

22 December 2014

The Secretary
Advertising Standards Complaints Board
PO Box 10-675
Wellington

MATTER NO: 1061.4
OUR CONTACTS: Stephen Franks
Pam McMillan
Digby Livingston

By email: asa@asa.co.nz

Dear Sir or Madam

HUTT NEWS PUBLICATION COMPLAINT

1. This complaint is submitted for our clients, the Hutt City Council (“HCC”) on behalf of their citizens. Please address all correspondence to the sender.
2. This complaint is about an advertisement (**enclosed**) by the Greater Wellington Regional Council (“GWRC”) published on page 22 of the Hutt News on 16 December 2014 (“the advertisement”). The advertisement promotes the Local Government Commission’s draft proposal for reorganisation of the Wellington region (“the draft proposal”).
3. In our opinion the advertisement breaches of the Code of Ethics: Basic Principles 1, 3, 4, and Rules 2, 8 and 11. The advertisement:
 - (a) Is likely to deceive or mislead people who will be making submissions on the draft proposal by suggesting:
 - i. Local boards will have the same responsibilities as the current councils under the proposal
 - ii. Wellington local boards will have greater powers than Auckland local boards under the proposal
 - iii. Hutt Valley is in decline
 - iv. HCC cannot afford to fix aging water pipes and waste water pipes
 - v. HCC is “ill-equipped to meet these challenge”
 - vi. HCC is a “poor performing” council
 - (b) Promotes ideas which are untrue and not substantiated by fact; and
 - (c) Does not clearly distinguish opinion from factual information.

2. The HCC are not averse to other councils communicating their opinion of the draft proposal to their citizens. They expect and hope there will be a vigorous expression of views on the pros and cons of the draft proposal. But they do not tolerate use by the GWRC of advertisements to deceive readers. As well as breaching your code, it is contrary to the duties of local authorities and their members to act in good faith and with honesty and integrity.

ADVERTISEMENT

4. The newspaper advertisement by GWRC was on page 22 of the Hutt News on 16 December 2014. It is an entire page made up of several articles, a list of regional councillors and a diagram of the proposed governance framework. The page is entitled "Our Region: News from the Greater Wellington Regional Council". It is a paid article by GWRC.
5. There are two substantial items: "Eight Local Boards proposed for Wellington Region" and "Meeting the Hutt Valley's long term challenges".
6. It advertises the Commission's draft proposal. It informs readers when they need to make submissions and how to do this. The title "Meeting the Hutt Valley's long term challenges" sets the scene for the main item, "Meeting the Hutt Valley's long term challenges", which is a mix of quotes from the Commission's draft proposal interlaced with one-sided comments from GWRC.
7. The advertisement is both a public notice and an expression of opinion. It is by a local authority. Newspaper advertisements by local authorities have been the subject of other complaints to the ASA.¹
8. Some of the quotes have been taken out of context or changed to mean something quite different to the intended meaning in the draft proposal. Misquoting to give a different meaning is simply dishonest. Misleading readers about HCC in order to promote the Commission's draft proposal is inexcusable. Examples of the misleading or inaccurate quotes are in the **Appendix**.

CONTEXT

9. The same issue of the Hutt News has a similar advertisement from HCC on page 17 (**enclosed**). HCC did not know in advance of the GWRC's advertisement. HCC sets out to give its citizens a balanced notice of the draft proposal and the various views on it.
10. HCC sees the GWRC publication as part of a pre-planned propaganda scheme. GWRC has published almost identical advertisements in: (both **enclosed**)
 - (a) Kapiti Observer (page 13, 18 December 2014); and
 - (b) Upper Hutt Leader (page 12, 17 December 2014).
11. These advertisements included the same article "Eight Local Boards proposed for Wellington region" and therefore were also inaccurate and misleading. They have the same diagram and notices about "What happens now" and "Local leaders to direct transition". Instead of the article "Meeting the Hutt Valley's long term challenges" they had "Meeting Upper Hutt's long term challenges" (in the Upper Hutt Leader) and "Meeting Kapiti Coast's long term challenges"

¹ For example, Complaint no. 13/044 by M. Gibson on an advertisement by Wellington City Council on a proposed rezoning change.

(in the Kapiti Observer). Both of these also included statements likely to mislead readers. This complaint does not include these advertisements.

