

**IN THE MATTER OF**

the Resource Management Act 1991

**AND**

**IN THE MATTER OF**

An application by Wellington City Council (City Shaper) c/- Urban Perspectives Ltd for the redevelopment of Frank Kitts Park including the construction of buildings and structures and associated earthworks.

Wellington City Council Reference SR358352

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**DECISION OF THE HEARING COMMISSIONERS**

**Lindsay Daysh**

**Sue Piper**

**Julia Williams**

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11 November 2016

## SUMMARY OF THE PROPOSAL

The proposal seeks to undertake a redevelopment of Frank Kitts Park on the Wellington Waterfront. As detailed in the application received from Wellington City Council (City Shaper), the proposal consists of the following elements:

- Demolition of the existing amphitheatre and associated promenade walls;
- Earthworks to level the park (with the exception of the existing carparking building/weekend market which is to be retained);
- The expansion and upgrade of the children’s playground, including the retention of the landmark lighthouse slide structure;
- The construction of a Chinese garden termed by the applicant as ‘The Garden of Beneficence’;
- The creation of two new open lawns. For ease of reference these will be referred to throughout this report as the Harbour Lawn and the City Lawn; the City Lawn being the lawn above the existing Wilson’s parking building;
- The removal and replacement of the memorial plaques currently on the promenade wall and the relocation of the Wahine Mast;
- The construction of a pavilion structure adjoining the Chinese Garden;
- A pergola structure on the southern elevated edge of the site to provide additional shelter to that part of the proposed Upper Lawn; and
- Related seating, lighting, landscaping and paving.

Originally part of the application, the removal of the pedestrian bridge that currently connects Harris Street to the upper level of Frank Kitts Park, was withdrawn. The applicant has stated that they will retain the existing stairs connecting the upper lawn and the promenade adjoining the Whairepo Lagoon, rather than constructing the new, wide staircase from the Upper Lawn down to the Whairepo Lagoon, as originally detailed within the application.

## SUMMARY OF THE RESOURCE CONSENTS REQUIRED

The proposal requires resource consent from Wellington City Council (“WCC”) for the following reasons:

- **Rule 13.4.5 - Discretionary (Unrestricted) Activity** The proposal includes modification of existing open space within the Lambton Harbour Area.
- **Rule 13.4.7 - Discretionary (Unrestricted) Activity** The proposal includes the construction of buildings and structures in association with the Chinese Garden. The construction of any building or structure within the Lambton Harbour Area requires consent as a Discretionary (Unrestricted) Activity under Rule 13.4.7.
- **Rule 30.2.2 - Discretionary (Restricted) Activity** The proposal includes the disturbance of material over the entire park, being 13,500m<sup>2</sup>, with cut heights of up to 6 metres and fill depths of up to 4 metres. The proposal will also involve approximately 910m<sup>3</sup> of imported fill; all disturbed/excavated material will be retained on site.

## **SUMMARY OF THE HEARING**

The hearing took place at the West Plaza Hotel in Wellington over three consecutive days from 10 to 12 October 2016 with provision made for a final written right of reply from the applicant at the conclusion.

The hearing commenced with extensive evidence presented by the applicant, and its legal, landscape architectural, architectural, WCC Events, WCC Parks and Recreation, Crime Prevention through Environmental Design (hereinafter referred to as CPTED), wind, shading and planning advisers. The WCC regulatory adviser on wind also gave evidence.

On the second day of the hearing, Tuesday 11 October, evidence was presented by 16 submitters both in support and opposition of the application. On the third and final day of the hearing, Wednesday 12 October, evidence was presented by a five further submitters. The applicant's architectural advisers then provided some clarification on matters raised to by the commissioners on the first two days of the hearing.

The Council Reporting Officer, Council traffic, wind and Wellington Waterfront Technical Advisory Group (hereinafter referred to as TAG) Advisers provided additional comment on matters that were raised through the hearing and the applicant's legal adviser then gave an oral summary of its right of reply. The hearing was adjourned with the commissioners requesting that the applicant follow this up in written form.

