COMPLAINT NUMBER	19/379
APPEAL NUMBER	19/014
COMPLAINANT	City Vision
APPLICANT	City Vision
ADVERTISER	Save Chamberlain Park
ADVERTISEMENT	Save Chamberlain Park, Print
DATE OF MEETING	9 December 2019
OUTCOME	Appeal Allowed, Complaint Upheld in Part

SUMMARY

The Complaints Board ruled on 2 October 2019 the complaint made by City Vision about the print advertisement for Save Chamberlain Park was Not Upheld.

The Complainant appealed the Decision. The Chairperson considered that the Application raised sufficient grounds for the matter to be reheard by the Appeal Board.

The Appeal Board said the advertisement was likely to create the impression that Chamberlain Park was being completely destroyed rather than repurposed and the use of a specific number of trees being removed had been presented as fact and not adequately substantiated.

The Appeal Board ruled the two claims made in the advertisement about Chamberlain Park being destroyed and 1000 trees being ripped out were in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

The Appeal was Allowed and the Complaint was Upheld.

Decision: Complaint **Upheld in Part**, Appeal **Allowed**

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

APPEAL BOARD DECISION

On 2 October 2019 the Complaints Board ruled to Not Uphold the complaint made by City Vision about the print advertisement for Save Chamberlain Park.

The Complainant appealed the Decision. The Chairperson accepted the Appeal and said the Application raised sufficient grounds for the matter to be reheard by the Appeal Board.

The Chairperson directed the Appeal Board to consider the advertisement with reference to the following codes:

ADVERTISTING STANDARDS CODE

> **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.
>
> **Rule 2(e): Advocacy Advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

Summary of Complaints Board Decision

The Complaints Board did not uphold the complaint about the Save Chamberlain Park print advertisement. The Board agreed the advertisement was an advocacy advertisement and the identity and position of the Advertiser was clear.

The Complaints Board said the advertisement was a combination of opinion and factual claims and the Advertiser had provided sufficient substantiation for the factual claims made. The Board said in the context of robust debate during the local election campaign, the political advocacy advertisement was unlikely to mislead consumers.

Complainant's Appeal

The Complainant said the Complaints Board did not adequately address the claim that the City Vision plan would destroy the park as the golf course would be downsized to create a public park. The Complainant does not consider the current golf course to be a park.
The Complainant said the statement "they want to rip out 1000 mature trees'' was not adequately substantiated by the Advertiser and it challenged the Complaints Board's application of the advocacy principles, and considered a liberal interpretation of the Code allowed misinformation.

Advertiser's response to the Appeal

The Advertiser defended the word "destroy" in the headline of the advertisement and stated it is used in the context of the 18 hole golf course not being able to be used under the proposed plan.
The 1000 mature trees claim was an "in the order of" estimate which consumers are unlikely to interpret as exactly 1000. The definition of mature was a factor of age, not size, using an established definition of trees and vegetation over three metres or taller and provided maps to demonstrate the groves of close growing trees.

APPEAL BOARD DISCUSSION

The Appeal Board carefully considered the complaint, the advertisement, the information provided by the Complainant and the Advertiser, and the Complaints Board Decision.

The Appeal Board confirmed the advertisement fell within the definition of advocacy advertising provided for under Rule 2(e) of the Advertising Standards Code and agreed the Advertiser's identity and position were clear.

Preliminary matters

Advocacy advertising
The Appeal Board noted the Complainant's view on the application of the advocacy principles and the liberal interpretation of the Advertising Standards Code.

Context, including the identity of the advertiser, is a key consideration for advocacy advertising and allows consumers to assess the weight they wish to give the advertising content. Advocacy advertisements usually express the Advertiser's view or philosophical position on matters that are subject to public debate.

The Appeal Board affirmed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints and Appeal Boards.

Political parties, politicians, lobby groups or advocates should not be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

The Appeal Board agreed to consider the Appeal in conjunction with this liberal interpretation under the application of the Advocacy Principles.

The third claim in the advertisement
The Appeal Board noted the issue of the financial cost of over $30 million for the proposed changes had not been raised in the appeal application. The Appeal Board agreed with the Complaints Board Decision, that stating a figure of over $30 million was not misleading for a plan in the early stages, taking into account likely variable costs and the proximity of the number to that quoted in the plan. As such, this part of the Complaints Board decision remained Not Upheld.

