



Waterfront Watch Inc
PO Box 19045
Courtenay Place
Wellington 6149
Email: info@waterfrontwatch.org.nz
Web: www.waterfrontwatch.org.nz

30 September 2016

Resource consent application: Redevelopment of Frank Kitts Park

Location 29 Jervois Quay, Wellington (Frank Kitts Park)
Service Request Number 358352
Name of Applicant Wellington City Council
Applicant's Address for Service C/- Urban Perspectives Ltd, PO Box 9042, Wellington
Email: alistair@urbanp.co.nz

- **Waterfront Watch Inc opposes the application.**
- **We ask that the application be Declined.**
- **We wish to be heard in relation to this submission.**

Contact details:

Name: Patrick McCombs
Postal: PO Box 19045, Wellington 6149
Phone: 04 385 1415; 021 126 9786
Email: info@waterfrontwatch.org.nz

1. Introduction:

My name is Dr Patrick McCombs.

I have personal experience and expertise in coastal planning and management, port development and harbour-side revitalization, and in public consultation and participation.

I am the President of Waterfront Watch Inc.

I am appearing as the Advocate for Waterfront Watch and will be presenting our submission. With the Commissioners' permission, I propose to call Committee members and Past Presidents as witnesses to present the case for Waterfront Watch.

Qualification and Experience

I hold a science PhD in factors controlling the growth of aquatic plants. From 1972 I worked for 15 years in the Public Service on the development and implementation of coastal, foreshore and seabed policy, planning and management. I authored the 1980 publication "Who Cares for the Coast" which summarised the statutory, administrative and policy framework at that time.

My earliest involvement with Wellington Harbour was in 1975 when I led the evaluation of an environmental impact report on the proposed expansion of the container terminal.

I have been a member of the Editorial Board of the international Coastal Zone Management Journal and have visited harbour edge revitalisation projects in several cities.

I have represented the Harbours & Foreshores Section of the Ministry of Transport as a voting member of the Water Resources Council, the Wellington Regional Planning Authority and the Wellington Harbour Maritime Planning Authority.

I have appeared before the Environment Court to present Expert evidence on waterfront planning issues.

2. **Submission:**

The opposition of Waterfront Watch primarily relates to:

- a) the loss of amenity that would result from the removal of the amphitheatre,
- b) the loss of amenity that would arise from the location of the proposed Chinese Garden within Frank Kitts Park, and
- c) the proposed expenditure which would be funded by building developments elsewhere on the waterfront.

In our view, the major omission from the Assessment of Environmental Effects (AEE) is that it failed to identify the amenity value of the park in its existing form, or the affection with which it is held by many people. It therefore failed to assess the impact of the loss of these amenities.

Waterfront Watch will not be presenting any expert evidence, at this hearing, on the amenity value of the existing park and in particular the amphitheatre which provides its primary form. When there is a need to describe and analyse a proposed development that might be difficult for lay people to visualise, there is a role for an expert landscape architect or urban planner to interpret and describe an abstract proposal. In this situation, however, the existing amenities are there for people, not only to see, but to use, relate to, value and enjoy. Instead of paying a professional to put our views into technical terms, I will ask members of our Executive Committee to describe the value that they see in the existing amenity of Frank Kitts Park and what would be lost by the proposed redevelopment.

They will also put before you the results of the on-line survey of public views that Waterfront Watch has made available, and a petition that has been open on the **Change.org** website. Of the more than 160 responses so far received by the survey (40% of whom identified themselves as not “members or supporters of Waterfront Watch”) 85% opposed locating the Chinese Garden in Frank Kitts Park with 15% supporting the proposal, and 84% opposed the removal of the amphitheatre.

The petition asking for the project to be abandoned has received over 1800 signatures to date. The petition calls on:

“Mayor Wade-Brown, Andy Foster, and other Councillors to abandon this project, put ratepayers money to better uses, and properly consult with Wellingtonians before making any commitments to redevelop Frank Kitts Park in the future”.

3. Background

3.1 The Wellington Chinese Garden Society Inc

The Wellington Chinese Association Inc (previously the Wellington branch of the New Zealand Chinese Association) has long promoted the creation of a Chinese Garden in Wellington. In 2003 the Association was a founding member of the Wellington Chinese Garden Society Inc.

The first of the objects for which the Chinese Garden Society was established is:

“To enter into a contract with the Wellington City Corporation to formalize the arrangements and commitment between the parties for the development of a Chinese Garden in the Chaffers Park area”.