On 17 October 2016 the applicant provided their written right of reply and closing statements. We then met and formally closed the hearing on 18 October 2016.

## **SUMMARY OF THE DECISION**

- It is well established that it is legitimate to consider positive effects as the definition of effect in the Act includes both positive and adverse effects.
- We conclude that there are positive effects from the proposal overall in relation to enhancing overall public amenity, providing an appropriate location for a Chinese Garden, enhancing the amenity and attractiveness of the playground, opening more direct views across the park to the waterfront promenade and the harbour and providing a more flexible/useable space for public events.
- We also accept that we must have regard to positive effects when forming a broad judgement on the overall impact of the proposal.
- We recognise the proposal has had a number of years of gestation. TAG and the applicant both are of the view that Frank Kitts Park is the right location for Wellington's Chinese Garden. We agree that integrating the Chinese Garden concept into the overall park design, noting the overall requirement for the Park for high quality design that is sensitive to context.
- We also acknowledge the position of the majority of other participants in this hearing process, who also considered that there was nothing in principle wrong with a Chinese Garden in Wellington but were concerned with its location in Frank Kitts Park.
- It is our view that the intention of the Design Brief to retain Frank Kitts Park as a large green park and a centre for outdoor activities that will meet the needs of a diverse range of people and activities remains relevant.

- The question of potential loss of amenity due to the loss of open green, usable space appeared in many submissions and we heard much discussion on green space during the hearing. We agree with submitters that the proposed design creates a more formal park but conclude that the loss of unstructured open space is balanced by the increased functionality of the lawn and playground areas.
- In respect of the amphitheatre we agree with submitters that it provides the park with a particular quality of space and function. However many of the attributes of the amphitheatre are already replicated along the waterfront or will be retained, albeit in the different location, in the redeveloped Frank Kitts Park.
- The proposal should be considered in its entirety and that it is not feasible to partially redevelop the park with a 'pick and mix' design process. In the wider waterfront context, our understanding is that the Waterfront Framework signals its intentions for Frank Kitts Park at some future time to be realigned away from Jervis Quay, with increased visual and physical connectivity between the park and the harbour. This vision would be significantly compromised by the retention of the amphitheatre and its supporting harbour wall.
- We agree that the redeveloped playground has a more structured character that provides a different range of more specialised play activity but with fewer areas for informal free play. While the playground could have been extended further south along the waterfront, we conclude that the park redevelopment has balanced the requirement to expand the playground with the need for a larger event space and the increased connectivity between the wider park and the harbour promenade.
- There was a general sense from submitters in opposition that the redeveloped park will reduce access between the city and the harbour and that the layout of space within the park reduces the ease of movement through the park. However on the issue of access into the park from the CBD, we find that the existing pedestrian entry and egress from the Jervis Quay frontage is more or less retained in the proposal and may even be improved by the relocation of the cross link pathway closer to the Willeston pedestrian crossing.
- In relation to the memorial plaques and the Wahine Mast we conclude that as an expression of history and heritage, the visual prominence of these features is more important than their historically accurate location. The Wahine Mast will be relocated at the edge of the waterfront promenade and we consider this to be appropriate. On the issue of the memorial plaques we wish to ensure that detailed design explores the location of the memorial plaques to confirm that they are appropriately located, readily visible and accessible in all weathers.
- On the pavilion structure and pergola we conclude that these structures provide amenity for people using the City Lawn terrace in the form of summer shading, protection from the rain and increased visibility between the terrace and Whairepo Lagoon, the harbour promenade and the wider waterfront. Given that the structures are visually permeable in the main, we find the benefits of increased amenity for park users outweighs the adverse effect of a slight reduction of distant views to the harbour and background hills from city streets and buildings to the west.

