

COMPLAINT NUMBER	19/395
COMPLAINANT	City Vision
ADVERTISER	Save Chamberlain Park
ADVERTISEMENT	Out of Home, Unaddressed Mail, Digital Marketing
DATE OF MEETING	14 October 2019
OUTCOME	No Grounds to Proceed

Advertisement: The advertisement for Save Chamberlain Park appeared in flyer, poster and digital marketing formats. The advertisement sets out the lobby group’s vision, what it believes voters are not being told about the proposed redevelopment plans for the park and provides information on how to vote if you do not want supporters of the redevelopment to be elected at the local body election.

The Chair ruled there were no grounds for the complaint to proceed.

Complainant, R Gallagher, on behalf of City Vision, said: Please process this complaint under the “ASA fast-track process” used for election related complaints. As voting papers have started arriving last week, time is of the essence.

Advertiser – Save Chamberlain Park, Advocacy
Leaflets hand delivered to letterboxes, posters distributed to public sites including shop windows, and social media.

Background

This complaint is our second about Save Chamberlain Park (SCP) group, a lobby group set up to stop proposed changes to Chamberlain Park, from a public golf course to a mixed public golf course and public park. The proposed changes involve turning the 18-hole golf course into a 9-hole golf course, with the remaining space creating 2 sports fields, a golf driving range, a playground, open spaces for the public and cycleway access through the park.

This rough masterplan commissioned by the council in 2015 for a pre-approval process, shows how it might be laid out. (*attached*)

This complaint follows similar points made in our previous complaint about a newspaper advertisement, along with new points for other breaches of the code. Some of the ground covered has also already come up in a complaint that SCP have made about City Vision advertising.

More information about the proposal can be found in the Indicative Business Case, prepared independently by council staff for the Local Board - https://infocouncil.aucklandcouncil.govt.nz/Open/2019/06/AE_20190626_AGN_8179_AT.HTM (pages 27-50)

And on the City Vision website here - <https://cityvision.org.nz/local-issues/opening-up-chamberlain-park-or-everyone>

City Vision is a political group that includes Labour, Greens and independent candidates, that has dominated the Albert-Eden Local Board in Auckland for the last term, and has backed the proposed changes to Chamberlain Park.

SCP advertising contravenes Rules 2(b) and 2(e) of the ASA Code because it untruthful, exaggeration and misleading as follows:

1. “At least 1000 mostly mature trees will be felled”

This is false because the proposals will not require the felling of 1000 mature trees, nor any similar amount.

Despite the masterplan (above) being just a draft, it still shows many areas that would be trees, bush and wetlands. Those areas are significantly greater than the existing bush and trees currently at Chamberlain Park. This point is demonstrated in the following drawing over an aerial photograph of the golf course, showing which trees would be felled in orange. In green we've marked where thousands of new trees would be planted. The trees that line the existing fairways would be partly retained by the golf course designer who'd be commissioned to layout the new 9-hole course, with consultation from golfers and arborists. SCP say they have counted 1000 trees to be felled. In a public meeting SCP said that the count was done by a couple of golfers one afternoon who went for a walk around the east of the park where the sports fields, parking and golf driving range would be. They did a “rough hand count” estimating that clumps of trees might be ten or twenty trees. When it started raining the counters went inside, estimating they'd reached around 1,000.

A reporter from the Spinoff was also at that meeting. Here's part of their report of it: “Save Chamberlain Park's figure is based on an amateur count carried out by two of its supporters. One of the tree counters, Dr Louise Kane, spoke at the meeting. She admitted she wasn't an arborist and that she got put off when it started to rain part way through the effort.”

<https://thespinoff.co.nz/local-elections/19-09-2019/the-two-loud-angry-campaigns-that-could-swing-the-auckland-local-elections/>

Looking at the aerial photograph, there are barely 100 trees to be felled in the area where the sports fields and driving range would be, as can be seen in the above photograph marked orange. Many of them are not mature (as claimed by SCP), especially the small bushes growing in clumps.

Some of the trees lining the fairways will be removed, though how many is unknown until the designs are finalised, and many plantings will replace those that come down. Even if all these fairway trees were to be felled there aren't more than 200 across the central area of the golf course.

That makes a worst-case scenario of roughly 300 trees to be felled, nowhere near 1000 claimed by SCP. These details have been given to SCP many times previously.

2. “The \$30 million cost comes out of rate payers pockets.”

