

COMPLAINT NUMBER	18/319
COMPLAINANTS	C Johnson & L Dawson
ADVERTISER	Tasman District Council
ADVERTISEMENT	Tasman District Council, Print
DATE OF MEETING	24 October 2018
OUTCOME	Settled in Part, Not Upheld in Part

SUMMARY

The Tasman District Council print advertisement featured in the *Tasman Leader* and the *Golden Bay Weekly* and provided information about the Waimea Community Dam with an overall project cost of \$99 million. A pie graph shows the cost share, with Tasman Council responsible for 23% and external funders share 77%. The advertisement states the Waimea Dam will deliver: "A healthy Waimea River, a secure water supply for 100 years, a prosperous productive economy and growth and resilience."

Complainant C Johnson said it is misleading to claim the overall project cost is \$99 million as this reads as an actual quoted fixed price when in fact the cost could be closer to \$136.5 million. The Complainant said the \$99 million was funding, not cost and the pie chart in the advertisement was also misleading as the 23% attributed to Tasman District Council excludes loans and interest and should be 39%.

Complainant L Dawson was also concerned about pie graph being misleading and questioned whether there is evidence to support the advertisement's claims the dam will improve river health or prosperity in the region.

The Advertiser said the advertisement was only published once in each newspaper and will not run again in its current form. The Advertiser provided a breakdown of the overall cost figure of \$99 million which it maintains is a fixed cost.

The Advertiser confirmed that future advertisements will include the \$10 million loan from Crown Irrigation Investment Ltd which will be added to the Council contribution.

The Complaints Board acknowledged the Advertiser's commitment to clarify the \$10 million loan as part of the Council's funding contribution and ruled this aspect of the complaint was Settled.

Taking into account the provision under the Advocacy Principles for a more liberal interpretation of the Code for advocacy advertisements, the Complaints Board ruled the \$99 million overall project cost and the list of benefits to the regions did not meet the threshold to be likely to mislead or deceive the consumer and were not in breach of Rule 2 or Basic Principle 4 of the Code of Ethics.

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

[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.

Basic Principle 4 required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 2 required the Complaints Board to consider whether the advertisement contained 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.

Rule 11 required the Complaints Board to consider whether the advertisement fell within the category of 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.

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

The Complaints

Two complaints were received for this advertisement.

Complainant C Johnson said it is misleading to claim the overall project cost is \$99 million as this reads as an actual quoted fixed price when in fact the cost could be closer to \$136.5 million. The Complainant said the \$99 million was funding, not cost and the pie chart in the advertisement was also misleading as the 23% attributed to Tasman District Council excludes loans and interest and should be 39%.

Complainant L Dawson was also concerned about pie graph being misleading and questioned whether there is evidence to support the advertisement's claims the dam will improve river health or prosperity in the region.

The Advertiser's Response

The Advertiser said the advertisement was only published once in each newspaper and will not run again in its current form. The Advertiser provided a breakdown of the overall cost figure of \$99 million which it maintains is a fixed cost.

The Advertiser confirmed that future advertisements will include the \$10 million loan from Crown Irrigation Investment Ltd which will be added to the Council contribution.

The Advertiser provided substantiation for the benefits to the region listed in the advertisement, including information from the Waimea Dam Economic Assessment Report and Statistics NZ.

The Complaints Board Discussion

The Complaints Board said the likely consumer takeout of the advertisement was an update of the progress of the Waimea Dam project and information on the costs and benefits of the

project. As an advocacy advertisement, the Complaints Board said its intention was to promote to readers why the decision to proceed with the project is a good idea, given that the project is still to be confirmed.

The Complaints Board then turned to consider the advertisement under Rule 11 of the Code of Ethics. Rule 11 provides for robust expression of belief or opinion being as expressed by the Advertiser and, therefore, such opinions may be robust. However, opinion should be clearly distinguishable from factual information.

Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the right granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

The Complaints Board discussed whether the identity of the Advertiser was clear. The Board said the advertisement contained a clear logo and contact details and directed readers to the website for further information. The Complaints Board agreed that as both the identity and the position of the Advertiser were clear, in compliance with Rule 11, the advertisement should be reviewed in the context of advocacy advertising, which is advertising designed to express an opinion. As such, and in the interests of freedom of expression under section 14 of the Bill of Rights Act 1990, a more liberal interpretation of the Code was appropriate.