- We find that the redevelopment provides a range of seating options for a variety of locations and activities but agree that additional seating options should be considered.
- Given the viewing distance, the complexity of the view and the now intervening streetscape elements, we concur with the applicant and TAG that the effect on the Willeston viewshaft is minor.
- The applicant acknowledges that the redevelopment will not create new direct views to the water. We note that with the harbour promenade sited some 2.5m above water's edge, there will only ever be opportunities for distant harbour views. In this respect, the Chinese Garden will not restrict views of the harbour from the city.
- We appreciate the concerns Wellington residents show for their waterfront and its existing vegetation. Overall we note that like the issue of sunlight in the park, there will not be many more or fewer trees but rather a redistribution of existing trees, with the notable removal of the Norfolk Island pines.
- Overall we agree that the issue of accessibility needs further scrutiny as the project progresses through detailed design. This is to ensure that path widths and surfaces facilitate accessibility through the park and that there is at least one accessible route through the garden.
- We accept that the walled garden not only replaces the shelter of the amphitheatre but introduces a range of sheltered and small scale spaces that will provide additional amenity for the park users. Overall we consider the closure of the Chinese Garden at night to be an acceptable loss of access to a small area of Frank Kitts Park and waterfront open space. This is also at a time when there is a lower levels of activity on the waterfront.
- We find that the changes in shading effects will be less than minor. Shading will not affect the use and enjoyment of the park and potentially will provide additional amenity in the form of shady, sheltered areas within the Chinese Garden for users of the park over summer.
- There was agreement that there will be a change in the wind conditions with the proposal in place and there will still be areas of the reconfigured park where park users can be provided with shelter. In our view we agree with the views of both wind advisers that users will adapt and find other areas within the redeveloped park in which to find shelter from the wind.
- We were advised that there is no intention of changing any existing arrangements that apply to the weekend market and that construction could be managed to avoid undue disruption.
- We are satisfied that interested parties have had the opportunity to express their views prior to the application being submitted including at the time of consideration of the design brief. While consultation is not mandatory it is commonplace where there is the potential for adverse effects. Importantly this hearing is a further way that groups or individuals can express a differing view on the proposal from the initial design principles through to detailed design.
- Neither the NZCPS nor the RPS are particularly determinative in respect of whether this proposal is consistent with the higher order planning framework.

- The proposal is considered to be consistent with the policy instruments that apply. We accept the applicants view that if positive effects are recognised and adverse effects are acceptable that there is no policy barrier to approval of the application.
- Our view is that the proposal is broadly but not entirely consistent with the Wellington Waterfront Framework document but this is not fatal to the application.
- Overall we have with some exceptions accepted that the conditions recommended by the applicant and WCC are fit for purpose.
- In the context of Part 2 of the Act there is a clear overall judgement to be made between the effects identified by submitters and the proposal from the applicant. We are satisfied that as long as the conditions are observed by the applicant, with monitoring and review where required, that the proposal represents the sustainable management purpose of the Act.
- We therefore grant the application for the redevelopment of Frank Kitts Park including the construction of buildings and structures and associated earthworks subject to the conditions contained in Appendix 1 to this decision.

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**Appendix 1** – Conditions of Consent

**Appendix 2** - Persons who attended and presented evidence or submissions at the hearing.

**Appendix 3** – All submissions received.

## 1. Introduction

This is the decision on a resource consent application made by Wellington City Council (City Shaper) to redevelop Frank Kitts Park including the construction of buildings, structures and associated earthworks. The resource consent application requires a Land Use consent from the Wellington City Council (WCC) for both the modification of any existing open space and to construct buildings or structures within the Lambton Harbour Area. In addition consent is also required for the associated earthworks.

We have been delegated the authority from WCC to hear and determine this application on behalf of the Council as consent authority. In making this decision we record that we have read all of the application documentation, all submissions received and the officer's report that included specific advice from a number of specialists including the Wellington Waterfront Technical Advisory Group. We have also had particular cognisance of the evidence and verbal submissions presented to us during the hearing.