The Waterfront Framework adopted in 2001 identified Chaffers Park (later renamed Waitangi Park) as a good location for a Chinese Garden and specifically mentioned the transition area east of Te Papa:

“The Leadership Group was asked to consider sites on and off the waterfront for a Chinese Garden that would be gifted by the Wellington Chinese community. The Group believes the Chaffers area is a good location for a Chinese Garden, and would fit with a recreation emphasis. No decision has been made about where on Chaffers this might go, although the Group notes that the Chinese community has indicated the area to the east of Te Papa is its preferred location.”(page 37)

On 19 December 2009 Wellington Waterfront Limited (WWL) recommended that the Council approve the redevelopment of Frank Kitts Park subject to finance, etc. The paper set out that the Wellington Chinese Garden Society (WCHS) had entered into a Memorandum of Understanding (MOU) with the Council regarding a garden to be sited in the Waitangi Park area, but said that the selection of the UN Studio design for a building in the Transition area, “likely to be a medium-to-long term development project”, raised issues about locating the Chinese Garden in this area. The UN Studio building is now no longer under consideration.

The report said that the Chinese Garden Society requested WWL to explore alternative suitable sites on the waterfront for the Chinese garden. WWL “reviewed various waterfront park areas and determined that Frank Kitts Park was a suitable location for a Chinese garden”. The report said, “As a consequence of the level of support WWL received from the WCGS for a Frank Kitts Park location, a Chinese Garden was included in the Frank Kitts Park design brief. The WCGS has been fully consulted throughout the entire competition process and fully endorses the selection of the preferred scheme”.

As set out above the original Objects of the Society, as applied in 2007, expressly nominated Chaffers Park (now Waitangi Park) as the location sought by Society Members.

A Special Meeting of the Society was held on 26 April 2016 to amend the Objectives in the rules in order to allow the Society to support of the Frank Kitts location for the Garden. The minutes of that meeting do not confirm that a quorum was present; Rule 4(c) sets the quorum for a Special Meeting as “equal to the number of members on the Committee at the time plus an additional ten members”. The Society’s latest annual return to the Charities Service identifies

11 current Committee members. The minutes record the names of 17 people as present, less than the quorum of 21 indicated by the Rules.

Any submission made on behalf of the Society to this hearing in support of the Council's application for Resource Consent would need to have been properly approved by an elected Executive Committee, and be in accordance with the Society's Rules and Objectives.

3.2 Relevant Provisions of the Waterfront Framework

In 2006 the Council consulted on a draft design brief before it sought competitive design proposals for the redevelopment of the park.

The subsequent report prepared for the meeting of the Council's Waterfront Development Committee meeting in December 2006 referred to the Framework in a way which allowed for Councillors to infer that the draft brief would give effect to what was proposed in the Framework document (page 37):

"The intention to redesign the park is part of the Waterfront Framework, which was adopted by the Council in 2001 to guide the development of the waterfront.

"Key aspects of the proposed design brief include:

- creating a Chinese Garden
- improving connections between the waterfront and the city
- improving the connection between the park and the water itself
- improving the connection between the park and the southern end of the TSB Bank Arena (formerly the Queen's Wharf Events Centre)."

The Framework had made no reference to a Chinese Garden associated with Frank Kitts Park.

The section of the Framework relating to Frank Kitts Park (page 35) said in full:

"This is a large green park and a centre for outdoor activities both on and off the water. There is a concern that the park faces the city and does not open out to the water's edge. However with the exception of the need for improvements around both the quay edge and the water edge, and the end of the Events Centre, work in this area is not seen as a priority.

"The lagoon end of the park, incorporating the car park structure, is proposed as an alternative site for the city's waka shelter.

"Safety: Urgent thought should be given to making the Jervois Quay edge of the park safer, especially for children using the playground, without compromising safety within the park itself by obscuring natural surveillance from the street and buildings on the city side. Development above the parking building on Jervois Quay opposite the park would potentially improve natural surveillance.

"Pedestrian access: Better and easier pedestrian access is needed to the park from across the road. One option to be explored is a bridge from the park to the parking building above the petrol station on Jervois Quay.

"Parking and vehicle access: Parking and drop-off zones are important considerations to allow access for a wide range of people. As part of reconfiguring the edge along the quays, more car parking and/or drop-off zones should be considered – provided they do not compromise traffic movement and safety.