12. In comparison, the GWRC's advertisement in the Kapi Mana (page 13, 16 December 2014) (**enclosed**) is more balanced and does not have so many inaccuracies or misleading statements about Porirua City Council. This may be because Porirua has publicly supported the Commission's draft proposals, while the councils for Kapiti, Upper Hutt and Hutt City have either publicly opposed it or not shown a preference yet.
13. The subject of the advertisement is the draft proposal released by the Commission on 4 December 2014 entitled "Draft Proposal for Reorganisation of Local Government in Wellington". The draft proposal was in response to two applications for reorganisation received by the Commission:
 - (a) application from three Wairarapa District Councils (Masterton District Council, Carterton District Council, South Wairarapa District Council) on 22 May 2013.
 - (b) an application from the Greater Wellington Regional Council for reform of local authorities in the wider Wellington Region on 21 June 2013
14. The draft proposal closely resembles the proposal made by GWRC in its application. It is for a new unitary authority, the Greater Wellington Council, which would take over the functions of the existing nine councils: Masterton District Council; Carterton District Council; South Wairarapa District Council; Upper Hutt City Council; Hutt City Council; Wellington City Council; Porirua City Council; Kapiti Coast District Council, and the Greater Wellington Regional Council.
15. The HCC made an alternative application for either an enhanced status quo or alternatively for four unitary authorities to replace the existing councils. The GWRC would be disestablished under this second option.
16. Public consultation on the draft proposal is now underway. Submissions close on 2 March 2015. The Commission will then decide whether to issue the draft proposal as a final proposal, issue a modified draft proposal as a final proposal, do a new draft proposal or not issue a final proposal at all (Schedule 3, clause 21(1) Local Government Act 2002). If a final proposal is released a poll may be demanded by a petition of 10% or more of affected electors enrolled in any one of the districts in Wellington region. If the petition is successful a poll will be held. If more than 50% of valid votes cast in the poll are for the final proposal then it goes ahead. If 50% or less of the votes are against it then it does not go ahead.
17. The advertisements by both GRWC and HCC (and any other affected council) are likely to influence submissions. We think the advertisement by GWRC was likely timed to leave citizens with an impression intended to sink into consciousness and public discussion over the holiday period, with limited opportunity for prompt and effective correction or rebuttal. There has only been one issue since 16 December. Hutt News is circulated widely. The advertisement could be the first time readers have heard about the draft proposal. First impressions are important as they colour any later impressions. If the GWRC continues to make such misleading and deceptive advertisements over the next few months many of the submissions made on the draft proposal will be based on untruths and wrong impressions.

BREACH OF CODE OF ETHICS – BASIC PRINCIPLE 1

18. Basic Principle 1 of the Code of Ethics states:

All advertisements must comply with the laws of New Zealand.

19. GWRC is required to follow the Local Government Act 2002 and guidelines by the Office of the Auditor General when making advertisements or doing any public communications.

Local Government Act 2002

20. The principles relating to local authorities (including both GWRC and HCC) in s 14 of the LGA require a local authority in performing its role to:
- (a) a local authority should— (i) conduct its business in an open, transparent, and democratically accountable manner;
 - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities;
21. The GWRC knows that most of its community is likely to begin from a position disavouring the changes it seeks. Prior to the notification of the draft proposal HCC commissioned a survey of residents across the affected area. Over 75 per cent across the Wellington region and over 80 per cent in the Hutt said they would prefer to keep the status quo.²
22. The GWRC is not conducting its business in an accountable manner or having regard to the views of all of its community if it is publishing statements which are deceptive and misleading.
23. Local authorities are required to have a code of conduct for their members (Schedule 7, clause 15 LGA). The Code of Conduct for GWRC members includes as a principle of good governance:³
- Honesty and integrity** - Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
24. The GWRC councillors should not have authorised an advertisement which is deceptive. If it was not referred to them for authorisation, the officers responsible should not have acted in a way that could bring the GWRC into disrepute.
25. The process for reorganisations is in Schedule 3. Subpart 3 of Schedule 3 is on advertising. Local authorities cannot do any advertising after a final proposal is released (cl 30). They can, however, publish material that: (cl 31(1)):
- (a) does not expressly or impliedly promote or oppose the final proposal; but
 - (b) contains factual or referential material presented—
 - (i) in a balanced way; and
 - (ii) to assist electors considering promoting or signing a petition for the purposes of subpart 2 or voting in a poll to make a better-informed decision.
26. Subpart 3 is relevant only to final proposals. The advertisement in question is in relation to a draft proposal. However, given the principles in s 14 and the context of Subpart 3 of Schedule 3

² Wellington City Council “Survey shows over 75% of us don’t want our councils to amalgamate” (Press release, 3 November 2014) available at <http://wellington.scoop.co.nz/?p=72441>. The survey report can be found at <http://www.huttcity.govt.nz/Documents/Your Council/2014 Public Opinion report.pdf>

³ The GWRC Code of Conduct for councillors is available at <http://www.gw.govt.nz/councillor-code-of-conduct/>

of the LGA it is implied that councils affected by a reorganisation proposal should have regard to the views of their communities who may be for and against a proposal. They should be open and transparent and not use devious means to influence their communities.

