

<b>COMPLAINT NUMBER</b>	20/371
<b>ADVERTISER</b>	Dunedin City Council
<b>ADVERTISEMENT</b>	Dunedin City Council, Print
<b>DATE OF MEETING</b>	24 August 2020
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** The Dunedin City Council brochure promotes the Forrester Park Dog Park. The advertisement says that "A new dog park specifically for small dogs, has opened at Forrester Park". The park is said to be a "fully fenced park" that caters to small dogs which are classified by weight (a maximum of 8kg). The advertisement is accompanied by an image of a small Scottish Terrier.

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

**Complaint:**

Advertisement: The Dunedin City Council distributes a monthly brochure called "FYI" to every residential address in its area (and digitally to anyone who "subscribes"). A copy is placed on the Council website (<https://www.dunedin.govt.nz/news-and-events/fyi-dunedin>). Page 6 page of the July 2020 issue advertises a "new" dog park in a "new" location: [https://www.dunedin.govt.nz/\\_\\_data/assets/pdf\\_file/0008/778760/FYI-July-2020-Email-Version.pdf](https://www.dunedin.govt.nz/__data/assets/pdf_file/0008/778760/FYI-July-2020-Email-Version.pdf).

The advertisement (Picture 01) shows a picture of a leashed dog and the heading "Forrester Park Dog Park". The text states: "A new dog park, specifically for small dogs, has opened at Forrester Park in Normanby. The park is the third in Dunedin, the other two are in East Taieri and Green Island.

The fully fenced park gives small dog owners another location to exercise their pet. Small dogs are classified, not by size, but by weight (a maximum of 8kg). In total, Dunedin has six dog exercise areas including Waverley, Wakari and Forbury Corner." The advertisement explicitly states the Forrester Park Dog Park is new and conveys it provides an additional location for dogs of the type and size (weight) pictured.

**Complaint:**

The advertisement is not truthful or balanced, misleads, deceives and confuses readers, and abuses their trust and any lack of knowledge for at least the following reasons.

**1. The dog pictured may not use a "small dog" park because it is oversize.**

(a) The dog pictured is a "Scottish Terrier". That breed is ineligible to use the dog park, confirmed by the DogsNZ breed standard which provides they should weigh 8.6 kgs - 10.4 kgs in "hard show condition". <https://www.dogsnz.org.nz/breeds/info/scottish-terrier/268>. That means responsibly bred dogs will always exceed the 8kg maximum. That does not account for poorly bred dogs, those suffering the increasingly prevalent condition of canine obesity, or companion dogs highly unlikely to be kept in hard show condition: the vast majority of dogs will exceed the weight limit by a greater margin.

(b) A general reader will not have that detailed knowledge so the picture deceives them into

believing similar sized dogs with that “chunky” body type can use the park. As the pictured dog is considerably oversized the advertisement misleadingly conveys the park benefits far more dogs and owners than it actually does.

(c) That is confirmed by the statistics the council submits to the Department of Internal Affairs which show a significant difference between the number of eligible dogs and the number of oversized dogs like the one pictured. At end 2019 almost 12.43% of the total dog population was up to that size/weight. Removing the oversized dogs like the one pictured reduces the number by almost 50% to just 7.14%. That leaves aside the unbroken decline in the population of “small” dogs since 2013 so at the time of the advertisement the proportion would be less, and “large dog” numbers higher.

(d) How many dogs can use a facility directly affects public opinion about its merits and informs Council’s legal obligation to be “financially prudent”. Deliberately using a picture of an oversized dog to deceptively convey the park can be used by almost 13% of the dog population instead of a steadily declining 7% has the predictable result of conveying the park is almost twice as meritorious and financially prudent than it is.

## **2. This is not a “new” dog park or “another location” for small dog owners.**

(a) “Forrester Park” contains a range of public facilities such as multiple soccer grounds, walking tracks, a forested walk and a large building leased exclusively by DogsNZ for indoor dog sports and as a base for outdoor dog sports using the surrounds. The Park has had a dog park for a long time although the Dunedin City Council appears to have failed its obligation to retain records under the Public Records Act 2005 and cannot state exactly when it was built. (See request for dates dog parks were built at [fyi.org.nz https://fyi.org.nz/request/10587-date-dog-parks-werecreated](https://fyi.org.nz/request/10587-date-dog-parks-werecreated)). Anecdotal reports indicate it was 20-25 years ago. All of Forrester Park and the existing Dog Park have been usable by small dogs for that entire period.