"Promenade: There is an opportunity to do more with the water's edge, both to make it possible for people to actually get to the water from the park and to

enhance activities on the water by creating an “intermediate harbour”. This could be by means of a breakwater, or pontoons or other alternatives.

“Open space: While **no major work is proposed for the main part of the park**, it is recognised as major green open space. [Emphasis added]

“It provides visual relief from the predominantly hard surfaces of the adjacent central city.”

In summary, the Waterfront Framework makes no proposal for the removal of the amphitheatre from Frank Kitts Park. Rather, it specifically states that no major work is proposed for the main part of Frank Kitts Park. It proposed that the Chinese Garden be located in Waitangi Park.

Despite this, the Conclusion of the report presented to the Council in December 2007 read **“Frank Kitts Park is in need of redevelopment in order to address and implement the improvements recommended in the Framework”**.

Subsequently, the Chinese Garden together with the removal of the amphitheatre were the main elements of the winning design for the redevelopment of the park.

Three improvement objectives that were identified in the Waterfront Framework had been carried into in the design brief:

- Improving access from the park: - to the CBD,
 - to the water, and
 - to the Events Centre

However, these three objectives were not included in the selected design and have fallen by the wayside. Waterfront Watch would have liked to see action taken to implement these three proposals to improve the links between the Park and its surroundings. We are disappointed that the vision for Frank Kitts Park recorded in the Framework, including the desirable improvements that were identified, has been ignored.

We are not objecting to catching up with the maintenance of the park; just to the loss of the amphitheatre and of the City Link main pathway, and the exclusion of the public at night from currently open space which would result from the installation of the Chinese Garden.

4. Council Consultation on the Proposal

In 2006 the Council consulted on the design brief for redeveloping Frank Kitts Park and received 69 submissions: 22 “supported the design brief completely”, another 20 “responded positively” and 15 submissions “were against the design brief, largely because they felt that Frank Kitts Park worked well in its current form, and that Waitangi Park was a better location for the Chinese Garden”. Members of the Chinese Garden Association supported the proposal, explaining that constructing a Chinese Garden at Frank Kitts Park would occur sooner than if it were constructed at Waitangi Park.

No changes were made to the brief for the design competition as a result of the consultation exercise despite the significant number who objected to moving the Chinese Garden from Waitangi Park to Frank Kitts Park.

5. **Recent Public Attitudes to the Proposal**

The advertising of the Resource Consent application for the redevelopment of Frank Kitts Park appears to have created a much greater level of public awareness than had been achieved during the Council's various attempts at consultation over the previous 10 years, with comments and letters to the Editor suggesting that the project had been "sprung on an unsuspecting public".

The great preponderance of the recent comments in the media has been negative, in contrast to the Council's earlier assessment of the public's attitude. This suggests that the Council's consultation efforts were faulted and misled the Council as to the level of affection that the Wellington public has for the existing park.

Also, there has been a significant change in the views of the public over the decade since the Council adopted its intention to rebuild Frank Kitts Park. The park was laid out in 1989 and by 2001, when the Council decided to remodel it, the surrounding Waterfront was still being constructed. In the 15 years since then the park has matured and mellowed into an important part of Wellington's cityscape. For many people it has been there for their whole life; it is as instantly recognisable as part of Wellington as the bucket fountain in Cuba Street.

The Assessment of Environmental Effects that accompanied the application fully reported the efforts that the Council had made to consult on its proposal, and presented the results as reasons why the redevelopment plan should go ahead.

Waterfront Watch submits that the Council's earlier consultation process was inadequate as measured by the number and diversity of the submissions received. The largest part of the feedback was obtained by asking people walking on the promenade during February 2015 to comment on illustrations of the proposed design. No distinction was made between, on the one hand, these spontaneous responses from people who may never have given any thought to the history, or the future, of the Waterfront and, on the other hand, the views of people, such as members of Waterfront Watch, who had over time developed considered views based on a full understanding of the context of waterfront developments.

Further, the location of the Council's consultation booth on the promenade, rather than in the park itself, would have skewed the results. How many of those who provided feedback on the proposed design were merely promenade walkers, rather than regular users of Frank Kitts Park itself? On the other hand, how many of the office workers who cross Jervois Quay to use the park each lunch hour – and who were the most important people to consult – were unaware that the consultation booth was even there, as it could not be seen from their perspective?