As in all cases, the Complaints Board said that where a factual claim in an advertisement was challenged by a Complainant, the onus fell on the Advertiser to provide the substantiation for that claim. The Board also reiterated its stance that it was not an arbiter of scientific fact nor was it within its jurisdiction to verify evidence provided. Instead, its focus was to consider the likely consumer take out of an advertisement rather than the absolute legitimacy of a claim.

Issue 1 – The claim the overall project cost is \$99 million.

The Complaints Board noted the Advertiser's response that it stood behind the total project cost figure of \$99 million, citing the \$3 million savings made to offset the increase in construction costs. The Complaints Board accepted the Advertiser's explanation of the costing, noting it was a matter of public record and that the proposed dam would have a smaller holding capacity 13m cubic metres as a solution to problems experienced from larger dam projects.

The Complaints Board said it could not comment on budget speculations or assumptions and would not expect the Advertiser to provide a rebuttal for these in its response. Taking into account the advocacy principles, the Complaints Board said the Advertiser had provided sufficient explanation to support its claim of the total cost of the project and ruled the claim was not misleading and did not breach Rule 2 of the Code of Ethics.

Therefore, the Complaints Board ruled this component of the complaint was Not Upheld.

Issue 2 – The claim 23% of the project cost was attributable to Tasman District Council.

The Complaints Board said the graphic representation of the cost share of the project was a factual statement and as such required substantiation.

The Complaints Board acknowledged the Advertiser had agreed the identification of the \$10m loan from Crown Irrigation Investments Ltd should be included in order to ensure the information depicted in the pie graph was not misleading. The Complaints Board accepted the Advertiser's assurance that this loan would be added to the Council contribution figure for any future advertisements.

The Complaints Board ruled this part of the complaint was Settled.

Issue 3 – The claim the dam will improve river health and prosperity in the region.

The Complaints Board said the potential benefits of the dam project listed in the advertisement were aspirational statements about the Advertiser's view of the long-term benefits of the dam. The Board said that even if consumers were to interpret these beneficial claims as statements of fact, the Advertiser had provided sufficient substantiation for the claims.

The Complaints Board said the inclusion of potential benefits in the advertisement was not misleading and ruled this part of the complaint was Not Upheld.

Summary

Taking into account the provision under the Advocacy Principles for a more liberal interpretation of the Code, the Complaints Board ruled the \$99 million overall project cost and the list of benefits to the regions did not meet the threshold to be likely to mislead or deceive the consumer and were not in breach of Rule 2 or Basic Principle 4 of the Code of Ethics.

The Complaints Board accepted the Advertiser's assurance that the loan would be added to the Council contribution figure for any future advertisements. The Complaints Board ruled this part of the complaints was Settled.

Accordingly, the Complaints Board ruled the complaint was Settled in part, Not Upheld in part.

DESCRIPTION OF ADVERTISEMENT

The Tasman District Council print advertisement featured in the *Tasman Leader* and the *Golden Bay Weekly* provides the latest news about the Waimea Community Dam and states an overall project cost of \$99 million. A pie graph shows the cost share, with Tasman Council responsible for 23% and external funders share at 77%. The advertisement states the Waimea Dam will deliver: A healthy Waimea River, a secure water supply for 100 years, a prosperous productive economy and growth and resilience.

COMPLAINT FROM C JOHNSON

Complaint regarding Tasman District Council (TDC) advertisements in the *Tasman Leader* of 13 September 2018 and *Golden Bay Weekly* 14 September 2018

I refer you to the above advertisements and draw your attention to inaccuracies contained therein:

1. The total cost is stated categorically as 'Overall project cost \$99m'. This is not true. It reads as an actual quoted fixed cost. The figure of \$99m is the funding, not the cost. See attached screengrab from TDC website. The actual cost is now quoted at \$102m.

This cost total is also open to doubt because some time ago, dam construction costs were published on TDC's website as \$82.5m to which was attributed a 'p95' (i.e. 95%) expectation that the dam would come in either at or below that figure. In June this year that figure blew out by \$26m to a new total of \$108.5m. Taking this into account, less alleged savings to be made by council of \$3m, a more correct figure would be \$105.5m.

However, even this is somewhat inaccurate as it excludes 'sunk costs' and other expenditure put variously between \$6.6m and \$13m but generally accepted as a median figure of \$10m. TDC accounting does not include previous costs only forward costs. Nevertheless, a true total of costs attributable to the dam, as paid by ratepayers, would be, say, \$115.5m.