Appeal Board Discussion
The Appeal Board said its discussion would focus on the two issues raised in the Complainant's appeal submission:

- Is the use of the phrase *"*City Vision plan to destroy this precious Auckland Park" misleading?

- Is the claim "They want to rip out 1000 mature trees" substantiated?

Is the phrase "City Vision plan to destroy this precious Auckland Park" misleading?
The Appeal Board noted the Complaints Board had focused on the word 'destroy' and its meaning. The Appeal Board agreed with the Complainant that the phrase needed to be considered as a whole in the context of the advertisement. The Appeal Board said the combination of the strong, emotive language and the chainsaw and bulldozer images superimposed on the picture of the park meant readers could believe the whole park was disappearing, and replaced by something altogether different to a park, when the plan is to repurpose it.

The Board agreed a plan to retain half of the golf course and widen the public use of the rest of the space differed from the impression created in the advertisement, that the park and open space will 'destroyed'.

The Appeal Board said the context played an important role in whether the statement would mislead consumers. The Appeal Board said the advertisement was published in the Weekend Herald newspaper to a wide audience, many of whom were unlikely to have prior knowledge about the proposed changes.

The Appeal Board ruled the wording was not saved by the Advocacy Principles and said it was likely to mislead consumers.

Is the claim "They want to rip out 1000 mature trees" substantiated?
The Appeal Board referred to the Advocacy Principle regarding clear distinction of fact and opinion. It said:

> "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."

The Appeal Board said the statement "They want to rip out 1000 mature trees" was an absolute claim presented as fact. The Appeal Board said a specific number based on an interpretation of concept drawings was always going to be difficult to substantiate without an agreed definition of what constitutes a mature tree and an independent survey. The Appeal Board agreed that without the detailed final plans, the exact impact on the trees could not be known.

The Appeal Board said the substantiation provided in terms of the definition and number of mature trees was an estimate and was not sufficient to substantiate the absolute claim made in the advertisement that 1000 mature trees would be ripped out.

The Appeal Board ruled this claim was not saved by the Advocacy Principles and said it was likely to mislead consumers.

The Appeal Board ruled the two claims in the advertisement subject to appeal were in breach of Principle 2 Rule (b) of the Advertising Standards Code.

The Appeal was Allowed and the Complaint was Upheld in Part.

Decision: Complaint **Upheld in Part**, Appeal **Allowed**

APPENDICES

1. **Description of Advertisement**
2. **Complaint from City Vision**
3. **Summary of the Complaints Board Ruling**
4. **Appeal Application from City Vision**
5. **Response to the Appeal Application from Save Chamberlain Park**

Appendix 1

DESCRIPTION OF ADVERTISEMENT
The advertisement appeared in the Weekend Herald on 21 September. It is headed "You Wanna What" and shows images of a chainsaw and a bulldozer over an image of a park. The headline states "City Vision plan to destroy this precious Auckland Park". The call to action is "Save Chamberlain Park, and "Vote City Vision out". Readers are directed to their Facebook page and website. It has an authorisation statement as required for election advertising under the Local Electoral Act.

Appendix 2

COMPLAINT FROM CITY VISION
Please process this complaint under the "ASA fast-track process" used for election related complaints. As voting papers have started arriving this week, time is of the essence.

Advertiser – Save Chamberlain Park
Advocacy
Printed in NZ Herald, Weekend Herald edition on Saturday, 21st of September 2019.

This complaint is the Save Chamberlain Park group, a lobby group setup to stop Chamberlain Park from being changed from a public golf course to a mixed public golf course and public park. City Vision is a political group that has dominated the Albert-Eden Local Board in Auckland for the last term, and has proposed the changes.

More information on the proposed changes can be found here
- https://cityvision.org.nz/local-issues/opening-up-chamberlain-park-or-everyone

Attached is a scan of the advertisement in question.
Also attached is a draft masterplan which gives an indication of approximate plans for the new park might, and an aerial photograph of the existing golf course.

In their large advertisement Saturday 21 September, Save Chamberlain Park made several claims which are untrue, as such breaching the ASA Codes 2 (b) and 2 (e):

1 Headline "City Vision plan to destroy this precious Auckland Park".

This is false because the proposal is not to destroy the park. The proposal would turn the golf course which has limited public access into a public park, in the traditional sense of a park, with large open spaces, playing fields, playgrounds etc, with open access to everyone. It also retains golfing activities in the form of a 9-hole course and other amenities. So the proposal is to 'create' an Auckland Park rather than 'destroy' in the advertisement.
The word 'destroy' is defined in the Oxford Dictionary as to "End the existence of (something) by damaging or attacking it."

