts (The Mayor) All reports were comprehensive and involved on-site inspections."

The second point noted broad report agreement but differences in detail which would be discussed in a meeting of Opus and Structural Concepts. Other points assured ratepayers they would not be paying for the report commissioned by the Mayor followed by a point saying the Mayor's report had been released to the chief executive through the Mayor's legal firm with a request to recover the cost of the building report and legal fees. This point said the Mayor had refused to release his report to councillors until a day after it had been released to the media. This was followed by "Are these the actions of a leader who has serious concerns about staff and public safety? We do not believe so."

The penultimate point said that “the issue of the council building being used as a Civil Defence Headquarters is totally unrelated to its day to day use as a District Council building” and the last point: “We have total confidence in our chief executive, David Clapperton. We are absolutely satisfied with his handling of this matter.”

To the left of the bullet-points was a box containing the words: “Each week we will personally fund half a page in the Chronicle to keep you informed about what is really going on.”

COMPLAINT FROM V HARROD

The differences in three separate engineering reports is being peer reviewed and no decision has been made regarding the veracity or otherwise of the claims the council building is safe. It is also a disturbing development that nine councillors have been allowed to publicly undermine the Mayor by saying in an advert that "The Mayor refused to release his report to councillors until a day after it had been released to the media" after also acknowledging in the advert the Mayor paid for the last engineering report out of his own pocket. In the event the Mayor paid for the report then what he does with it is therefore his decision to make. Overall though the advert and planned subsequent adverts (as stated in the advert) is a disturbing element. How can the community newspaper claim to be independent in reporting news about an important and on-going community matter of great public interest while accepting money for advertisements stating facts that may indeed prove to be entirely false and misleading? Is this "The Truth" well we don't know because no results have been released yet about the peer review process so, in that sense, this advert is not only misleading but potentially incorrect and liability in the event there is a major earthquake is also an issue.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2 Truthful Presentation: Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 11 Advocacy Advertising: Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

RESPONSE FROM ADVERTISER: ROSS BRENNIGAN, ON BEHALF OF THE COUNCILLERS

As I understand the complaint, it alleges the advertisement referenced by V Harrod fails to meet the following standards.

Code of Ethics

Basic Principal 4 - All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2 - Truthful Presentation – Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 11 - Advocacy Advertising – Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

V Harrod's complaint appears to suggest

- 1) That safety of the building cannot be verified until the peer review is completed and our statement that the building is safe for normal occupancy is incorrect.
- 2) That councilors do not have a right to "undermine" – or disagree with - the mayor
- 3) That our advertising compromises the independence of the newspaper

In addition Rule 11 suggests that our identities are not clear.

Our response

- 1) Safety of the building. – our ad references 3 reports. The Opus International report 2014 gives the council building a rating of 86% New Build Standard (NBS) as an IL2 (Importance level) Building and a rating of 50% NBS as an IL4 building. The ISPS report does not specify %NBS but quotes the Opus figure as 85% NBS for an IL2 building and states the building is safe for normal occupancy. The Structural Concepts report gives the building a NBS rating of 50% at IL2 and <30%NBS as an IL4 building.

For normal use an IL2 rating is the relevant measure, an IL4 rating applies to a Civil Defence building and suggests a building can stand a 1 in 2500 year earthquake (Opus report).

An earthquake prone building is classified as under 34%NBS. Even at the lowest reported level of 50% this building is clearly not earthquake prone at IL2 level and makes our statement correct that the building is safe for normal occupancy. We would expect a peer review to result in a final figure between 50% and 85% NBS at IL2 level which will validate our statement.

The most pessimistic report, that of Structural Concepts, concludes in section 12 that the building is in sound condition and 50%NBS without the Civil Defence use.

In addition, Appendix A, Rapid Building Assessment, completed on 23/11/16 after the Kaikoura earthquake, recommends in section 10 "further assessment – none", in section 11 "building can be used" and section 13 "no action required"

As far as we can see there are no other challenges to facts in the advertisement.

- 2) This appears to relate to the issue of social responsibility to the community. Democracy entitles different viewpoints to be put. This is particularly so when the elected representatives are divided over an issue. The mayor had previously appeared in various media a number of times including the Chronicle expressing his viewpoint on the building. This interpretation is not held by the nine elected representatives featured and we have a community responsibility to make our views known. If the mayor is undermined by the majority of elected representatives holding

a different viewpoint that will be because the community gives our view greater credibility.

- 3) It should be the role of newspapers to report news impartially. Failure to publish both sides of a story would be a form of censorship.

Further, we believe that our photos included in the advertisements make our identities clear and actually make us more identifiable within the community than does a name. These are the photos used on the District Council website which identifies all councilors along with all their contact details.

We believe this covers any areas of concern expressed. If not could you please contact us with specifics of any concerns you wish s to comment on.

RESPONSE FROM MEDIA: NZME

NZME received the advertising material from the client and we have published the supplied material in good faith and as per normal practice.

Having read the complete text of the advertisements we can understand the view that some of what has been presented by the advertisers could be regarded as contentious, however we are not in a position to 'fact check' all advertisement copy on behalf of our clients.

We note, however, that the names of the counsellors who paid for the advertisement, and an address for them, was not visible on this advertisement (notwithstanding the fact that their images were in the advertisement).

We have ensured that future advertisements from these counsellors are labelled as such and the correct information and addresses are clearly stated.