In addition, the contractors' estimates, which TDC base their figures on, are not fixed and will increase. In a report for the 28 August council meeting, the report's authors stated their belief in the 'robust' nature of the revised pricing, yet in the wake of a \$26m blowout gave no indication of what this judgement was based upon, however, a further increase of some \$2m must be added to provide necessary professional project management in the absence of TDC's lack of capability. Add to this the effect indicated by the Oxford University Study on Large Dams which put cost increases at an average blowout of 95% over budget and one can see how it is impossible to put the cost accurately in just five words. This is particularly true when one learns that TDC's liability for cost overrun is 50% up to \$3m and 100% above that figure. They currently claim up to \$22m as susceptible to further cost escalation. If the Oxford study proves true, that could add a further \$21m, making a total of \$136.5m and some \$37.5m more than the ad states.

Therefore, by no stretch of the imagination could 'Overall project cost \$99m' be deemed an accurate statement of the actual cost of the dam, particularly as critics have offered fact after fact that the science, construction constraints and financial management are deficient.

2. The pie chart is inaccurate in that the low 23% cost attributable to TDC ratepayers is funding, not cost. It excludes repayment of a \$10m interest-free 20-year loan from CILO (Crown Irrigation Investments Ltd). It also appears to exclude interest and repayment of 50% of an \$11.5m LGFA (Local Government Funding Agency) loan, although the other 50% is featured as 'WIL servicing council debt in CCO'.

If you take the figures by Murray Dawson, who has spent the past four years questioning the data supplied by TDC, the 23% figure should actually be 39%. The correct figure is therefore

70% more than indicated. The attached document shows the corrected figures based upon TDC's own published figures, together with an accurate pie chart.

As demonstrated above, I suggest that the text and graphics complained of misleads the public in a very calculated manner.

COMPLAINT FROM L DAWSON

The percentage used in this advertisement are incorrect. TDC ratepayers share 23% actual share 39% as per attachment. There is no evidence that the dam will improve river health as claimed. A prosperous local economy is not dependant on the dam. The regional economy is performing well.

CODES OF PRACTICE

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, TASMAN DISTRICT COUNCIL

In response to your letter of 24 September regarding complaint 18/319 I have chosen to substantiate the material within the advertisement in question and provide the Board with the steps I am taking to ensure the information within the advertisements is clarified.

In doing so I have taken your advice and am responding to provide the Board with confidence that the advertisement was prepared with a due sense of social responsibility to consumers and to society.

While providing the facts behind the advertisements in question, the Board may be interested to know that they only had one rotation, ie only published once, and were the subject of media enquiry in local newspapers and online providing the avenue for wider explanation and substantiation. They are not to be run again and do not feature on any other media beyond the newspapers' respective archive sites.

The identification of the \$10m loan from Crown Irrigation Investments Ltd (Govt) in question will now be added to the Council contribution within further advertisements being carried in the same newspapers over the coming week. An explanation of this decision and the former position is outlined below.

Dam benefits

To substantiate the benefits provided by the proposed dam;

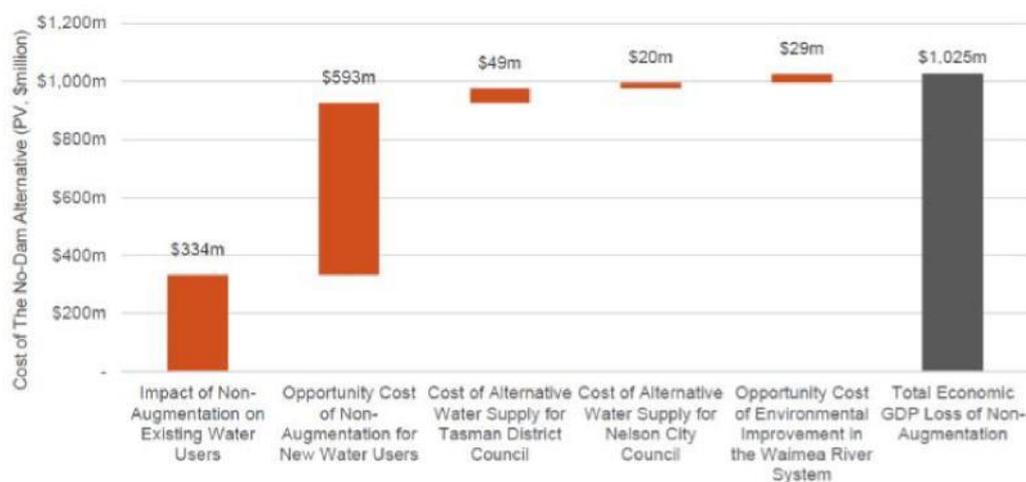
- A healthy Waimea River,
- A secure water supply for 100 years,
- A prosperous productive economy, and
- Growth and resilience,

the following information is provided.