This is simply not the case and to suggest so is not truthful.

The words ‘destroy this precious Auckland Park’ are strong and could be considered hyperbole. Hyperbole is an exaggeration for effect, and ‘destroy’ could be considered an exaggeration of ‘damage’. But the word ‘damage’ would be factually incorrect as well, as would any similar word that suggests the park-like nature will be negatively impacted. Given this fact, the words ‘destroy this precious Auckland Park’ are extremely untruthful.
There is nothing within the advertisement to suggest that this is sentence, or any of its individual words are hyperbole. It is presented as fact. Nor is there any suggestion or hint that the sentence is opinion.

If the sentence read “City Vision plan to destroy this precious 18-hole golf course” that would have been accurate, although a hyperbole still.

2 The text in the advertisement claims that the cost of the proposed changes are over $30 million. “They want to use your rates at a huge financial cost of over $30million dollars”

This is false because the proposed changes have only been approximately costed by council officers as part of preliminary decision-making to approve the proposals in principal, and that estimate was less than $30 million - $29.5 million.

It’s worth noting that $29.5 million was only alluded to in a list of various proposed projects at the Auckland Council Governing Body meeting, as a ‘worst case scenario’ cost. The list presented maximum budgets possible without any detailed costings done. For example it costed clean fill at the full retail rate of $80 per cubic metre, when bulk fill is substantially less and sometimes costs nothing but the transportation.

3 The text claims that 1000 mature trees will be felled. “They want to rip out 1000 mature trees”

This is false because the proposals will not require the felling of 1000 mature trees. As can be seen in the attached aerial photograph there aren’t even 1000 mature trees on Chamberlain Park. Much of those trees will remain as per the plan also attached.

Save Chamberlain Park have publicly admitted that they came to the figure of 1000 trees after a rudimentary count of trees in the vicinity of the proposed playing fields.

They have previously fudged the age and status of the trees by saying ‘mostly mature’ but in this advertisement they claim that all thousand trees are ‘mature’ which is incorrect.
As reported in the Spinoff website:

“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.” The Spinoff - https://thespinoff.co.nz/local-elections/19-09-2019/the-two-loud-angry-campaigns-that-could-swing-the-auckland-local-elections/

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 remove any further advertisements. 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.

Appendix 3

SUMMARY OF COMPLAINTS BOARD DECISION 19/379

Summary of the Complaint

The Complainant said three statements in the advertisement are misleading.

1. "City Vision plan to destroy this precious Auckland Park". (use of the word "destroy" is misleading)
2. "They want to use your rates at a huge financial cost of over $30 million dollars" (inaccurate costing)
3. "They want to rip out 1000 mature trees" (misleading, not that number of trees in park)

Issues Raised

- Truthful Presentation
- Advocacy advertising

Summary of the Advertiser's Response

The Advertiser affirmed its use of the word "destroy" regarding the plan for the park and provided information to support the other claims in the advertisement.

Summary of the Complaints Board Decision

The Complaints Board did not uphold the complaint about the Save Chamberlain Park print advertisement. The Board agreed the advertisement was an advocacy advertisement and the identity and position of the Advertiser was clear.

The Complaints Board said the advertisement was a combination of opinion and factual claims and the Advertiser had provided sufficient substantiation for the factual claims made. The Board said in the context of robust debate during the local election campaign, the political advocacy advertisement was unlikely to mislead consumers.

The full version of this decision can be found on the ASA website:
https://www.asa.co.nz/decisions/

Appendix 4

APPEAL APPLICATION FROM CITY VISION

This letter is to request:

i. an appeal of the ASA decision 19/379 which did not uphold City Vision's complaint against an advertisement by Save Chamberlain Park in the NZ Herald on 21 Sept 2019, and
ii. that our second complaint against Save Chamberlain Park's leaflets to be heard

Although the election which these advertisements were targeting has been completed, the issue of Chamberlain Park is ongoing. The claims made by Save Chamberlain Park are still relevant and affect decisions made by Albert-Eden Local Board.

The basis of our appeal of the ASA's decision 19/379 is:
C Evidence provided to the Complaints Board has been misinterpreted to the extent it has affected the decision.

Reasons for Appeal

Our original complaint had three points and we believe points 1 and 3 have not been adequately addressed by the ASA.