Office of the Auditor General Guidelines

27. The Office of the Auditor-General's guidelines "Good Practice for Managing Public Communications by Local Authorities" (April 2004) recommends that every council adopt a communications policy which embraces these guidelines. The guidelines are not binding on councils. However they codify standards of propriety which GWRC should have followed and which the ASA is entitled to take into account in considering the boundary appropriate here between advocacy and informative advertisements. Principle 6 and 7 are particularly relevant to the advertisement:

Principle 6 –

Factual and explanatory information should be presented in a way that is accurate, complete, fairly expressed, and politically neutral.

Principle 7 –

Communications about matters that are under consideration by the Council, or are otherwise a matter of public debate, should present the issues in an evenhanded and non-partisan way.

BREACH OF CODE OF ETHICS – BASIC PRINCIPLE 3 AND RULE 2

28. Basic Principle 3 of the Code of Ethics states:

No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer.

29. Rule 2 states:

***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).*

30. The statements of fact in the advertisement are variously false, or framed deceptively and likely to mislead. Examples of these misleading and false statements are in the **Appendix**.

31. There is strong evidence of deliberately misleading readers and deceptive statement in the advertisement. HCC is willing to consider evidence in support of the statements made in the advertisement if GWRC can supply it, but in its absence we urge that GWRC's conduct get the highest level of censure.⁴

⁴ The onus will be on GWRC to highlight evidence in support of the advertisement: Complaint no. 14/460 "The Appeal Board considered a number of statements in the advertisement were presented as statements of fact. This meant the Appeal Board needed to consider whether the Advertiser had satisfactorily substantiated those claims.

BREACH OF CODE OF ETHICS – BASIC PRINCIPLE 4

32. Basic Principle 4 of the Code of Ethics states:

All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

33. This advertisement deals with a major change to local governance in the Wellington region. If the draft proposal is eventually implemented it will change the way Wellington citizens are represented in local matters, the level of rates and many other aspects of local government services and responsibilities.
34. By making statements which are misleading and deceptive, the GWRC is not acting in a socially responsible manner. People reading the advertisement may be worried HCC is in financial strife and the infrastructure in poor condition. They will be misinformed on the draft proposal. They may decide the draft proposal is the only option based on these misleading and factually incorrect statements.
35. Complaint number 14/453 was on the advertisement by the Internet Mana Party on Youtube which includes video footage of an event featuring “Kim Dotcom Internet Party Founder and Visionary”. Those at the event reacted to a number of statements from Mr Dotcom and then chanted “Fuck” John Key” a number of times. The Complaints Board agreed that as the advertisement was in breach of Rule 4 of the Code of Ethics, it had not been prepared with a due sense of social responsibility to consumers and society and was also in breach of Basic Principle 4 of that Code.
36. Although the advertisement in question does not use such emotive language as the Mana Party advertisement, it does attempt to sully the reputation of HCC without foundation and is recklessly indifferent to the effect on civic pride and confidence of the Hutt people with HCC.

BREACH OF CODE OF ETHICS – RULE 8

37. Rule 8 of the Code of Ethics states:

***Denigration** - Advertisements should not denigrate identifiable products or competitors.*

38. The meaning of “denigrate” is “To blacken, sully, or stain (character or reputation); to blacken the reputation of (a person, etc.); to defame.”⁵
39. The GWRC by putting the advertisement in the Hutt News and entitling the main article “Meeting the Hutt Valley’s long term challenges” is clearly trying to persuade Hutt residents that their council is in strife. It is attempting to blacken HCC’s reputation. GWRC plainly thinks it is in competition with HCC in terms of persuading communities to submit for or against the draft proposal.
40. In Complaint number 07/283 an advertisement for Miles Toyota was published in The Press newspaper, with the headline “COMPARE OUR VALUE”, the Toyota Logo and the words “DARE TO COMPARE”. The advertisement showed a comparison of prices to replace front brake pads

The Appeal Board emphasised when claims were challenged, the onus was on the Advertiser to highlight supporting evidence in support of the statements made.”

