

COMPLAINT NUMBER	17/256
COMPLAINANT	W Meldrum
ADVERTISER	Shelly Bay Ltd
ADVERTISEMENT	Shelly Bay Ltd, Print
DATE OF MEETING	12 September
OUTCOME	Not Upheld

SUMMARY

The Shelly Bay Limited print advertisement was headed “Shelly Bay: It’s a simple choice.” A large picture of what Shelly Bay might look like when developed was superimposed in a circle showing dilapidated Shelly Bay buildings and labelled “\$5.85m.” The pictured development was labelled “\$2m”. Between them was the word “or.” The advertisement said: “It’s your money. Make a submission to the WCC at wellington.govt.nz/have-your-say” At the bottom of the advertisement was: “This advertisement has been placed by Shelly Bay Limited, the company behind the Shelly Bay proposal. Shelly Bay Limited is a joint venture between Wellington Iwi-owned Port Nicholson Block Settlement Trust and The Wellington Company.”

The Complainant’s concern was the advertisement was deceptive because there were other choices than spending either \$5.8 million or \$2 million and these were not mentioned. Further, Wellington City Council (WCC) had granted consent to the developer so there was no choice available to readers. The Complainant was concerned that the advertisement was paid for by Shelly Bay Ltd but directed readers to the WCC website and that readers were invited to make a “submission” which was not a “simple choice.”

The Complaints Board said the advertisement was clearly attributed to the Advertiser, Shelly Bay Ltd, and contained figures pertaining to development or retention taken directly from the WCC consultation document. The consultation document focussed on these two options for Shelly Bay and consumers were clearly directed to the WCC website where they were able to make submissions. The Complaints Board noted these submissions could oppose both options.

The Complaints Board said the advertisement was not misleading under Rule 2 and had been prepared with a due sense of social responsibility under Basic Principle 4. The Complaints Board ruled the advertisement was therefore not in breach of the Code of Ethics.

The Complaints Board ruled to Not Uphold the complaint.

[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 Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society and whether it contained any statement or visual presentation or created an overall impression 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 ruled the complaint was Not Upheld.

The Complaint

The Complainant's concern was the advertisement was deceptive because there were other choices than spending either \$5.8 million or \$2 million and these were not mentioned. Further, Wellington City Council (WCC) had "granted consent to the developer under the housing accords and housing areas act 2013 so there is no choice available to readers." The Complainant noted readers were invited to make a "submission" which was not a "simple choice" and was concerned that the advertisement was paid for by Shelly Bay Limited (the company behind the Shelly Bay proposal) but that readers were directed to the Wellington City Council website.

The Advertiser's response

The Advertiser, Shelly Bay Limited, said that the information presented in the advertisement had been taken directly from the WCC public consultation document. The Advertiser provided a copy of the document with two relevant passages highlighted. The first of these were: "It is estimated it would cost the Council \$5.85 million just to refurbish the buildings and maintain the infrastructure to a minimum standard." The Advertiser interpreted this to mean the cost to WCC and ratepayers if nothing was done. The second was: "The net cost to the Council would be \$2 million" and was followed by breakdown of figures indicating the \$10 million cost of infrastructure/public space minus \$8 million income from the sale of public land. The Advertiser said the \$2 million was the ratepayer cost of development.

The Advertiser refuted the Complainant's comment that the advertisement was deceptive for three reasons. Firstly, there were only two options as per the consultation, to do nothing or sell and lease the land, the cost of which had been confirmed by WCC and reiterated in the advertisement. Secondly, claims regarding the consent process were not subject to the advertisement, nor the consultation process. Thirdly, the advertisement was clearly identified as being paid for by Shelly Bay Limited and directed people to the WCC consultation website to enable them to make up their own minds and make a submission after reading council literature.

The Advertiser said they had simply provided a mechanism of presenting a range of facts important for the public to consider in making their own decision as part of WCC's public consultation process regarding the sale and lease of WCC landholdings.

The Media response

The Complaints Board then turned to the response from the media, Fairfax. Fairfax said in part that they "understood the promotion for this campaign to be a truthful representation of the information provided to the public via their advertisement."

Fairfax attached a rebuttal full page advertisement containing another view point of the development.

The Complaints Board discussion

The Complaints Board considered whether the content of the advertisement was misleading in part because it appeared to offer a choice between the maintenance or development of Shelly Bay. The Complaints Board noted that the consultation document on the WCC website to which consumers were clearly directed focused on only those options, the maintenance or development of Shelly Bay, and the advertisement was not misleading in saying there was a choice between them.

The Complaints Board noted that the future of Shelly Bay was a matter of public interest in Wellington and had been under consideration for some time. The consultation document, submissions process and hearings were the latest iteration of this. The matter was regularly covered in local media. The Complaints Board noted that as part of the democratic process submitters could choose to oppose both options and have their view recorded.

The Complaints Board said the Advertiser was entitled to present their view of the process and the advertisement had referenced the Advertiser's commercial interest in the development.