We are also mindful of the public interest in waterfront developments and the longer term efforts that there have been to find a suitable location in Wellington for a Chinese Garden. We discuss both of these matters in more detail later in this decision.

### 1.1 The Site

The Assessment of Environmental Effects and the s42A report prepared by Claire Moore both outline the site and the context for the application. In summary Frank Kitts Park is one of two large areas of green open space on Wellington's Waterfront with the other being Waitangi Park to the east of the National Museum - Te Papa Tongarewa. The site is some 20,000m<sup>2</sup> in area and is bounded by:

- The Central Area high rise buildings to the west separated by Jervois Quay, a major arterial road carrying 6 lanes of traffic;
- The Hunter Street access and the TSB Bank Arena to the north;
- The Waterfront Promenade to the east; and
- The Whairepo Lagoon and the promenade to the south.

The existing uses of the site include a well utilised children's playground, lawn areas and what is known as the amphitheatre. At the southern end of the site is a park elevated above an existing covered carpark with direct vehicular access to Jervois Quay. Within the carpark structure is a number of small boatshed tenancies facing onto the Waterfront and Whairepo promenades. Of note is the promenade wall that differentiates the park from the waterfront promenade. Also of note is the existence of a number of memorial plaques on the promenade wall and most of the Wahine placed in an elevated section of the park.

Access to the waterfront in this location is defined by at grade pedestrian crossings north of Hunter Street and at Willeston Street. Elevated crossings are available further to the south via the City to

Sea Bridge and via an overbridge that connects the elevated part of Frank Kitts Park with Harris Street.

It is very clear to us that Frank Kitts Park is recognised as being one of Wellington City's premier areas of public open space. Its central location on the Waterfront, adjoining a highly used promenade and in close proximity to the central part of the Wellington Central Business District, makes it a very valuable city asset for residents and visitors.

## **2. Summary of the Proposal**

As stated the application proposes to redevelop and modify Frank Kitts Park. The principal components of the proposed redevelopment are:

- Demolition of the existing amphitheatre and associated promenade walls;
- Earthworks to level the park (with the exception of the existing parking building with a grassed area above which is to be retained);
- The expansion and upgrade of the children's playground, including the retention but relocation of the distinctive lighthouse slide structure;
- The construction of a Chinese Garden termed by the designers as 'The Garden of Beneficence';
- The creation of two open lawns or grassed areas. These are known in the application documentation and throughout the hearing as the Harbour Lawn and the City Lawn. The Harbour Lawn is proposed to be located between the expanded children's playground at the north of the Park and the proposed Chinese Garden. The City Lawn is a proposed reconfiguration of the existing lawn located above the existing parking building that also serves as a weekend market;
- The relocation of the series of memorial plaques that currently are located on the raised wall that adjoins the waterfront promenade. In addition the Wahine Mast is also proposed to be relocated;
- The construction of a pavilion structure adjoining the Chinese Garden;
- A pergola structure on the southern elevated edge of the site to provide additional shelter to that part of the proposed City Lawn; and
- Related seating, lighting, landscaping and paving.

Originally part of the application, the applicant formally withdrew the removal of the pedestrian bridge that currently connects Harris Street to the Park. The applicant has stated that they will retain the existing stairs connecting the upper lawn and the promenade adjoining the Whairepo Lagoon, rather than constructing the new, wide staircase from the City Lawn down to the Whairepo Lagoon, as originally detailed within the application.