⁵ Oxford English Dictionary online.

using four local providers. One of these providers gave evidence the quotes were not accurate. The Complaints Board decided that as the advertisement could mislead consumers, it also denigrated identifiable competitors and was therefore in breach of Rule 8.

41. In comparison the advertisement in question does not compare HCC with GWRC. But it does include misleading statements intended to make HCC sound like a poor performing council in financial strife.

BREACH OF CODE OF ETHICS – RULE 11

42. Basic Principle 1 of the Code of Ethics states:

***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.*

43. The advertisement mixes expressions of opinion with factual information. It is advocating for the Commission's draft proposal.

44. The quote below shows how the advertisement mixes fact with opinion. The facts are the quote from the draft proposal on the pipes. The opinion is "This shortfall is beyond the reach of some councils including Hutt City Council". This comes across as a fact. If GWRC tries to justify its behaviour by claiming it is really an opinion of the GWRC then it should have made that clear. But in any event it would be a disguised claim as to the facts expressed as opinion to reduce culpability on challenge. That kind of conduct is reprehensible under the other grounds of objection.

For example, the Commission reported that across the Wellington region, "almost 50% of existing water pipes and around 40% of wastewater pipes are in poor or very poor condition and the largely unbudgeted cost of replacing them is between \$1.7 billion and \$2.6 billion". This shortfall is proving beyond the reach of some councils including Hutt City, which the Auditor General has ranked among New Zealand's three poorest performing councils in terms of infrastructure spending (Auditor General, Local Government: Results of the 2012-2013 audits Part III).

CONCLUSION

45. If the ASA finds in favour of this complaint, HCC wants the GRWC to:

- (a) Publish a correction and apology in the Hutt News acknowledging that it has breached the ASA Codes as well as being deceptive;
- (b) Correct any misleading or deceptive statements; and
- (c) Pay a reasonable contribution to HCC costs of getting correction.

46. We realise you do not have authority to order such remedies. That does mean you are precluded from expressing your view on proper conduct by an advertiser at fault.

48. There is urgency to this complaint. The public consultation period closes on 2 March 2015.
Please let us know if you require any further information.

Yours faithfully
FRANKS OGILVIE

pp.

A handwritten signature in black ink, appearing to read 'S Franks', is positioned below the typed name.

Stephen Franks
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APPENDIX: INACCURACIES, FALSE AND MISLEADING ELEMENTS OF THE ADVERTISEMENT

Examples of inaccuracies and misleading statements in the article “Eight Local Boards proposed for Wellington region”

1. The article “Eight Local Boards proposed for Wellington region” deliberately misquotes the draft proposal. An example is:

“The Wellington Local Boards will have greater power than the Auckland Local Boards through the proposed allocations and decision making responsibilities,” the Commission wrote.

2. We have searched the Commission’s draft proposals (both volumes)⁶, the Commission’s Fact Sheet⁷, press release⁸ on 4 December and cannot find this quote. We assume the real quote is from page 6 (paragraph 1.28) of Volume 1 is: [our emphasis]

*The Commission **expects** the Wellington local boards will have greater power than Auckland local boards **with respect to non-regulatory functions**, for example, functions outside the consents and permits of the Resource Management Act 1991 or Building Act 2004. This is achieved through the **proposed allocations and delegations of decision-making responsibilities to the local boards**. Auckland Council has kept more functions within CCOs (council-controlled organisations) than Wellington, which limits the ability of local boards to influence decisions such as those involving local transport. Auckland Council also does not appoint councillors to local boards, but this is proposed for Wellington to improve communication and coordination.*

3. The removal of the word “expects” is deliberately deceptive. It changes the meaning from something like “may possibly” to “will definitely”. The removal of the words “with respect to non-regulatory functions” is also deceptive. It leaves out the fact local boards have limited powers and responsibilities.
4. A reader would assume this quote is directly taken from the draft proposal and there is no question that the proposed Wellington local boards will be more powerful than those in Auckland. The powers of local boards are set in s 48H of the LGA. The Commission is only able make the initial allocation of decision-making under Schedule 3, clause 42A. Although the Commission may allocate more responsibilities to the proposed Wellington local boards than the Auckland local boards have, this may change in the future. This is shown by how local boards in Auckland have collectively protested to the Mayor Len Brown over their growing lack of power and funding.⁹

⁶ Available at <http://www.lgc.govt.nz/the-reorganisation-process/reorganisation-current-applications/view/wellington-region-reorganisation/?step=34>