The Complaints Board noted the numbers given for maintaining or developing Shelly Bay were accurately quoted from a WCC document available to anyone and with the WCC website address highlighted. Consumers were clearly directed to the website where they could engage with the submission process.

The Complaints Board said the advertisement was not misleading under Rule 2 and had been prepared with a due sense of social responsibility under Basic Principle 4. The Complaints Board ruled the advertisement was therefore not in breach of the Code of Ethics.

Accordingly, the Complaints Board ruled to Not Uphold the complaint.

Decision: Complaint **Not Upheld**

DESCRIPTION OF ADVERTISEMENT

The Shelly Bay Limited print advertisement was headed "Shelly Bay: It's a simple choice." A large picture of what Shelly Bay might look like when developed was superimposed with a circle showing dilapidated Shelly Bay buildings labelled "\$5.85m." The pictured development was labelled "2m." Between them was the word "or." The advertisement said: "Maintaining Shelly Bay's neglected buildings and infrastructure will cost Wellingtonians \$5.85 million. Instead for \$2 million we can have a world class destination with new housing employment and attractions that will make Wellington an even better place to live." Under the pictures and these words were, in Maori and repeated in English:

"To those who look at the finer detail, stimulate the current of thought
Provoke the pathway of intellect
Turn this way to the changing landscape of Shelly Bay
Rise! Rise and make a submission to WCC

Underneath this was: "It's your money. Make a submission to the WCC at wellington.govt.nz/have-your-say" At the bottom of the advertisement were the logos of the Port Nicholson Block Settlement Trust and The Wellington Company and the words: "This advertisement has been placed by Shelly Bay Limited, the company behind the Shelly Bay proposal. Shelly Bay Limited is a joint venture between Wellington Iwi-owned Port Nicholson Block Settlement Trust and The Wellington Company.

COMPLAINT FROM W MELDRUM

The Shelly Bay Limited ad in the Saturday 29 July 2017 Dominion Post purports to offer readers a binary choice of the Wellington City Council (WCC) either spending \$8.5 million or \$2 million.

I believe this advertisement is deceptive for the following reasons:

1. There are other choices the advertisement does not mention;
2. WCC has granted consent to the developer under the housing accords and special housing areas act 2013 so there is no choice available to readers;
3. The advertisement invites readers to make a submission, an act that does not support or indicate a "simple choice".
4. The advertisement is paid for by the Shelly Bay Limited but directs readers to WCC website.

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).

RESPONSE FROM ADVERTISER: EGMONT DIXON LTD (MANAGEMENT CONSULTANTS) ON BEHALF OF SHELLY BAY LTD

I am writing in response to the email forwarded to Danielle Warren on the 2nd August 2017 regarding the complaints made by:

- M. Gibson
- W. Meldrum

In response to the complaint made, Shelly Bay Limited position on the claims made is as follows:

1. The information and material presented in SBL's advertisement has been taken directly from Wellington City Council's (WCC) public consultation document, this has not been presented in any way that is contrary to the facts presented in this document. For your reference I attach this document for your perusal with the extracts highlighted. SBL has simply highlighted these facts for the benefit of its audience as we view this information being essential in persons "if they wish" to respond formally.

M. Gibson's observation that this material is misleading or wrong is unfounded and we would find it hard to believe that WCC would consult publically on this matter if this was the case. If these figures are wrong or incorrect we would recommend that M. Gibson raises issue with WCC directly.

For your reference I also provide the link to WCC's public consultation web page:

<http://wellington.govt.nz/have-your-say/public-inputs/consultations/open/have-your-say-on-shelly-bay>

2. In response to W. Meldrum, comments that the advert is deceptive, we refute this for the following reasons:
 - a. There are only two options that are on offer as per the consultation do nothing or sell and lease the land, the costs of which have been confirmed and defined by WCC and reverberated in our advert
 - b. Claims regarding the consent process are not subject to our advert nor the consultation process I am unsure how this is of any relevance.
 - c. Yes the advert is paid for by Shelly Bay Limited and this is clearly identified in the advert, directing people to the WCC consultation website is to enable people to make up their own mind by reading the literature that Council has prepared and making a submission to which Mr Meldrum is entitled to express his position on this matter.

In reference to this matter being referred to ASA we are somewhat perplexed as we do not believe SBL have acted in a manner which is deceptive nor misleading and we have merely provided a mechanism of presenting a range of facts which we feel are important for the public to consider in making their own decision as part of WCC's public consultation process regarding the sale and lease of WCC landholdings.

RESPONSE FROM MEDIA - Fairfax

We understood the promotion for this campaign to be a truthful representation of the information provided to the public via their advertisement.

As an advocacy styled advertisement, it provided the public with the information the advertiser wished to convey, with an authoriser statement at the bottom of the advertisement, should any party wish to contact them to discuss. A submission process via the Wellington City Council was another option that was contained in the advertisement.

I have also attached a rebuttal full page advert that ran in The Dominion Post on the 5th August, for which readers were provided another view point of the development.

We welcome any recommendation the ASA may for any future correspondence /advertising on this matter.