We sometimes see comments, including in our survey of the public's views on this proposal, that the Council "should just get on with it" and stop consulting with the public. Commonly, this view is put forward by people who have faith that the Council's plans will always be the best for the city. Most people feel like this and would like to support Council proposals, so it is not surprising that,

when approached on the Promenade, many of those who were shown artist's impressions of the redevelopment proposal responded positively.

Like most Wellingtonians, Waterfront Watch members are proud of the city's Waterfront that is so highly appreciated by the public and visitors alike. But we are very much aware that most of the features that people so appreciate are here on the Waterfront only because Waterfront Watch and other groups, over more than 25 years, have prevented the Council from implementing many of their development plans. These features include:

- Waitangi Park – as public space rather than townhouses, and with 5 fewer buildings than were included in the winning park design
- Open views across the Royal Port Nicholson boat harbour
- The Circa Theatre building not replaced by an office tower block
- The Brewery and Odlin's buildings retained
- The Free Ambulance building on its historic site
- The lagoon not filled in
- The rowing club buildings saved and relocated
- No buildings along the Frank Kitts Park street frontage
- No Hilton hotel on Queens Wharf
- Restricted traffic access to Queens Wharf along the promenade past Shed 6
- Queens Wharf plaza retained at its original size
- Kumutoto Plaza to be expanded to include the previous building site 8, and
- The building now underway on Site 10 will be two storeys lower than one that the Council approved 2 years ago, and with a cut-away in the ground floor giving views of the old Eastbourne Ferry terminal

Waterfront Watch welcomes and supports many aspects of the proposed work on Frank Kitts Park, which would not seem to require resource consent. However, we believe that the proposed removal of the amphitheatre and the location of a Chinese Garden in the Park should be added to this list of saved amenities and abandoned plans.

6. Motivation of Council's Desire for Change

In his evidence, Allan Brown, the Council's Waterfront Operations Manager, suggests that in its existing form, Frank Kitts Park is not meeting the community's needs [para 13, 14]. He said:

"The division of the Park into small areas (eg amphitheatre, upper Frank Kitts Park, sloped walkways) and positioning of trees in the grassed areas so there is no large, open flat space limits the use of the Park for the larger events that the Council wishes to accommodate on the Park. This subdividing of space, precluding large marquees, and requiring multiple small marquees, increases the cost of establishing event accommodation, and therefore is a damper on having some community events. This lack of a large flat lawn has negatively impacted Wellington City's iconic events such as the Dragon Boat Festival, Cancer Society Relay for Life, and the Home Grown Musical festival.

"While the Park accommodates boot camps, slack liners, and parkour, it has not regularly been the selected site for 'kicking the ball around'. ... "

"Parkour", identified by Mr Brown as an activity currently accommodated in Frank Kitts Park, is typical of activities that make use of the special amenity values of the existing park and which would be lost if the amphitheatre was

bulldozed and replaced by a square, flat lawn. It refers to a Council children's activity programme described as:

“Using natural surroundings, parkour gets you from A-to-B in the most efficient way possible by running, jumping, vaulting and climbing. Classes are fun and challenging, and help kids develop and improve balance, strength and confidence with a strong focus on safety.”

Mr Brown is right to say that Frank Kitts Park is not preferred as place “for kicking the ball around” if he is referring to older people wishing to play Forceback or Touch rugby. In its present form, the park, however, does provide a safe place for smaller children to run around after a ball without the risk of injury from the big kids. The introduction of a square, flat Harbour Lawn would displace little children who now climb on the park structures, roll down the grass slopes, and play hide and seek around the pathways, in favour of older youths who are already catered for on Waitangi Park. It would destroy the special amenity value of the existing Frank Kitts Park.

I will note that the Framework [page 30] promises that “Open spaces will range from small, intimate, areas to large, more open areas”. The existing amphitheatre at Frank Kitts Park provides spaces that are small and intimate, and unique on the Waterfront. If those spaces were removed as proposed, all of Waterfront grass spaces would be open and flat, suited to ball games but with no variation except for the minor sculpting that borders the Waitangi Park wetlands.

Mr Brown refers [para 13] to “larger events that the Council wishes to accommodate on the Park” and named several events, such as the Run for Life and Dragon Boat festivals, which have been successfully held over many years in the existing iconic Park.

Mr Toby Acheson from the City Arts & Events Team, in his Evidence, has added to the points made by Mr Brown. He has listed many of the events that are held at Frank Kitts Park and named some that have out grown the space and been moved to other sites such as Waitangi Park. He sees benefit in replacing the amphitheatre with a large, flat lawn that would enable use of the park for larger events, and said “central Wellington is acutely short of useable, flat, open spaces”.