⁷ Available at <http://www.lgc.govt.nz/assets/Wellington-Reorganisation/Wellington-reorg-Factsheets.pdf>

⁸ Available at <http://www.lgc.govt.nz/commission-news-and-contact-information/media-statements-and-speeches/a-greater-wellington-council-proposed-for-region/>

⁹ Note, the recent letter from the Auckland Local Boards to Mayor Len Brown dated 14/10/14 stated: “The energy and momentum coming into the new Auckland Council demonstrated willingness on the part of Aucklanders to put aside their concerns and aim for a new beginning. We as local board chairs, some of whom have served since establishment in November 2010, have worked tirelessly to put into practice your aspirational words. In effect, your vision for inclusion, equity, and unity, has been our calling. However, as local board chairs we have witnessed cuts in funding for local priorities. Community based innovation has been stifled through policy that has in the most part ignored Local Board feedback over that of officer’s recommendations.

5. Another example of an inaccuracy is where the same article states: [our emphasis]

*As the cornerstone of local democratic arrangements the boards **will service the same communities as existing councils** and effectively **take over their local responsibilities**, including parks, events, libraries, town planning, rural roads, pavements and cycle paths.*

6. To start with, the proposed local boards will service different communities to the current councils. For example, the Porirua Tawa local boards would service communities who are currently separated under Porirua City Council and Wellington City Council.
7. Further, a reader would think from this statement that local boards would, in effect, take over from the current councils. This is wrong and misleading. Local responsibilities of the current councils include setting rates, resource consent processes, consulting on and making district plans. The local boards will not be able to set rates, will not participate in the resource consent processes and will only have limited participation in the planning processes. There are many differences between the responsibilities of local authorities and those of local boards.

Examples of inaccuracies and misleading statements in the article “Meeting Hutt Valley’s long term challenges”

8. There are several examples of inaccuracies in the item “Meeting Hutt Valley’s long term challenges”. For example, where it says:

The Hutt Valley faces challenges that are “regional in scale and impact and will require regional scale responses” according to the Local Government Commission.

9. This suggests the draft proposal is saying the HCC is facing large challenges which are “regional in scale”. In fact the Commission’s report states on page 47 (Schedule D) of Volume 1: [our emphasis]

The key advantages of the proposal are that it:

(a) recognises that the people of the whole Wellington Region share a strong community of interest as well as recognising the distinct more local communities of interest within the region

*(b) offers the greatest scope to address the significant future issues facing **the communities of Wellington** relating to:*

- the provision and maintenance of infrastructure networks*
- the consequences of demographic trends*
- the desire for more effective economic development*
- the need to manage the risks of natural hazards and respond effectively to hazard events*

The Mayoral proposal and the organisational response to your Worship’s proposal will result in significant reductions in local asset based services. We recommend a priority reset and request that the shared governance model be respected. This includes ensuring that decision making on the Long-term Plan 2015-2025 is informed by local board plan priorities, as envisaged by the Local Government (Auckland Council) Act 2009.

- *the ongoing pressures for more effective and sophisticated and environmental management.*

*These issues are **predominantly** regional in scale and impact and will require regional scale responses.*

10. There are no references to the challenges just being for HCC. The advertisement leaves out the word “predominantly”. Misquoting to give a different meaning is simply dishonest.

11. The statement above carries on: [our emphasis]

*These include “its ageing population, uneven patterns of growth **and expected decline**, exposure to natural hazards, and the longer term consequences of climate changes and sea level rise.*

12. The actual quote from the Commission’s draft proposal is on page 2 (paragraph 1.15) and 8 (paragraph 2.8) of Volume 1 or page 4 (paragraph 1.18) of Volume 2: [our emphasis]

*Wellington is our capital city. It matters to our country It is at the heart of decision-making about the future of our country and our international standing. It is often the face the country shows the world when New Zealand hosts high-profile international events. **Wellington faces** particular region-wide long-term challenges relating to:*

- *its ageing population*
- ***uneven patterns of growth in some areas and expected decline in others***
- *exposure to major earthquakes, tsunami, floods which could devastate the region*
- *the need to diversify the region’s economy to build competitiveness, resilience and performance*
- *the longer term consequences of climate change and sea level rise.*

13. The advertisement misquotes the draft proposal. It suggests the Commission has identified HCC as having all of these challenges, when in fact it is a list of general challenges for the Wellington region. Instead of saying “uneven patterns of growth in some areas and expected decline in others” it says “uneven patterns of growth and expected decline”. This has a completely different meaning. It suggests Hutt Valley is expected to be in decline. The intended meaning in the draft proposal is that some areas will grow and others will decline.