This is incorrect because the costs for the proposals would come from existing council budgets and wouldn't affect rates.

\$30 million was a ‘worst-case scenario’ indicative budget to gain approval from the Auckland Council Governing Body. Whatever the final budget is, it will come from council budgets that are already set. If Chamberlain Park was not funded, that \$30million would be spent on a

different council project instead. So none of the money makes any difference to ratepayers pockets or their bank accounts. It just means that some of their rates are spent on the upgraded Chamberlain Park rather than elsewhere in Auckland.

This falsehood is reinforced by equating the amount to a rates hike in the next sentence.

3. “This money would be better spent weatherproofing nine of the 30 existing sports fields in Albert-Eden.”

The Albert-Eden Local Board has exhaustively considered every other sports field in the ward for upgrades. Most are not suitable due to size, proximity to houses, lack of parking, difficulty and expense relating to Resource Management Act applications, and other issues.

Some have been upgraded, for example at Fowlds Park, which was significantly delayed by neighbours.

In short, that money would not be better spent because it *cannot* be spent weatherproofing any more full-size sports fields, as planned at Chamberlain Park, because there are none that are suitable.

There are some other projects that could be progressed, namely The fields we have are not ‘weather proofed’ – they just have a different surface so that they can talk extra hours of play before they need to be closed to protect them from damage, especially in wet weather.

...

Resolutions from June 2019 meeting:

https://infocouncil.aucklandcouncil.govt.nz/Open/2019/06/AE_20190626_AGN_8179_AT_WEB.htm Make for interesting reading because the staff state: ‘endorse that the redevelopment of Chamberlain Park has a robust case for change and strategic alignment with council objectives and would deliver community benefits comparable to the capital and operational investment required.’

4. “Hard surfaces for car parks, artificial turf, pathways and roading will reduce open space by around one third”.

Open space is defined as “any open piece of land that is undeveloped (has no buildings or other built structures) and is accessible to the public” by the US EPA and most definitions are similar. They all include sports fields of all kinds including soccer and golf.

The important distinction is that the land must be publicly accessible. At present the golf course is inaccessible to the public because of a perimeter fence, locked gates, warning signs and the need for public to enter via a golf clubhouse that discourages entry to non-golfers.

The proposed changes to Chamberlain Park will **increase** open space rather than reduce it as claimed. The plans visible in the map at the top of this show that even if the sports fields were not considered open space, they, along with carparks and pathways, do not cover anywhere near a third of the total area.

5. The Albert-Eden area has 30 sports fields. Adding a new ‘carpet’ costs approximately \$400,000 which usually doubles the use. Changing to ‘artificial’ costs around \$2m and can *increase* use by 400%. These options have been ignored.”

As described earlier, these options have not been ignored.

6. “No environmental assessment has been done.”

The Local Board has received a number of reports by council staff and consultants since 2014 on various aspects of the local geography, ecology, hydrology, etc - none of which have raised red flags about the proposals.

Officers are currently working on detailed documentation to support a comprehensive Resource Consent application for the whole project, which will include a formal AEE (Assessment of Environmental Effects) as required by the RMA. All major projects have an AEE - but they are not done prior to approval in principle as SCP seems to assume.

7. “The Park has flourished for 80 years in its present form as a unique Auckland-wide community asset with an unspoiled and irreplaceable landscape.”

Chamberlain park opened as a golf course 80 years ago. But in the 1970s the North Western motorway was built over its northern edge separating the old clubhouse from the rest of the golf course and reducing the park’s size considerably. Also the St Lukes Road extension was built over its eastern end. These large reductions in size required the redesign of the golf course which included felling and replanting trees. That was 40 years ago.

8. “The trees to be felled are a vital link in Auckland’s bird corridors”.

Although native birds are sometimes seen on the grass at the golf course the trees are not particularly hospitable to birds. Mainly because they are mostly exotics and pines which are not favoured by birds, and because they are arranged mostly in open rows lining the golfing fairways, so they provide less protection from wind and weather than bush. The proposed changes includes many areas of bush including a wetlands stream.

9. “More than 1,000 mature trees will be chopped down.”