The proposed Dam is critically important for the economic, social, environmental, and cultural well-being of the Tasman and Nelson regions. The benefits of the Dam and the costs of not having a dam have been well researched (Northington Partners, 2010; Cook & Northington, 2011; NZIER, 2014; Morrison Low, 2015; NZIER, 2015; Northington Partners, 2016, Northington Partners 2017; and NZIER 2017).

Northington Partners in July 2017 updated their assessment of the opportunity cost to the Region if the Dam did not proceed. Their report concluded that the total financial and economic cost to the Region would be in excess of \$1,025 million based on five key components as shown in the diagram below.

Aggregate Cost of No Dam (mid-point)



Source: Northington Partners July 2017 – Waimea Dam Economic Cost of the No-Dam Alternative

One of the most significant impacts of not progressing with the Dam is the economic cost of foregone regional growth, and the loss of potential output from primary production and supporting industries. Impacts are measured in terms of regional GDP and reflect the direct impact on existing irrigators through lower production and margins, as well as indirect impacts on food processing and other industries. In terms of lifting productivity, the dam is expected to enable a significant potential increase in production volume and profitability compared to current dryland uses, thus having a positive flow on effect for our economy, including downstream support industries.

Other opportunities relate to the environmental and social costs of maintaining the health of the Waimea River and associated amenities. The environmental benefits from the Dam are difficult to attribute a monetary value, as is the degree to which residents living in the Nelson and Tasman regions enjoy the environmental benefits. For the purposes of assessment, the cost of the environmental improvements was assumed to be 30% of the overall capital cost of the scheme and 30% of the ongoing operating costs (\$28.6m). This is based on the overall live storage in the Dam required to maintain the minimum low flow in the River and in

numerical terms demonstrates this scheme supports more than just the productive sector of the Tasman economy.

The NZIR Waimea Dam Economic Assessment report June 2017 outlines the economic impacts in a 'with Dam' and 'without Dam' water supply scenario for the Tasman-Nelson region in relation to our horticulture and viticulture crops on the Waimea Plains reliant on irrigation. In summary, the Dam would enable investment in higher productively land uses and by year eight after construction, and the Nelson-Tasman regional GDP would expand by \$60.6 million per year. Much of this would be driven by higher export revenue associated with increased agricultural production and profitability would encourage additional investment. All Nelson-Tasman residents would be better off with household consumption increasing by \$13.9 million per year due to higher incomes (wages and profits) linked to increased production.

Based on Statistics NZ information we are anticipating population growth of 11.6% in the District between 2018 and 2038 using a combination of high and medium projections. With the combination of population growth and a trend for smaller households, we expect that housing demand will grow at a higher rate over this period, placing more pressure on our community water supply. The Government's National Policy Statement for Urban Development Capacity (NPS-UDC) also requires us to plan and provide the necessary infrastructure such as water and wastewater to meet projected housing demand.

The proposed Dam will ensure Council is able to continue to provide water to our communities in Brightwater, Richmond, Mapua, Hope and Redwood Valley, which constitute around 40% of our District's population. Based on population growth, current water use, and changing climatic conditions, we expect significant water shortages and restrictions for our communities, businesses, industries, and horticultural irrigators. Without the Dam or an alternative augmented water supply, we estimate there will be some form of water rationing nine out of every 10 years. Security of water supply, particularly over the summer period with peak water demands is essential for our community's health and wellbeing and to maintain and grow our business activity and local economy.

Without the Dam, these communities will face significant shortfalls in water supply almost every year over summer, requiring major reductions in water use of at least 25-40% (depending on the scheme and timing of any drought). Every 6-8 years during major droughts, our community will face up to 80% reductions where they will only receive water for required essential human health based on 125 litres per person per day. The duration of droughts range, but have in the past been in excess of 100 days over summer. The implications on the health and social wellbeing of our communities will be significant.