14. To be more accurate, the GWRC could have quoted from the draft proposal where it says at page 9 (paragraph 2.13) of Volume 1:

- *the particular challenges the Hutt Valley and Wairarapa communities face with forecast declines in their working-age populations, but substantial required investment in infrastructure*

15. The same article carries on: [our emphasis]

*After extensive analysis the Local Government Commission concluded that councils in their current form are **ill-equipped** to meet these challenges over the next 30 years.*

16. We do not know where the GWRC got this conclusion from. Volumes 1 and 2 of the draft proposal do not use the word “ill-equipped” or come to this conclusion. HCC plan to submit on the fact that there is very little problem definition in the draft proposal which justifies such a drastic change.

17. If the GWRC was to accurately reflect the Commission’s conclusion on the need for change it could have used this quote from page 5 (paragraph 1.26) of Volume 1:

On balance, the case for change in Wellington is not as compelling as it was in Auckland. Wellington does not face the growth pressures of Auckland. Nor does it have the level of dysfunction between current councils that was evident in Auckland prior to amalgamation. None of the current councils is in a situation of immediate crisis or at risk of short-term failure.

18. This suggests the Commission does not see a great need for urgent change, at least in the short term.

19. Another example of inaccuracies is where the article says:

As the Commission points out, all corners of the region could benefit from a more integrated approach to managing its economic and environmental assets – including through a more robust approach to spatial planning – in contrast to the status quo of nine councils overseeing 131 plans.

20. This is not a direct quote, but rather a summary of what the Commission has pointed out in the draft proposal. The problem is the draft proposal does not use these words. The draft proposal does not refer to “131 plans” at all. At page 15 of Volume 2 it states:

The proposed Greater Wellington Council also provides a significant opportunity to simplify and streamline the number of plans and planning documents that are required to govern Wellington. There are currently over 300 plans administered by the region’s councils.

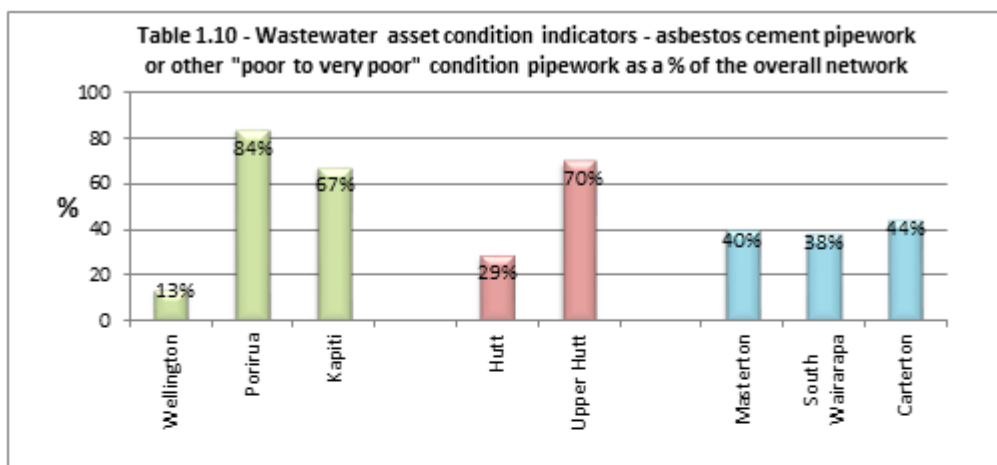
21. The inference from the advertisement is that having a more robust approach to spatial planning will reduce the need for so many plans. In fact, the Wellington Region Growth Strategy already contains a strong spatial planning dimension which is acknowledged by the Commission. Having spatial planning does not mean there is any need for less regional plans or district plans. A spatial plan has quite a different function than a regional or district plan under the LGA. The advertisement misleads the reader and distorts the truth.