Point 1: The advertisement stated that "City Vision plan to destroy this precious Auckland Park".

Our argument challenged the meaning of the word destroy as inaccurate, which was not upheld by the ASA.

We also argued that that the sentence taken as a whole claims City Vision would destroy a park. The ASA decision did not deal with this argument in the ruling.

As a complete phrase, the headline "City Vision plan to destroy this precious Auckland Park" says to readers that a traditional park is planned to be destroyed. That's incorrect because it is actually an 18-hole golf course that would be 'destroyed' with the land being used to create a public park.

The use of park-like imagery behind the text, rather than golf flags or other golf imagery, further reinforces the meaning of 'Auckland Park' as a traditional park. Anyone with little or no knowledge of Chamberlain Park would reasonably assume that it is a traditional public park that is to be destroyed.

But Chamberlain Park is not a traditional park, it's a public golf course. The entire area is fenced off and signs warn against public entry. Due to its inaccessibility, public awareness about Chamberlain Park is low.

No doubt Chamberlain Park as a golf course is precious to some people but the overall meaning of this headline, especially combined with the imagery, is factually wrong. City Vision has no intention of destroying a 'precious Auckland Park'.

In fact, City Vision stated plans are to create a traditional public park for Auckland by removing the fences to allow open access and building various public spaces along with a smaller golf course. This is the complete opposite of Save Chamberlain Park's statement.

City Vision requests that the ASA reconsiders this argument in light of the overall meaning of the headline, rather than just the word 'destroy'.

Point 3: The advertisement stated that "They want to rip out 1000 mature trees".

City Vision argued that the claim of removal of 1,000 mature trees was inaccurate. By majority decision, this was not upheld by the ASA in the context of advocacy advertising:

> *The majority of the Complaints Board accepted the information provided by the Advertiser to substantiate the claim of 1000 trees being removed under the proposed plan, in the context of advocacy advertising.*

This suggests that if the claim had not appeared in Advocacy Advertising, the Complaints Board would not have accepted Save Chamberlain Park's substantiation. If the substantiation had been adequate under regular circumstances, the ruling would state that the Advertiser had provided sufficient substantiation to support these claims, as it did in the decision for a different complaint brought by Save Chamberlain Park against City Vision - 19/359.

Save Chamberlain Park's attempts to substantiate this claim can best described as incomplete and amateur. Their counting process was described as such in the Spinoff article as noted in the original complaint. City Vision provided photographic evidence of the number of trees affected so that ASA members could see that the claim was inaccurate.

It's important that Advocacy Advertising generally follows the same rules as other advertising, even though it is dealing with more consequential subjects. Public policy and elections can have far more impact on the well-being of people and communities than consumer products and services. Advocacy Advertising is more likely to feature counter-argument, impassioned views and robust arguments – which is fitting because democracy, public policy and elections are often at stake. The ASA recognises this special area of advertising with specific guidance notes.

Some of the ASA's Guidance Notes on Advocacy Advertising recommend a more liberal interpretation of the rules to safeguard democracy and freedom of expression. This policy is admirable but out of date.

Across the world Advocacy Advertising in its many forms now threatens democracy. Repeatedly, misinformation has been spread through advertising on opaque social media platforms, and in public platforms. Advertising at scale large enough to influence public policy or elections is available only to companies, groups and individuals who can afford it.

Questionable Advocacy Advertising has influenced important elections, votes and decisions around the world such as Brexit, the 2016 US Elections, the 2018 Indian Elections and so on. Advocacy Advertising weakens democracy by giving power to those with the most money. Rather than 'one person one vote', advertising makes possible a system of 'one dollar one vote'.

With the increase in social media advertising and 'attack ads' in NZ, it is more important than ever that ASA's rules around accuracy and fair play are enforced rather than interpreted liberally.

As well as recommending a liberal interpretation, the ASA Guidance Notes also recommend restrictions on Advocacy Advertising for the sake of 'fair play', which in the case of the original City Vision complaint, has not been followed.

City Vision believes the ASA used an <u>overly liberal</u> application of the advocacy advertising guidance notes, and as a result Advocacy Principles 3 and 4 have not been followed:

> *3. That the Codes fetter the right granted by Section 14 (that people have the right to Freedom of Expression) 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 advertiser and that the Codes should be interpreted liberally to ensure fair play by the contestants.*

Advocacy Principle 3 can be separated into three parts.
The first part states that the ASA codes restrain freedom of expression when it comes to advertising 'to ensure fair play between all parties on controversial issues. This effectively suggests that fair play is a desirable outcome and to be encouraged.