## 2.1 Application Documentation

The proposal on which we are basing our decision is included in the consent application and its associated plans and documents lodged with WCC including further information requested prior to and during the hearing. For the record these documents comprised of the following:

- The application and the Assessment of Environmental Effects prepared by Urban Perspectives Ltd dated 5 May 2016. This also includes:
  - A drawing set prepared by Wraight and Associates in conjunction with Athfield Architects, Duncan Campbell, Dunning Thornton, Aurecon and eCubed. Specifically these are:
    - Plans - LA RC 0-01 through to LA RC 1-22;
    - Sections - LA RC 2-00 through to LA RC 2-04;
    - Details - LA RC 3-00 through to LA RC 3-05;
    - Architectural Illustrations LA RC 4-00 through to LA RC 4-17; and
    - Athfield Architects Drawings AR RC 1-00 to AR RC 2-05.
  - A Landscape and Architectural Design Statement (Wraight Associates);
  - A record of Pre Application Meeting (3 March 2016);
  - Minutes of the Technical Advisory Group (23 December 2015);
  - Correspondence with Iwi;
  - Viewshaft Analysis;
  - Photomontages;
  - Crime prevention through Environmental Design (CPTED) Statement (Stoks Ltd);
  - Lighting Statement (eCubed);
  - Earthworks and Erosion and Sediment Control Measures (Aurecon); and
  - Design Brief – Redevelopment of Frank Kitts Park (Waterfront Development Subcommittee Technical Advisory Group) dated 16 June 2006.
- Further information was also provided in respect of:

- Wind effects (Opus); and
- Shading effects (Spencer Holmes).
- A number of other items of information were also provided by the applicant in closing. These are included as Appendix B to the closing statement with plans quantifying existing and proposed lawn areas and Appendix C with more detail on the existing and proposed Willeston Street viewshaft.

## 2.2 District Plan Overview

The following provides an overview of the relevant District Plan provisions and has been summarised from the WCC Reporting Officer (Ms Moore's) s42 report. The site is located in the Central Area of the Wellington City District Plan. It is subject to the following notations on the Planning Maps:

- Lambton Harbour Area;
- Hazard (Ground Shaking) Area;
- Viewshafts 10 and 11; Appendix 11 of Chapter 13;
- Sunlight Protection Area (Frank Kitts Park); Appendix 7 of Chapter 13.

## 2.3 District Plan Rules and Activity Status of the Proposal

<p><b>Modification of Existing Open Space:</b> - The District Plan requires consent for a Discretionary (Unrestricted) Activity under <b>Rule 13.4.5</b> for the modification of any existing open space within the Lambton Harbour Area.</p>	<p><b>Discretionary (U)</b></p>
<p><b>Construction of Buildings and Structures in the Lambton Harbour Area:</b> The proposal includes the construction of buildings and structures in association with the Chinese Garden. The construction of any building or structure within the Lambton Harbour Area requires consent as a Discretionary (Unrestricted) Activity under <b>Rule 13.4.7</b>.</p>	<p><b>Discretionary (U)</b></p>
<p><b>Earthworks:</b> The proposal involves the disturbance of material over the entire park, being 13,500m<sup>2</sup>, with cut heights of up to 6 metres and fill depths of up to 4 metres. The proposal will also involve approximately 910m<sup>3</sup> of imported fill; all disturbed/excavated material will be retained on site.</p>	<p><b>Discretionary (R)</b></p>

Therefore, the proposal does not comply with permitted conditions under Rule 30.1.3, and consent is required for a Discretionary (Restricted) Activity under <b>Rule 30.2.2.</b>	
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Therefore we have considered the application as a **Discretionary (Unrestricted) Activity**. We note that there was no disagreement between the applicant’s planning adviser Mr Aburn, Ms Moore from the Council or from any of the submitters as to the activity status of the matters before us to determine.

### 3. Relevant RMA Provisions

When considering an application for resource consent as a discretionary unrestricted activity and the submissions received we must, subject to Part 2 of the Act, have regard to the provisions within s104 of the Act. They are:

- a. The actual and potential effects on the environment of allowing the proposed activity (s104(1)(a)). We have considered effects of the proposal in sections 6 to 8 of this decision.
- b. s104(1)(b) being the relevant provisions of:
  - i. A national environmental standard. In this proposal the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 is the only NES applicable;
  - ii. Other regulations (none applicable);
  - iii. A national policy statement (none applicable);
  - iv. The New Zealand Coastal Policy Statement 2010 ;
  - v. A regional policy statement or proposed regional policy statement. The applicable document is the Regional Policy Statement for the Wellington Region 2013;
  - vi. A plan or proposed plan where the operative Wellington City District Plan is the only document of relevance. This includes all parts of the Plan including any relevant Design Guides.