Without the Dam, our water shortfall will grow over the next 10-20 years, requiring even more stringent rationing. Longer term, dependent communities will be unable to develop beyond the 2013 urban envelope, meaning we will be unable to provide sufficient development capacity to meet the needs of people and communities and future generations. This, in turn, will have negative flow on effects to the local economy.

From 1 November 2019, as a result of national requirements and changes to our resource management plan, if there is no augmented water supply and river flows are low, some water take permits from the Waimea aquifers and river system would be cutback by as much as 100%. Only 22% of the 329 permit holders will have their allocations unchanged. This is required in order to protect the health of the Waimea River by maintaining a minimum river flow of 800 litres per second (l/s) in the absence of a dam. Although these cuts are necessary to protect our river environment and related natural systems, they will adversely affect our ability to provide for business and industry along with our community's health and social wellbeing.

In the event that the proposed Dam does not proceed:

1. Council, as community water supply authority, will not be able to connect any new industry that uses more than 15m³ of water per day limiting economic growth.
2. Council, as water manager, will have cut back water permit allocations significantly and some growers have indicated this will mean production will move off the Waimea Plains (no new permits have been granted in some zones since the 1980s and other since the 1990s). The economic value of the Waimea Plains would likely decline as irrigators struggle to maintain production continuity.
3. The reduction in economic activity in the Richmond Waimea area would adversely affect rates affordability, fees, and charges across the whole District. Richmond and the lower Waimea areas provide the funding to Council that allows equalisation of charges for many services across the District.
4. Council would have to reconsider the supply of water to Nelson City as provided for in the current Supply Agreement to ensure water can be supplied to our Tasman residents. It is likely we would also need to seek change to the current water takes by Nelson City Council from the Roding River which would otherwise flow into the Waimea catchment.
5. Council will have to find an alternative supply option to cope with the risk of restrictions as well as catering for increased community demand. The alternatives to the Dam are significantly less cost-effective, and they would only deal with community water supply risks into the future. Competition for water will increase and any separate irrigation solutions would compete with Council's search for sites to locate any affordable water infrastructure. Any alternatives do not have the land or consents required, and access to joint venture and Government funding would be lost.

If we are to maintain and strengthen the local economy, businesses need to see public investment in key infrastructure. As with other infrastructure investment, the private sector can and will leverage this to the benefit of the wider community. The level of financial commitment, the long term nature of the investment and the overall size of the project means central and local government investment is required to make the project financially viable for businesses.

In summary, a secure and reliable water supply is needed to support and drive increased business activity across the Waimea Plains and Nelson City. Without a secure water supply, businesses will not have the confidence to reinvest in their current operations, and we will not be successful in attracting additional businesses and workers to our Region.

Wider Benefits of the Augmentation Dam

There are many benefits from the project for our community. The Dam will provide a safe and secure community water supply for about 20,000 people who currently live in the Waimea Basin, provide a secure supply of irrigation water to up to 3,800 hectares of mostly food producing land, enhance minimum flows in the Waimea River to provide for recreational users – swimmers, kayakers, fishers, picnickers etc. It will also provide water for our growing communities in Richmond, Nelson, Brightwater, and Mapua, as well as enabling a further 1,200 hectares of land to be irrigated in the future. It also provides our residents and businesses with greater water security in the face of climate change.

The Waimea Plains holds some of the most fertile productive land in the South Island, producing fruit, vegetables and boutique crops such as hops, berries, and grapes. It is of national strategic importance and a loss of productive capacity would be significant not just to our region. There are only two dairy farms left on the Plains and their days are numbered

because of the value of land. Nitrate contamination risk from dairying will not eventuate, and Council has measures in place to manage this risk from horticultural activity.

With a Waimea Community Dam, the Council would aim to ensure a minimum flow of 1100 l/sec to provide a far healthier river ecology to meet the objectives of the National Policy Statement on Freshwater Management (NPS-FW). If there is no dam, the target minimum river flow under the Tasman Resource Management Plan will be 800 l/sec to protect our aquifers from the threat of saltwater intrusion contaminating groundwater bores and our drinking water supply. However, this relatively low flow does not protect the natural ecosystem of the river and exposes Council to criticism and potential challenge, that it would not be meeting its obligations under the NPS-FW. This may mean the Council is forced to consider a higher minimum flow and even greater water use cuts when the planning rules are up for review again in 2025.