This is a view that Waterfront Watch has long held; we have advocated to the Council over several decades the need to protect and expand useable, public open space, especially on the waterfront, to meet growing demands especially from a burgeoning inner city population. Waitangi Park is only open space because concerned citizens protested against the Council's development plans, and Waterfront Watch argued at the resource consent hearing for the level green lawn to be almost double its current size, to reduce the expensive wetland area and to include the so-called “Transition” zone.

Having seen now, the Council's recognition of the shortage of green, useable, open space, we are even more aware of the lost opportunity in 2015, when Waterfront Watch was before the Environment Court opposing the development of Site 10 at Kumutoto and advocating for the area to be saved for public use. At that Hearing, Expert evidence given for the Council said that there was sufficient open space nearby to meet the city's needs.

Mr Acheson's evidence does not refer to any investigations carried out to identify other opportunities for meeting his need. They should have been evaluated and presented to this Hearing.

However, Waterfront Watch disagrees strongly with the proposition that the best way to provide more open level space is by demolishing the amphitheatre and destroying the other, unique types of spaces that it provides.

If the Council has identified a need to accommodate more large marquees than can fit on the lawn at Waitangi Park, we suggest that they make use of the "Transition" area within Waitangi Park, between the Graving Dock and Te Papa, that is currently sealed and used for at-grade parking. Apart from its use for the Home Grown Music festival and the weekly market, this area is underutilised. If the Council believes this is impractical to the point where it justifies the removal of the amphitheatre, this Hearing should be presented with the Evidence that has led the Council to that conclusion.

7. Effects of the Proposal

I appreciate that a Resource Consent hearing is concerned with the matters laid down in the Act, and specifically the criteria set out in section 104. It is not a referendum, nor a popularity contest.

Waterfront Watch submits, however, that when considering the loss of amenity that would be experienced by the removal of the amphitheatre, or by removing the existing City Link access way to the Promenade, the weight of the public's feelings about the value that they put on those amenities must be considered alongside the opinions of witnesses expert in landscape design who may be looking at the proposal through a different lens.

On this basis, Waterfront Watch will not be presenting expert evidence to support the case for retaining the Park in its present form: rather we will be relying on the views of ordinary folks who, themselves, value the amenity of the Park.

Section 104 of the Act sets out the matters relevant to decisions on this application, and clause 6 of Schedule 4 lists the matters to be covered in the Assessment of Environmental Effects.

The view of Waterfront Watch departs from that of the applicant at clause 6.1(a) of Schedule 4. Para 1.4.1 of the AEE sets out the requirement of the clause, viz:

"6.1(a) if it is likely that the activity will result in any significant adverse effects on the environment, a description of any possible alternative locations or methods for undertaking the activity" [must be included].

But the Assessment then states :

"The proposed modification to the existing open space will not result in any significant adverse environmental effects. Accordingly, it is not necessary to give consideration to alternative locations (it is not proposed to 'relocate' Frank Kitts Park) or methods."

The removal of the amphitheatre, and of the City Link thoroughfare connecting Willeston Street to the Promenade, would represent a loss of significant

environmental amenities greatly valued by the Wellington community, and those adverse effects would be more than minor.

Because the adverse effects of the proposal would be significant, in terms of what is proposed to be taken away rather than what would be constructed, alternative locations and methods need to be examined.

The applicant has not recognised the amenity value that the Wellington public place on the amphitheatre element of Frank Kitts Park. Because they have made no attempt to measure the use made of the sheltered lawn and surrounding seating the Council has been unable to assess the significance of the proposed environmental change and loss of that amenity.

Mrs Pauline Swann, former President of Waterfront Watch, will give evidence as to the popularity and value of the amphitheatre amenity.

Similarly, the applicant has made no attempt to measure or assess the importance of the City Link thoroughfare that would be lost to the proposed Chinese Garden. We understand from the Council that no counts of pedestrians using the City Link have been undertaken to assess its importance for walkers accessing the promenade from the central city.

The applicant is wrong in its view that replacing the City Link pedestrian spine with the Chinese Garden would have no significant effects.

Lindsay Shelton, founding President of Waterfront Watch and member of the Team that produced the Waterfront Framework, will give evidence providing context for the references to Frank Kitts Park in the Framework on which the current application has put significant importance.