Again the incorrect assertion about 1000 trees, this time they’re all mature and it’s *more than* 1,000. A similar line appears again on another panel with slightly different meaning – “more than 1000 mostly mature trees”

10. “The City Vision controlled Albert Eden Local Board earlier this year outvoted the other board members 5 votes to 3 to ignore an indicative business case that said the Chamberlain Park project was uneconomic”

The Indicative Business Case provided by council staff to the Albert-Eden Local Board on 26 June 2019, recommended the redevelopment of Chamberlain Park, with increased costs. It provided two options and recommended the development of a detailed business case based on the second option which was the full redevelopment.

This is available to view here -

https://infocouncil.aucklandcouncil.govt.nz/Open/2019/06/AE_20190626_AGN_8179_AT.HTM (pages 27-50)

The business case recommended increasing the budget from the previous \$22m to \$29.7m but there was a lack of detail around the increased budget which the City Vision members of the Local Board questioned. A further business case was recommended to investigate the \$29.7m estimate. The Local Board voted to ‘receive’ the report, which is not a vote to ‘accept’ or ‘endorse’ it. The Local Board chose not to ‘not receive’ or ‘reject’ the report which would have ended the project or delayed it by several years.

It is possible that SCP read a headline in the council’s business case “Preferred option does not show strong economic case for change”. Further reading would have told them this relates to the higher costs of the preferred option, and a lower cost:benefit analysis because most of the benefits of the proposals are not financially quantifiable.

10. “Peter Haynes - Peter did not respond to the survey but through his position as chair, he has led the redevelopment plans, including those that failed in court.”

There has only been one court case, in the Auckland High Court on 8 Feb 2018. Auckland Council won and SCP’s application for a judicial review was dismissed. No redevelopment plans have failed in court.

<https://forms.justice.govt.nz/search/Documents/pdf/jdo/f3/alfresco/service/api/node/content/workspace/SpacesStore/0dbe71be-0bb1-47a6-81fc-52858c0b3326/0dbe71be-0bb1-47a6-81fc-52858c0b3326.pdf>

This complaint is made in the light of the ASA Guidance Note on Advocacy Advertising.

As stated above, the advertisement is in contravention of Rules 2(b) and 2(e) of the Code as the claim in the advertisement is misleading and cannot be substantiated as factual.

I request that the advertiser immediately cease distributing this flyer, and similar flyers via all media including social media and posters in public.

I also request that the advertiser agrees not to repeat the misleading claim or make different misleading claims in future advertisements which, under the ASA Code, includes written statements and verbal statements.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e);

Preliminary matter – timing: The Chair noted the complaint was received on 1 October. The complaint raised a number of similar issues to a complaint about Save Chamberlain Park advertising that was already before the Complaints Board. The complaint was reviewed to consider whether there were other likely breaches of the Advertising Standards Code taking into account decisions made by the Complaints Board about similar advocacy advertising. The Chair considered new matters of substance had not been raised and ruled that the fast track process was not required in this instance.

The Chair noted the Complainant's concerns the advertisement is misleading and claims are not able to be substantiated.

The Chair said the advertisement for Save Chamberlain Park was an advocacy election advertisement presenting its opposition to the proposal to change Chamberlain Park from its current role as a public 18-hole golf course and included results from a candidate survey.

The Chair confirmed that under Rule 2(e) of the Advertising Standards Code, advocacy advertisements must clearly identify the identity of the Advertiser. The Chair said the information in the advertisement made it clear Save Chamberlain Park was a lobby group advocating against the redevelopment of the park. The advertisement included a website address which provided greater context for consumers who wanted to learn more about the debate.

In considering the complaint, the Chair referred to two precedent decisions, 19/359 and 19/379 which were complaints made by opposing lobby groups relating to the future of Chamberlain Park. The complaints were not upheld by the Complaints Board.

She noted the Board had determined that under the more liberal interpretation of the Code provided for under the application of the Advocacy Principles, the two sides of the Chamberlain Park debate were entitled to put forward their views and interpretation of the data without undue hindrance from authorities such as the Complaints Board.

The Chair also noted that Complaint Board's focus was to consider the likely consumer take out of an advertisement taking into account context, medium, audience and product. The Chair noted that the context was a key factor in the advertising before her, published during the recent local election campaign in the midst of media coverage on issues of local interest.

The Chair said taking all of the above into account and noting the robust debate from both sides that this issue had generated, the advocacy advertisement did not reach the threshold to breach the Advertising Standards Code.

Therefore, the Chair ruled there were no grounds for the complaint to proceed.

Chair's Ruling: Complaint **No Grounds to Proceed**

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.