The second part gives guidance saying the spirit of the Code is more important than technical breaches. One assumes the 'spirit of the code' is similar to the 'purpose of the code' which on the ASA website reads:

> The purpose of the Advertising Standards Code (Code) is to ensure that every advertisement is a responsible advertisement.

> All advertising must be legal, decent, honest and truthful and respect the principles of fair competition, so that the public can have confidence in advertising.

The third part states that people's right to express their views should not be restricted by the rules. This doesn't apply here as the 1000 trees claim is presented as fact rather than as a view or opinion. The claim that 1,000 mature trees were to be removed is not an advocacy argument. It is stated as fact and is manifestly incorrect. Evidence of this is that the counting approach adopted by the advertiser has been discredited and the information provided by City Vision in its complaint shows that 1,000 trees would not be removed. In terms of the ASA code the advertiser may mount an advocacy argument that it is preferable to have the current golf course rather than a public park, playing fields and golf course. But if the code is to have relevance an advertiser should not be able to make patently false claims and justify them on the basis of advocacy advertising.

Advocacy Principle 4 states that robust debate is encouraged, and gives guidance recommending a liberal interpretation of the codes when it would ensure fair play by contestants. So, the guidance within these two Principles is that the *"spirit of the Code is more important than technical breaches*" and *"that the Codes should be interpreted liberally to ensure fair play by the contestants"*.

Save Chamberlain Park's advertisement wasn't 'fair play' in that it didn't follow the ASA's rules of making claims that can be substantiated. As the ASA majority decision implied, Save Chamberlain Park's substantiation was only adequate if interpreted liberally as Advocacy Advertising.

But the ASA erred in choosing to apply a liberal interpretation, because doing so did not ensure fair play by the contestants as recommended by the guidance notes.

In fact, fair play would have been ensured by applying a regular interpretation which is in keeping with the spirit of the Code - to ensure responsible, legal, decent, honest, truthful advertising that respects the principles of fair competition.

By interpreting the Codes liberally, the ASA's decision had the opposite effect, endorsing unfair play by the contestants, and contradicting their own guidance notes for Advocacy Advertising.

For these reasons, City Vision appeals the ASA decision 19/379 which did not uphold the complaint against Save Chamberlain Park's advertisement.

Appendix 5

RESPONSE TO THE APPEAL APPLICATION FROM SAVE CHAMBERLAIN PARK

We note at all times material to the following statements the Albert-Eden Local Board ("the Board") was dominated by a majority of City Vision members. Communities and Residents members have consistently voted in opposition to the Chamberlain Park re-development plans.

In its appeal City Vision asserts that points 1 and 3 of its appeal "have not been adequately addressed by the Appeals Board." In our submission the Appeals Board both adequately addressed points raised by City Vision, correctly interpreted the evidence presented to it and was correct in not upholding the complaint.

Point 1: City Vision has asked the Appeals Board to re-evaluate the statement that "City Vision plan to destroy this precious Auckland Park".

We refer the Appeals Board to our response to the original complaint and expand on our response to follow.

The complaint refers to the Oxford Dictionary definition of destroy; "End the existence of (something) by damaging or attacking it". The Cambridge Dictionary definition of destroy is "to damage something so badly that it cannot be used". We submit that "as it used to be" is implied in this definition. We submit that this is the natural and ordinary meaning of the word "destroy." For example, a city that is said to have been "destroyed" by bombing has not had its "existence ended" by the bombing. The city is still a city, people still live in it, but the city has been damaged so badly that it cannot be used as it used to be. Things such as "ambiance", "amenity values" and "aesthetic coherence" can also be "destroyed". For clarity we submit that "destroy" does not mean "make disappear".

We submit that in many contexts, including advocacy advertising, it is not misleading to put forward the view that the precious Auckland Park that Chamberlain Park is would be "destroyed" by the implementation of the City Vision Masterplan which includes the removal of 1,000 trees, the replacement of many hectares of grass and trees with roads, car parks, footpaths, other hard surfaces and over 2 hectares of fenced artificial playing surfaces. Additional change rooms, toilets and numerous 18 metre tall floodlights are also part of the Master Plan.