Our analysis of the proposal against the statutory instruments that apply is provided prior to our assessment of the proposal under Part 2 the Purposes and Principles of the Act.

- c. s104(1)(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

We have had regard to the following other matters under s104 (1)(c) being the provisions of the following:

- i. The Wellington Waterfront Framework April 2001; and
- ii. Other policies and strategies prepared by Wellington City. These were outlined in the s42A report. While these have some overall relevance they are not determinative to our decision.

#### **4. Notification and Submissions Received**

Prior to our assessment of effects and consideration of the proposal under the relevant planning instruments, it is important that we record matters of notification process and the content of the submissions received prior to the hearing commencing. As with the activity status the following has been summarised from Ms Moore's s42A report.

##### **4.1 Notification**

The application was publicly notified on 2 June 2016 in accordance with sections 95-95F of the Act. We were advised that a public notice appeared in the Dominion Post, and The Wellingtonian on this date, two signs were erected at various locations around the site, and a notice including all the application documents was placed on the Council website. All owners and occupiers of land in the immediate area were served a copy of the application or were provided with electronic access to the application via the Council's website. In addition, notice was served on the following groups that were deemed to be potentially interested parties:

- Port Nicholson Block Settlement Trust
- Te Runanga o Toa Rangatira (Ngati Toa)
- Wellington Tenths Trust
- The New Zealand Transport Agency
- Waterfront Watch
- Wellington Civic Trust
- Star Boating Club
- WREDA/Positively Wellington Venues
- Wilson Parking
- The Boat Shed
- Wellington Underground Markets

The submission period closed at 4:30pm on 1st July 2016.

##### **4.2 Submissions**

A total of 107 submissions were received. Of these submissions 55 were opposed to the application, 46 were in support of the application, 5 had a neutral position, and 1 submitter did not indicate

their position. A list of the names of all submitters and their position on the application is attached as **Appendix 3**.

The s42A report provided a brief outline of the keys issues raised in the submissions. This is summarised as follows:

<b>Submission Subject Matter:</b>	<b>Submitters who have commented on this</b>
<p><b>1. Sunlight Access and Shading</b></p> <p>A common concern raised by submitters is the amount of shading that will fall on the proposed relocated playground. This concern arises due to the proximity to the TSB Arena, and the high-rise buildings on the opposite side of Jervois Quay; therefore concluding that the new relocated playground will be shaded for a large proportion of the day and year, thus reducing the overall amenity of the space and potentially its usability.</p> <p>Submitters also raised the concern of shading caused by the high walls of the Chinese Garden and the impact of this on the overall park, and the Waterfront Promenade.</p> <p>Furthermore, some submitters raised a concern about the potential/actual shading caused by the proposed landscaping throughout the park.</p>	3, 13, 14, 20, 36, 50, 93, 95
<p><b>2. Design of the Park</b></p> <p>A concern raised by a number of submitters was that the design of the park fails to make the most of the opportunity for improved connections between the city and the harbour.</p> <p>Submitters highlighted that the primary location of activities in the design of the park are along the Jervois Quay edge of the park, and thus the emphasis appears to be on Jervois Quay rather than the harbour and the promenade. The location of seating, memorials, walkways and the playground along the western edge of the park is considered to emphasise this, in addition to the entrance of the Chinese Garden and access to the Upper lawn being from Jervois Quay.</p> <p>Submitters raised the concern of the fragmentation of the overall space of the park, and the disconnected movement within the park due to the design; noting that the spaces within the park are broken spaces, rectilinear forms and include extensive hard surfaces. Submitters also considered the Chinese Garden will reinforce this fragmentation.</p> <p>Submitters in support of the application commended the design of the space, and considered the redevelopment to improve the overall usability of Frank Kitts Park, and its interest as a waterfront destination.</p>	2, 3, 4, 6, 8, 11, 14, 15, 16, 20, 23, 28, 30, 31, 32, 33, 34, 36, 42, 44, 46, 48, 51, 58, 59, 60, 62, 70, 71, 76, 78, 79, 80, 81, 82, 83, 85, 93, 95, 98, 99, 106
<p><b>3. Location and Design of the Chinese Garden</b></p> <p>A significant proportion of the submitters expressed an opposition to the Chinese Garden being located on the waterfront stating that the site is</p>	3-23, 27, 29, 30-34, 36 – 38, 40-44, 46-48,