22. An example of a misleading statement which is directly aimed at HCC is where the article states: [our emphasis]

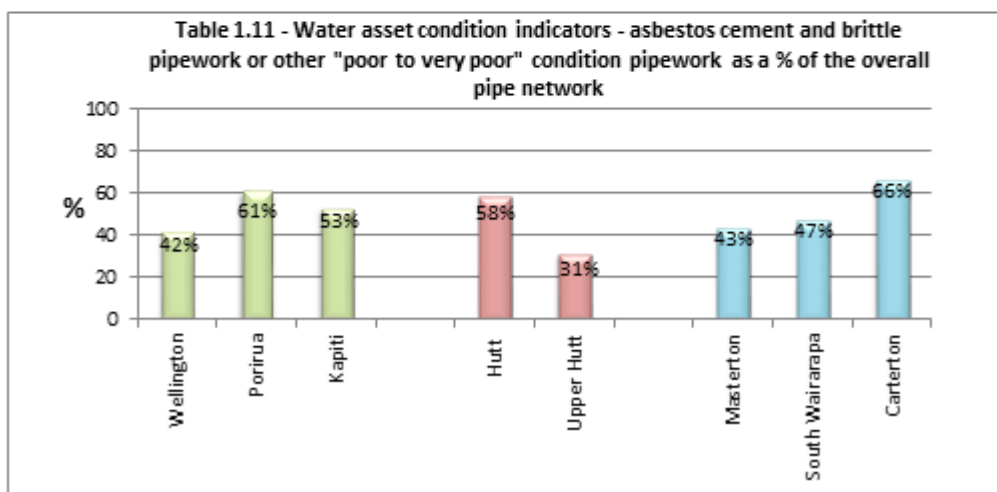
“After extensive analysis the Local Government Commission concluded that councils in their current form are ill-equipped to meet these challenges over the next 30 years.”

*“For example, the Commission reported that across the Wellington region, “almost 50% of existing water pipes and around 40% of wastewater pipes are in poor or very poor condition and the largely unbudgeted cost of replacing them is between \$1.7 billion and \$2.6 billion”. **This shortfall is proving beyond the reach of some councils including Hutt City, which the Auditor General has ranked among New Zealand’s three poorest performing councils in terms of infrastructure spending (Auditor General, Local Government: Results of the 2012-2013 audits Part III).***

23. The advertisement quotes directly from the Commission’s draft proposal but distorts the meaning. The quote is relevant to waste water and water pipes across the whole of the Wellington region and not just for HCC. The purportedly factual sentence after the quote is false. There is no basis in the draft proposal, or elsewhere, as far as HCC is aware, for the claim of a “shortfall” nor that replacement costs when due are “beyond the reach” of HCC. The use of wider statistics is misleading and deceives the reader into believing the HCC faces a situation more dire than it really is.
24. The inference of a looming infrastructure crisis in the Hutt is unsupported. According to HCC over 80 per cent of all storm water, waste water and water supply pipes are in ‘good’ or ‘very good’ condition, with the rest scheduled for fixing and replacement.
25. The quotes from the draft proposal on the pipes derives from Tables 1.10 and 1.11 of the MWH report “Survey – Asset Management Activities Wellington Region Local Authorities (7 November 2013)”¹⁰. Table 1.10 (below) shows HCC has the second lowest percentage of wastewater assets which are in “poor to very poor” condition. The HCC sits in the middle of Table 1.11 (below).



Note: South Wairarapa measures asbestos pipe only. Other condition ratings are not available.



Note: South Wairarapa measures asbestos pipe only. Other condition ratings are not available.

¹⁰ Available at <http://www.lgc.govt.nz/the-reorganisation-process/reorganisation-current-applications/view/wellington-region-reorganisation/?step=34>

26. The HCC has an annual programme and budget to deal with the scheduled replacements and are well able to manage that. According to HCC:

Engineers regularly check the condition of the pipe networks, grading them on a scale of 1 to 5, where 1 is excellent and 4 and 5 need replacing.

Grade 4 and 5 pipes are replaced, or upgraded to ensure uninterrupted service to ratepayers and residents.

Currently 68 percent of Hutt City's wastewater pipes (by length) are graded 1 to 3, which means that around one-third are in category 4 and 5 and need replacing. Hutt City is spending just over \$3 million annually on replacing category 4 and 5, and some category 3 pipes. That level of spend will continue for another 10 years, or so.

In 20 years' time, the annual spend on waste water pipes will drop below \$2 million.

90 percent of storm water pipes are category 3 or better. Over 80 percent are category 1 and 2, and storm water pipes often outlast their expected lives. This means very low levels of storm water pipe renewal is likely over the next 35 years.

The situation with fresh water supply pipes is intermediate between waste water and storm water. Nearly 75 percent of the pipes are rated grade 3 or better, and the majority are grade 1 and 2. Hutt City is currently spending \$2 million annually in this area. After 2030 this steps up to just under \$3 million before dropping away from about 2050.