Whether or not an area which is known as a park is used for active or passive recreation is not determinative of what the area is called. Describing such an area as a park is common. Within the Albert-Eden Local Board area there exists Eden Park, Alexandra Park, Walker Park and Melville Park, amongst others, which are all called parks.

Chamberlain Park is used for active rather than passive recreation as are Walker and Melville Parks and many, many other parks. However, this does not detract from the fact that Chamberlain Park is a park which can be used by the public. It is correctly described as an "Auckland Park" in the advertisement complained of.

City Vision notes that the entire area of Chamberlain Park is fenced off. We submit that this point is irrelevant to the complaint that the advertisement is misleading. We note however, for the information of the Appeals Board, that the fence exists due to the decision of some earlier elected body, a predecessor to either Auckland Council or the Board. Current elected bodies have the right to remove the fence and open the Park to open up public access at considerably less cost than envisaged in the Chamberlain Park Master Plan. In its appeal City Vision states that it plans to remove the fences. In neither the "Chamberlain Park Master Plan Options" document presented to the Board on 22 April 2015 nor the "Chamberlain Park Master Plan" presented to the Board on 5 August 2015 is any mention made of removing the fences. Save Chamberlain Park would not oppose such removal provided Auckland Council Health & Safety guidelines are met.

City Vision claims that there are signs which warn against pubic entry, that Chamberlain Park is inaccessible and that public awareness of Chamberlain Park is low. We submit that these points are irrelevant to the complaint that the advertisement is misleading. We note however, for the information of the Appeals Board, there are two points of public access to the Park, but only a sign near the clubhouse which does not "warn against public entry". What it does say is "CAUTION Anybody entering this property does so at their own RISK". This is applicable to all users of the Park, whether golfers or other users. A photo of this sign is available if requested. Other external signs visible to the general public are at the corner of Linwood Ave and St Lukes Road and on the Park fence further along St Lukes Road. Neither contains a caution or warning message, in fact both say "families and casual golfers welcome", implying

that families, who may or may not include golfers, can use the Park. Photos of each sign are available if requested. We submit that a petition signed by 26,000 people alone indicates a significant degree of public awareness of Chamberlain Park.

City Vision complains about the "use of park-like imagery" rather than "golf flags or other golf imagery". We submit that these points are irrelevant to the complaint that the advertisement is misleading. We note however, for the information of the Appeals Board, that Chamberlain Park looks as it does and our wording in the advertisement states that it is a public golf course. It would be clear to anybody following the links to our Facebook page or web site that Chamberlain Park is used as a golf course.

Before dealing with point 3 of the appeal, we draw the Appeals Board attention to a map provided by City Vision with their original complaint which they described as "a draft masterplan which gives an indication of approximate plans for the new park".

This map first appeared as "Scenario 4" in consultation rounds held in May and June 2015 and was then appended to the "Chamberlain Park Master Plan" document tabled before the Board on 5 August 2015, still identified as "Scenario 4" and marked "Draft".

On that date the Board passed (by a 4-3 majority) resolution number AE/2015/128 which states, in part, "That the Albert-Eden Local Board approves Scenario 4 as the basis for development of the final Chamberlain Park Master Plan…". Since then this map has been unchanged in any references by the Board or City Vision to the Chamberlain Park masterplan, including appearing on City Vision's web site with a date of 13 September 2019, no longer labelled "Draft". A screen shot of this is attached and marked "A".

On 27 February 2019 the Board passed (by a 5-3 majority) resolution AE/2019/16 which states, in part, "That the Albert-Eden Local Board request staff to commence all work required to enable a single resource consent application for the development of Chamberlain Park as envisaged in the Chamberlain Park Master Plan 2015….".

To us this is a clear indication that the map provided by City Vision is not "an indication of approximate plans" but a depiction of the outcome which they desire for Chamberlain Park. Why this is important will become clear as we discuss point 3 of the appeal.

Point 3: City Vision argues that our claim that 1,000 mature trees will be lost is inaccurate.

We repeat the points made in our response to the original claim and expand on them.

For the avoidance of doubt the statement in the advertisement "They want to rip out 1,000 mature trees" was a pithy phrase used to communicate to the public that if the City Vision Master were implemented in the order of 1,000 mature trees would be removed. We submit that a reasonable reader would have taken this as the message from the statement. We further submit that a reasonable reader would not have thought that we were stating that exactly 1,000 mature trees would be removed i.e. not 999 or a few less and not 1,001 or a few more but exactly 1,000.