Alana Bowman, also a member of the executive committee will set out the results from an on-line public survey and analyse the feedback on which the Council has relied in developing its plan, and the biased consultation processes by the Council.

8. The Chinese Garden

First, I need to make it totally clear that Waterfront Watch and our members support, and would welcome, a formal Chinese Garden in Wellington. Our concern is only with the location of the garden.

In coming to their view as to the suitability of Frank Kitts Park as the location for a Chinese Garden, many of our committee members and other Waterfront Watch members were able to draw on personal experience visiting formal Chinese gardens in Dunedin and cities around the world. We have reviewed the evidence of Mr Duncan Campbell.

Waterfront Watch prefers that Wellington's Chinese Garden is built either in the Botanic Garden (where there are other themed gardens), or attached to the proposed new Chinese Embassy in Rugby Street where it would be appropriately placed between Government House and Pukeahu Park. Both of these suggestions were strongly endorsed in the on-line survey of public opinion on these issues.

In his evidence Mr Campbell has commented on these options [53]:

- In relation to the Botanic Gardens he said “As I understand it, the early suggestion that the Chinese Garden be sited in the Botanical Garden was rejected by those responsible for the guardianship of the Botanical Garden”. No evidence has been presented to support Mr Campbell’s understanding of the Council’s position, nor to provide any reasoning.
- In relation to the proposition that a suitable location for the garden would be within the grounds of the proposed Chinese Embassy, Mr Campbell has said: “The suggestion that Wellington’s Chinese Garden be located within the confines of the new Embassy of the People’s Republic of China ... is entirely inappropriate from a variety of different perspectives.” Earlier [48] he had referred to a Chinese State sponsored “export of the Classical Chinese garden” programme that has been in place since 1981. We also understand that, in addition of Wellington’s Sister Cities in China, the Government of China has given its support to the establishment of a Chinese Garden in Wellington. In his evidence Mr Campbell provided no evidence or reasons to support his dismissal of the suggestion that the garden be established as part of the new Embassy.

Waterfront Watch has sought clarification from the Chinese Embassy in Wellington as to its views on the siting of the garden.

A preferred location, if the garden had to be on the waterfront, would be that recommended in the Waterfront Framework in 2001, East of Te Papa, on the site already consulted on by the Council and approved as part the Waitangi Park design. The siting of the Garden in this “Transition” area of Waitangi Park could be integrated with the provision of a large open area as sought by the Council to accommodate event marquees, again avoiding the loss of amenity associated with the location proposed in the application.

Waterfront Watch does not accept that the evidence provided by the applicant has adequately addressed the question of alternative sites for the proposed Chinese garden. Because locating the garden in Frank Kitts Park would have more than minor negative effects on the existing public open space, views and pedestrian amenities of the Park, consideration of alternatives is required by clause 6.1(a) of Schedule 4 of the Act.

9. The “Pedestrian’s First” Principle on the Waterfront

The Framework includes the agreed Principle that “pedestrians come first” [p32, 34]. This Principle must be applied to the retention of the City Link pathway aligned with Willeston Street linking the CBD to the Promenade. The path must not be unnecessarily sacrificed as the location of a Chinese Garden when other sites are available.

10. Excluding Public Access at Night

Waterfront Watch is opposed to creating a situation where public access is denied to more of the waterfront open space. The Framework includes the Principle [p19] that “The waterfront is predominantly a public area”. It notes that “Ground floors of buildings will be predominantly accessible to the public” (accepting that they will be closed outside business hours): there is no suggestion in the Framework, which has been extensively consulted on and agreed, that any areas other than building sites would not be publically accessible.

Waterfront Watch does not dispute Mr Stoks’ view [54] that “the [proposed] garden does in fact need to be controlled - and locked”. It is for that reason that we conclude that the garden should be located on another site where there is no established presumption that the public should have unrestricted access.

11. Waterfront Expenditure Funded by Buildings

Waterfront Watch is opposed to the expenditure of some \$5.5m by the Council on the proposed redevelopment of Frank Kitts Park.

We appreciate that an issue such as the wise expenditure of ratepayers’ money is not a question that can normally be considered under the Resource Management Act. However this proposed expenditure would be budgeted by the Council from the Waterfront Development Fund which is sourced from developments within the waterfront, which are largely multi-storey commercial buildings.