The proposed Dam will support Te Tau Ihu iwi by addressing three of their key concerns – low flows in the Waimea River, over-allocation of the resource, and protection of the mauri and wairua of the river system. Iwi will be involved in the on-going monitoring of cultural and environmental health of the river and coastal springs, which are highly valued by iwi. As part of our agreement, there will also be access for local iwi to harvest ngahere (trees) and pakohe (argillite) which are treasured taonga.

Adjacent landowners to the dam, Ngāti Koata, are supportive of the benefits of this use of their land, and have continued to show their support as this project has progressed. The Dam will provide improved access to their land in the Lee Valley, and improved returns for Ngāti Koata.

As agreed through the resource consent process with Department of Conservation and the Royal Forest and Bird Protection Society, the Project will provide a compensation fund that is already supporting biodiversity restoration projects in the Waimea River catchment, including the margins of the Waimea Inlet on a long-term ongoing basis. Some of the positive offsets include propagation, transplantation and restoration of native trees and rare plant species, and weed and pest management control. Collectively, the programmes provide a significant investment for native biodiversity and indigenous ecosystems on public and privately owned land, and produce lasting benefits. The enhancement programme has already commenced with the successful propagation of the rare and endangered herbaceous plant 'New Zealand shovel mint' (*scutellaria novae-zealandiae*, found outside of the DOC land), so much so that DOC is now relocating the plant to other areas.

Ratepayer contribution

To answer the concerns raised over the way the Council contribution to the Proposed Waimea Community Dam is illustrated. The purpose of the ad was to give residents and ratepayers some confidence they were not subsidising irrigators as claimed by those opposed to the dam – including the complainants.

The Dam has quite complex financial arrangements. While the approach taken to date is quite valid there is an alternative view that is no less valid. That is to treat the \$10m concessional loan to Council as Council funding rather than external funding. It must be noted that this loan is at a nil interest rate which over the expected 20 years of the loan saves Council over \$5m in interest costs. The loan is repaid from income streams from Council's Enterprise activities (Primarily Forestry). In the Council's long term plans these funds have been used to reduce debt levels. That has an indirect impact on future rates and fees and charges as the Council's finance costs are reduced somewhat.

It must be noted that this loan is at a nil interest rate which over the expected 20 years of the loan saves Council over \$5m in interest costs. The loan is repaid from income streams from the Council's Enterprise activities (primarily forestry), not from rates and water charges. In the Long Term Plans these funds have been used to reduce debt levels. Council will however still use income streams from Council's Enterprise activities to offset rates in the same way we have been doing for a number of years.

We acknowledge the alternative description of funding streams is a more conservative view than we had previously taken, and is likely to be the approach used to describe the project funding from now on.

The identification of the \$10m loan from CIIL will now be added to the Council contribution within advertisements being carried in the same newspapers over the coming week.

WIL capital raising	26.5 million
WIL serviced Council debt in CCO	5.75 million
CIIL loan through CCO for WIL	22 million
Nelson City Council	5 million
Freshwater Improvement Fund grant	7 million
Total external funding	66.25 million
CIIL loan to Tasman District Council	10 million
Tasman District Council – Enterprise activity	2.91 million
Environmental flow/Public good – rates	6.6 million
Water account – rates and charges	13.4 million
Total Tasman District Council funding	32.91 million
Total	99.16 million

In the current and last Council Long Term Plan the income from enterprise (read commercial') activity was mostly used to repay Council debt. The funds are also used to reinvest in the enterprise activities to maintain their ability to contribute to the Council's finances.

The first \$500kpa of income from forestry does go to offset rates demands. This is an increase from the \$250kpa in the 2015-25 LTP. That is not impacted by the Waimea dam

funding proposal. It is fair to say however, that the balance used to reduce debt also then reduces the finance costs to Council. That in turn reduces pressure on increases to rates and fees and charges into the future. That said though the impact of an interest free loan over 20 years will not be significant to have an impact of rating demands over that period.

As to the claim that the figures being discussed are funding raised, not the costs of the project. The table supplied by the complainant C Johnson as a screen grab from the Council's website is correct. Of the \$102m total project cost the Council has already identified \$3m in savings, bringing the project cost, including a small contingency, down to \$99m.

FURTHER RESPONSE FROM ADVERTISER ADDRESSING POINTS RAISED BY COMPLAINANT 1

The total cost is stated categorically as 'Overall project cost \$99m'. This is not true. It reads as an actual quoted fixed cost. The figure of \$99m is the funding, not the cost. See attached screengrab from TDC website. The actual cost is now quoted at \$102m.