City Vision claim's that our attempts to substantiate our claim were "incomplete and amateur". We refute City Vision's claim.

Auckland Council's Technical Report "The Urban Forest of Waitemata Local Board in 2013" published in 2017 includes at page 6 the statement "For the purposes of this report 'urban forest' is defined as all of the trees and other vegetation three metres or taller in stature" and this is the height limit we chose to adopt as our definition of "tree".

Subsequently, Auckland Council's Technical Report "Tree Loss in the Waitemata Local Board Over 10 Years, 2006-2016" published in 2018 used the same height limit to define a tree, at

page 5 and the same height is used in Auckland Council's "Auckland's Urban Ngahere (Forest) Strategy" at page 23.

"Mature" is a factor of age, not necessarily of size, particularly in areas of Chamberlain Park where the topsoil is relatively thin above the basalt rock beneath.

As we noted in our original response, by overlaying the masterplan map on an aerial view of the Park (refer attached map marked "B') , it is easy to see what trees would be lost as a result of the proposed re-development. A map showing such an overlay is attached as "C". One thing that is clear on this map is that the actual fairways on the golf course are much wider than the white lines shown on the masterplan map, giving rise to greater tree loss. Once this is done, it becomes easy to count the number of affected trees, which is what we did before including our results on our Facebook page in May 2018. To make this count one does not have to be an arborist or a botanist as no judgements about the trees themselves are being made and this is what we did. Dr Louise Kane continues to stand by her count and is prepared to swear an affidavit in support.

City Vision claims to have provided "photographic evidence of the number of trees affected" by submitting an aerial view of the Park, taken on an oblique angle, suggesting that a valid count of trees can be made from the air. As we noted in our response to the original claim, what may appear to be only one or two trees on an aerial view is actually a grove which can contain a significant number of trees.

As an example of this, we have highlighted one such grove on the attached map C as "A". A count of the trees in this grove gives a total of over 160 trees in this grove alone, both native and non-native. In addition there are a substantial number of plants less than three metres tall, again both native and non-native. Discussions with former green keeping staff with long experience on the Park have led to advice that this grove has been there for at least 30 years and therefore the trees therein can be considered as mature. Photos of the grove from both external and internal viewpoints are available.

There are many such groves of close-growing trees on the Park, both within and outside the areas which will be impacted if the masterplan goes ahead, and suggesting that the number of trees in them can be counted from a photograph in clearly incorrect.

In the "Summary of Complaints Board Decision", it is stated that reference to 1,000 mature trees is "(misleading, not that number of trees in park)". We cannot see where this incorrect statement has come from. The Chamberlain Park groundsmen can confirm that there are many several thousand trees at least at Chamberlain Park.

As we pointed out in our response to the original claim, the City Vision-dominated Board made no attempt at an environmental assessment of the impact of their plan, in spite of the fact that trees will be lost at a time of an Auckland Council declared Climate Change Emergency.

We propose that Save Chamberlain Park and City Vision share in the cost of an assessment by an independent expert acceptable to both parties of the number of trees affected by the masterplan and providing additional analysis of both native and non-native trees under and over 3m tall.

We note that 2km as the crow flies from the 32 ha Chamberlain Park is the 10 ha Owairaka / Mt Albert. Like Chamberlain Park, Owairaka has both large grassed areas and areas of tree coverage. As the Appeals Board is likely aware there is a controversial plan to remove 345 mature exotic trees from Owairaka. The fact that 345 trees have been identified demonstrates the fact that trees slated for removal can be counted, as we have done at Chamberlain Park. City Vision could have made its own count or, as the majority of the Albert-Eden Local Board membership, could have instructed Auckland Council staff to arrange for a count to be made. It did neither.

In summary, for reasons explained both in our original response and this response we stand by our 1,000 tree statement.

City Vision opines “It’s important that Advocacy Advertising generally follows the same rules as other advertising…” and that the ASA’s policy of a liberal interpretation of the rules when applied to advocacy advertising to safeguard democracy and freedom of expression is “admirable but out of date.” We submit that City Vision’s opinion of the ASA code and ASA policies is irrelevant to its appeal which is being heard under the ASA code and in compliance with ASA policies.

We submit that our use of the word destroy and our description of Chamberlain Park as an Auckland Park are acceptable in many contexts including advocacy advertising and that our tree count is accurate and is acceptable for use in many contexts including advocacy advertising.