In August 2015 Waterfront Watch appeared before the Environment Court to oppose consents sought by the Council for a large building on Site 10 at Kumutoto and the landscaping of the surrounding open space [ENV-2009-WGL-02224, ENV-2009-WGL-02225]. The Court was told by the Council, and accepted, that the development of the public space was intrinsically linked to the approval of the commercial building as the proceeds were needed to fund the work, and it subsequently connected the two projects in its decision. The Court, understandably, had not been interested in the Submission from Waterfront Watch that the Council could fund the Kumutoto landscaping without developing the building, if it used the money in the Fund that it had earmarked for the Frank Kitts Park upgrade.

The Council’s policy of promoting commercial development on the Waterfront to fund the public space expenditure on Frank Kitts Park was set out in the Waterfront Development Plan in 2007.

The Council is soon to consider options for the development of another building, at Kumutoto on Site 9. A decision by this Hearing to decline permission for the redevelopment of Frank Kitts Park would have a direct bearing on plans for future developments that will require consent under the RMA, including any building on Site 9.

Because expenditure on the public spaces on the Wellington waterfront is directly linked to commercial developments on the waterfront, I disagree with Mr Aburn’s opinion [128] that the expenditure of ratepayers’ funds is a “non-RMA issue” in this particular case.

12. Retention of Amphitheatre

If Commissioners conclude that they do not want to decline the proposed Chinese garden, Waterfront Watch would propose as an option that the Chinese Garden could co-exist with the retention of the amphitheatre. We put this forward as an option without, in any way, resiling from our wish to see the Chinese Garden located somewhere else.

The Garden is designed to sit squarely on the existing pathway. The planters that currently comprise the interface between the amphitheatre and the path could readily be replaced, with little change to the design, by the proposed Garden wall.

The four components of the proposed redevelopment – the Playground, Harbour Lawn, Chinese Garden and City Lawn – should be considered as independent of each other.

13. Response to Planner's Report

In an un-numbered section of the Planner's report (Page 36, between paragraphs 95 and 96) Claire Moore has identified a list of effects that she considers to be Positive Effects.

I will comment on each of the Planner's observations in turn because this will serve as a useful summary of the submissions made to this Hearing on behalf of Waterfront Watch:

1. *"Greater visual and physical access between the harbour and the city through the removal of the amphitheatre and promenade wall"*

- The proposal would reduce, rather than enhance, the physical access between the promenade and the city through the removal of the major City Link walkway that aligns with Willeston Street.
- The proposed alternative paths are much less direct and inviting. At night, the existing pathway is clearly visible for the Quay and from the Promenade whereas both new routes would be much less open to surveillance - either via the ramp, upper lawn and steps down to the lagoon, or doglegged to the left around the edge of the Harbour Lawn and past the vegetation screening the Chinese Garden's retaining wall. The Lighting Levels Strategy Plan shows that during the night the path will be illuminated at half the level of the Promenade (7 v's 14 Lux). The dogleg route will be crushed limestone, rather than sealed, so will be problematic in rain.
- While Waterfront Watch has, on many occasions, argued for the retention or enhancement of views across the harbour from the Quays, these have related to broad vistas and distant views and not specifically to the ability to see the water. Unlike multi-storey buildings on the waterfront, the low profile of the amphitheatre allows views of the backdrop hills and sky, so that it does not create a closed-in feeling that needs to be opened up. The application illustrations show that the removal of the amphitheatre and promenade wall will create no greater views from the Quay, with the water still not visible and less sky than now.