The cost is \$99m. The recent announcement citing the construction price increase to \$102m provided the need to find the funding required to meet the gap from the then \$75.9 construction price. In doing so the project partners identified \$3m in savings, hence the \$99m cost, as reported in the report to Council on 6 Sept ie a matter of public record.

This cost total is also open to doubt because some time ago, dam construction costs were published on TDC's website as \$82.5m to which was attributed a 'p95' (i.e. 95%) expectation that the dam would come in either at or below that figure. In June this year that figure blew out by \$26m to a new total of \$108.5m. Taking this into account, less alleged savings to be made by council of \$3m, a more correct figure would be \$105.5m.

The \$75.9m was always the number associated with the p95 attribution. The \$6.6m are the historical costs already sunk to 2014. The \$99 is directly attributable to the cost of the dam's construction and project completion.

However, even this is somewhat inaccurate as it excludes 'sunk costs' and other expenditure put variously between \$6.6m and \$13m but generally accepted as a median figure of \$10m. TDC accounting does not include previous costs only forward costs. Nevertheless, a true total of costs attributable to the dam, as paid by ratepayers, would be, say, \$115.5m.

The relevant word in this question is 'say'. It is speculation. As stated above there are costs in the formation of the project and the \$6.6m referred to was not funded entirely by ratepayers but through a range of sources including the Crown all of whom had an interest in securing a solution.

In addition, the contractors' estimates, which TDC base their figures on, are not fixed and will increase. In a report for the 28 August council meeting, the report's authors stated their belief in the 'robust' nature of the revised pricing, yet in the wake of a \$26m blowout gave no indication of what this judgement was based upon, however, a further increase of some \$2m must be added to provide necessary professional project management in the absence of TDC's lack of capability.

This completely untrue As part of the Early Contractor Involvement in this project to find the price prior to construction beginning a significant portion of the \$99m cost is fixed with only \$16 m variable of which \$8.5m is covered by contingency. The suggestion of an extra \$2m is

a spurious and unnecessary comment. The allowance provided within the overall project budget for contingencies has been arrived at through a robust and thorough process involving a number of external professional advisers.

Add to this the effect indicated by the Oxford University Study on Large Dams which put cost increases at an average blowout of 95% over budget and one can see how it is impossible to put the cost accurately in just five words. This is particularly true when one learns that TDC's liability for cost overrun is 50% up to \$3m and 100% above that figure. They currently claim up to \$22m as susceptible to further cost escalation. If the Oxford study proves true, that could add a further \$21m, making a total of \$136.5m and some \$37.5m more than the ad states.

The Oxford Dam study refers to dams throughout the world over many years with holding capacities in excess of 50m cubic metres of water. As a solution to the issues raised, the study's authors recommended smaller dams similar to the Waimea Community Dam with a capacity of 13m cubic metres and a construction pricing methodology as used here.

RESPONSE FROM MEDIA, STUFF LIMITED

Re: Tasman District Council Print – Complaint 18/319

Thank you for your letter dated 24 September 2018 in reference to the above complaint. We appreciate that council advertising can be an emotive subject as it involves ratepayers money, but we believe that this advertisement complies with all rules and regulations for advertising within NZ and is not in conflict of the Advertising Code of Practice. Our editorial team published the below article in response to the complaint from C Johnson and L Dawson;

<https://www.stuff.co.nz/nelson-mail/news/107262121/waimea-dam-ad-prompts-complaint>

The article presents an objective view from both parties. Tasman District Council corporate services manager Mike Drummond has confirmed in writing that funding gap is covered through a \$10 million loan was not being repaid by rates or water charge.

Based on this information I do not believe that the Tasman District Council advertisement in question has misled or deceived our audience.

Having said that any future advertising from this customer, we will review the information in the advertisement prior to going to print for the public to view.

I welcome any recommendation the ASA have in regards to this advertising or type of Campaign in the future.

Contact person for advertising complaints	Danny Schroder
Name and contact at creative agency	Hothouse Creative
Name and contact at media agency	Danny Schroder
A basic, neutral description of the advertisement	Waimea Community Dam funding
Date advertisement began	13th September 2018

Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Newspaper
Is the advertisement still accessible – where and until when?	No
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	ASA already has this on file
Who is the product / brand target audience?	General public / Tasman ratepayers
Clear substantiation on claims that are challenged by the complainant.	Misleading information / statistics
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.