27. The quoted words on the cost of replacing waste water and water pipes being between \$1.7 billion and \$2.6 billion are simply wrong. The Commission has compared the total replacements they say are needed within the next 30 years with the total budget provided for only 10 years when it should have been for 30 years. Even a simple extrapolation of the ten year budgets across the 30 year replacement period reveals there is little cause for concern, at least for HCC.
28. The statement "The shortfall is proving beyond the reach of some councils including Hutt City..." is a false, misleading and deceptive statement. Firstly, there is absolutely no shortfall in Hutt City Council's budget provision for infrastructure replacement. This can be confirmed by the Council's auditors and professional asset managers. Secondly, Hutt City Council has substantial funding capacity that is far more than is adequate to accommodate any unexpected additional infrastructure related costs. The extent of the Council's surplus funding capacity can be confirmed by Council's credit rating agency.
29. The fact that this is a false statement by GWRC would have been readily apparent to the experienced senior managers within their organisation.
30. The GWRC may claim that it is entitled to use and republish Local Government Commission material without responsibility for its accuracy. That could be the case ordinarily, but in this case the Commission's error is obvious. GWRC has claimed senior responsibility for water matters in the region. It has many experts and planners. It purports to know this area well. Yet it has retailed an elementary falsehood, obvious to HCC on casual review. GWRC must know HCC has the replacement of aged waste water and water pipes in hand. HCC plans to raise the error with the Commission. It is among a long list of evidences of incompetence in the Commission's draft proposal. But HCC never expected GWRC to make cynical propaganda capital out of the obvious error.

31. The advertisement carries on to suggest the Auditor General has ranked HCC among New Zealand's three poorest performing councils in terms of infrastructure spending in their report "Local government: Results of the 2012/2013 audits"¹¹.
32. This is also misleading and deceptive. The statistics in the Auditor-General's report deal with the reinvestment needed to improve asset capability. Hutt City assets are depreciating properly in accounting terms. But that does not mean capital expenditure must match depreciation for age since construction. Prudent and non-wasteful asset management schedules replacement according to service conditions which is exactly what HCC does.
33. The Auditor General has not ranked Hutt City Council in that way. The Council has confirmed this directly with their auditors. The Council is ranked in the lower three on a table produced by the Auditor General, but there is no indication whatsoever that this means the Council is a poor performing Council. In contrast, it could be an indication of a very effective infrastructure management programme. The primary reason for the position of Council on the table in question is the age profile of the Council's assets and the continued good performance of the Council's pipe network.
34. Again, the fact that this is a false statement by GWRC would have been readily apparent to the experienced senior managers within their organisation.
35. The report does not rank councils, use the words "poorest performing", or suggest in any way HCC is one of the poorest performing councils. Instead it says:¹²

3.77 Three local authorities consistently had capital expenditure to depreciation of less than 100%:

- *Hutt City Council ranged from 71% to 90% from 2007/08 to 2012/13;*
- *Waimate District Council ranged from 63% to 98% from 2006/07 to 2012/13; and*
- *Kawerau District Council continued to show the least capital investment, with a range of 44% to 72% in the last seven years.*

3.78 A consistently low percentage could call into question the local authority's ability to maintain assets in the long term. Kawerau District Council put its low reinvestment down to the relative newness of the town. However, the Council needs to carefully consider whether capital expenditure is enough to maintain desired levels of service in the long term and whether the relative age of the town remains a valid argument. Capital expenditure that is too low, even if it is in line with long-term plan forecasts, could lead to a sizeable need for renewal-related capital expenditure beyond the period of the long-term plan forecasts.

36. The caution is that having a low percentage in capital expenditure to depreciation "could call into question the local authority's ability to maintain assets in the long term". Infrastructure spending is not necessarily a determiner of poor performance nor is it stated to be so in the Auditor General's report.
37. The Mayor of HCC, Ray Wallace, has responded to this criticism:

¹¹ Available at <http://www.oag.govt.nz/2014/local-govt/docs/local-govt.pdf>

¹² Office of the Auditor-General "Local government: Results of the 2012/2013 audits" available at <http://www.oag.govt.nz/2014/local-govt/docs/local-govt.pdf>

“I am totally confident that we have a good understanding of the assets we own, their current condition, the levels of service the assets are required to provide, and what needs to be done to properly manage and maintain them both within the 20-year plan horizon and out to the end of the current century.”

“I refute the suggestion that we should always spend our depreciation. Sensible people paint their house every 10 years as it needs it, with touch-ups in between - you don’t paint one-tenth of your house every year, that’s just nonsense”