- The Waterfront Framework said “The promenade at the water’s edge needs to be enhanced to allow people of all abilities to access the water at various points” (page 14) and specifically identified, in relation to Frank Kitts Park, “an opportunity to do more with the water’s edge, ... to make it possible for people to actually get to the water from the park” (page 35). That the proposal does not address this issue is a design omission on which the Planner has not commented.
- 2. *“Increased diversity of open spaces on the waterfront”***
- Far from increasing the diversity of open spaces on the waterfront, the proposal seeks to remove the most identifiable and distinct space on the entire waterfront.
 - The proposed “Harbour Lawn” is essentially featureless, and could not be said to be increasing landscape diversity.
 - If the Planner is suggesting that a Chinese Garden would add a novel feature to the waterfront, this would be no reason to put it at the proposed location within the existing Frank Kitts Park when there are other sites available with no negative effects.
- 3. *“Creation of more robust spaces within the park to cater for a variety of scales of events and activities”***
- Nothing could be more “robust” than the existing spaces created by the amphitheatre.
 - And the amphitheatre’s intimate size and shape currently provide spaces of a variety of sizes making it particularly useful for a variety of activities ranging from exercise classes to briefings for visiting school parties, or secluded lunches.
- 4. *“Improved universal access throughout Frank Kitts Park”***
- The clever design on the amphitheatre currently facilitates wheelchair access to each terrace, and provides ramps between each of the levels of Frank Kitts Park, including from the main walkway to the Promenade.
 - Accessibility issues within the Chinese Garden have been referred back to the designers for reconsideration.
- 5. *“Retention of cultural items within the park: including memorial plaques and the Wahine mast memorial”***
- The proposed relocation of the plaques from the Promenade wall to stands scattered among the rain garden near the inner path cannot be regarded as an “enhancement”, compared to the status quo. In their present location on the Promenade wall, the plaques are a major point of interest, and probably the most memorable feature of the waterfront walk for many visitors, especially Americans heading for Te Papa from a visiting cruise ship. The proposed location would be “off the beaten track” and missed by most visitors.
 - Again, the value of the Wahine mast would not enhance simply by being retained. And like with any memorial that is relocated for whatever reason, the change can only be regarded as negative or unfortunate. Instead of being moved to the lower ground level, the memorial to tragic even in which 51 lives were lost in Wellington Harbour deserves to be retained in its current prominent position.

- The Planner has failed to note the removal of the amphitheatre which has been the prominent feature of Frank Kitts Park since 1989 would, for many Wellingtonians, represent the loss of a cultural icon in the City.
- 6. “Upgraded playground to accommodate a greater range of age groups”**
- The renewal of the playground equipment will be welcome as it has not been well maintained nor kept up-to-date. Such changes should not be dependent on the approval of a resource consent. And the need for catch-up maintenance should not be justification for a resource consent.
- 7. “Improved design in relation to CPTED principles”**
- Waterfront Watch is pleased that the design has been reviewed by a CTPED practitioner with some aspects, particularly associated with hidden spaces within the proposed walled Chinese garden, being referred back for further consideration.
 - Ms Moore seems to have overlooked that Mr Stoks in his Evidence [32] has expressed concern that the proposed design that would create a hidden entrance to the Northern pedestrian access door to the garage near the Pai Lau. The report recommended that the design be altered before approval.
 - Mr Stoks’ review did not identify any significant shortcomings in the existing park. The introduction of the potential hazards identified in the design, together with others that were not identified, such as the diversion of pedestrians at night from the City Link path either up to the City Lawn or along the dogleg path beside the Harbour Lawn, both of which are poorly surveilled, cannot be regarded as a “Positive Effect” of the application.
- 8. “Introduction of an iconic landmark to the waterfront through the establishment of the Chinese garden”**
- While the introduction of a Chinese Garden in Frank Kitts Park would, no doubt, create an iconic landmark the same would be true if it were built at another location on the waterfront or, indeed elsewhere in the city such as the Botanic Garden, Fredrick Street or Rugby Street.
 - The removal of the amphitheatre, on the other hand, could be regarded as the “loss of an iconic landmark”, rather than a “Positive Effect”.
- 9. “Enhanced viewshafts from Hunter Street and Willeston Street”**
- The enhancement of the views along the viewshafts at Hunter and Willeston Streets that have been identified in the application, is attributed in the TAG review to the trimming or removal of trees now visible in the designated viewshaft
 - The trimming or removal of the trees is not dependent on the granting of the Application. TAG’s assessment is that the view of the Monastery on Mt Victoria from Willeston Street is currently compromised by the intrusion of Pohutukawa trees that will be moved or trimmed. The fact that trees have been allowed grow into the view as a result of reduced maintenance by the Council should not be accepted as a reason to allow the Application. Waterfront Watch has noted, including before the Environment Court, several other situations in which relative neglect by the Council has preceded Resource Consent applications for developments on the waterfront.

- The law is clear that the effects of proposals subject to resource consents are to be compared with what is permitted under the District Plan, rather than with the existing situation. For example, this is often debated in comparing negative effects of a proposed building with those of an as-of-right building height. It is submitted that, before concluding that the improvements claimed in the application were an effect of the proposed works, the Planner should have considered the situation had the viewshaft been protected by proper tree maintenance by the Council, as permitted by the district plan. Excluding the issue of the overgrown trees, the structures of the proposed Chinese Garden would clearly impact on the viewshaft.

10. Conclusion

Waterfront Watch recommends that the Application be declined.

Patrick McCombs
President
Waterfront Watch Inc
30 September 2016