(b) Picture “02-Park” shows the small dog area is an approximately 50x16m rectangle located in the boggy corner of the existing dog park.

(c) No general reader would understand “new dog park” and “another location” to mean a tiny area in the corner of a pre-existing dog park that small dogs have been using for more than two decades.

## **3. The park lacks all the amenities the Council has educated the public to expect are installed in an area designated and advertised as a “dog park”.**

(a) By media statements that usually picture the parks, and in the statutorily required annual report on dog control practises, Council has consistently conveyed that an area designated a “dog park” adequately provides for safety, recreation and comfort by being fully fenced with lighting, water, agility equipment, poo bag dispensers refillable by users, and human shelters. The standardisation of these amenities, the length of time the parks have existed and the repetitive publication of the same information means the term “dog park” has become synonymous with these amenities.

(b) Picture 02-Park confirms it is a tiny barren rectangle in a corner with none of the amenities the Council has carefully educated the public to understand are installed when an area is designated and advertised as a “dog park”. That ignores that corner is generally unusable by even “large” dogs during winter because of pooled water and deep mud.

## **4. I also ask the Advertising Standards Authority to consider if this advertisement should be required to satisfy the criteria for advocacy advertising:**

(a) The area had been sectioned off for some months before being advertised to the public. The Council delayed advertising it until it also advertised reminders for dog registration fees. The advertisement is positioned 3 pages ahead of the reminder in the “FYI” brochure linked above, and the “blurb” for the dog registration fees refers to them paying for exercise areas which is another term the Council uses for “Dog Parks”. Registration fees are highly contested because they are amongst the highest in New Zealand and the Council has disregarded an Ombudsman decision to provide reasons for the amount charged. Dog

owners become most motivated to question fees at the time they are due, but it is predictable it would be far more difficult for them to garner public support to have fees and how they are expended scrutinised when the Council has misled the public into thinking they have just been provided with a fully equipped dog park in a brand new additional location. As the Council remained active on social media and on dog issues even during lockdown the delay and the misleading advertising appears calculated to achieve that outcome.

(b) Parks are built from dog revenue without notice and without disclosing the costs. Council ignores complaints about lack of maintenance of gates and fences and hazards in existing dog parks and refuses to make the small and relatively inexpensive modifications to allow them to

be accessed by a person using a mobility device. The advertisement does not disclose that building the park represents a position and opinion that is a higher priority than safety-related maintenance and non-discriminatory access for all members of society.

(c) Dog parks are contested because all scientifically credible research confirms they place dogs at increased risk of physical and mental harm, prevent species-appropriate physical and mental stimulation, and increase the risk of harm to owners from anti-social users. The multiple references to the park being used to exercise dogs do not reflect that is an opinion and a position about how the scientific research informs the “welfare” obligations imposed by the Dog Control Act 1996. That opinion and position is not distinguished from factual information such as what size dogs may use them.

#### **5. The advertisement cannot be withdrawn because it has already been distributed to every home.**

Accordingly I ask the Advertising Standards Authority to consider if the Council should be required to correct the predictably erroneous public perceptions by making a statement in a future edition of “FYI” that corrects the inaccuracies, by showing a picture of an appropriately sized dog such as a Chihuahua and identifying the area is a corner of an existing dog park and lacks any of the expected amenities.

#### **The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b)**

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2 (b) Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**The Chair** acknowledged the Complainant had a number of concerns with the Dunedin City Council advertisement for the new small dog park and the Chair considered these in turn.

Firstly, the Chair reviewed the Complainant’s concern with the picture of the Scottish Terrier. The Chair said the image was illustrative of a smaller dog breed and she noted the advertisement referred to a weight maximum which would help guide users of the park. The Chair said the image was not misleading.

Secondly, the Chair noted the Complainant did not consider the park or location to be new and the wording to this effect in the advertisement was misleading. The Chair said the advertisement referred to a fully fenced area that the Council had designated as a dog park for smaller dogs and said this was not likely to mislead consumers.

Finally, in reviewing the complaint, the Chair acknowledged the Complainant’s concerns about the type of facilities that should be in an area designated as a dog park and other

matters relating to dog registration fees. The Chair confirmed these issues are outside the ASA's jurisdiction. The Chair said the advertisement did not meet the criteria to be advocacy advertising.

The Chair said the advertisement promoting the small dog park was not likely to mislead or confuse consumers and therefore did not meet the threshold to breach Principle 2 or Rule 2(b) of the Advertising Standards Code.

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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.