<p>deserving of something more iconic to Wellington and easily accessible to all peoples, without the requirement to be locked at night.</p> <p>A number of submitters in opposition commented on the character of openness on the waterfront saying that a Chinese Garden, which is to be locked at night, has no place on the waterfront as it contradicts the open character. Submitters suggested alternative locations for this feature within the city, such as the Botanic Gardens or Jack Illot Green.</p> <p>Several submitters in opposition of the proposal believe that the high-walled design of the garden results in the reduction of flexible open space on the waterfront.</p> <p>One submitter raised an issue with the design of the Pai Lau gate at the entrance to the garden, noting that a black gate would be visually dominant.</p> <p>Submitters in support of the Chinese Garden being included within this proposal commended the design and the relevance of a Chinese Garden on the waterfront where there is an existing cultural hub. These submitters believed the positioning of the Chinese Garden in this location is a positive showcase of the significant history of Chinese in Wellington.</p>	<p>50- 56, 59-61, 63 - 66, 69-73, 79-107</p>
<p><b>4. <u>Wind Effects</u></b></p> <p>Several submitters in opposition raised the concern that as a result of the removal of the amphitheatre, the Harbour Lawn will be wind-swept and therefore less attractive as a space to be used for informal and formal events/activities.</p>	<p>10, 13, 14, 21, 23, 30, 33, 36, 42, 50, 51, 70, 71, 73, 79, 86, 88, 92, 98, 100, 106, 107</p>
<p><b>5. <u>Safety</u></b></p> <p>The following concerns of safety as a result of this proposal were raised in submissions:</p> <ul style="list-style-type: none"> <li>• Proximity of the relocated children’s playground to both the servicing area for the TSB Arena, and Jervois Quay</li> <li>• Removal of the amphitheatre and focus on the western edge of the park drawing the users towards the health-threatening vehicle emissions from the road users</li> <li>• A new design that is safe and doesn’t require being locked at night should be implemented rather than the Chinese Garden as proposed</li> <li>• Opening up the park to the harbour.</li> </ul>	<p>5, 15, 20, 36, 43, 55, 73, 77, 79, 93, 95</p>
<p><b>6. <u>Accessibility</u></b></p> <p>One of the concerns of submitters relating to accessibility was in relation to the Chinese garden being locked at night time. Many submitters believe that this contradicts the open space and access principles of the waterfront, and that locking the area is symbolic of privatisation of the space.</p>	<p>14, 15, 16, 23, 27, 29, 31, 35, 36, 40, 53, 70, 71, 73, 76, 86, 89, 91, 92, 98, 99, 106</p>

<p>Submissions in opposition of the proposal raised the concern about accessible design of the redeveloped park, noting that only parts of the Chinese Garden are fully accessible due to the inclusion of steps and gravel paths. It was also noted that the children’s playground has steps rather than ramps.</p> <p>Submitters raised the accessibility of the park from the city, and accessibility throughout the park. There was a general sense from submitters in opposition that the proposed park reduced access between the city and the harbour and that the layout of space within the park was fragmented, thus reducing the ease of movement through the park.</p>	
<p><b>7. Viewshafts</b></p> <p>Submitters raised the following comments relating to both the Willeston and Hunter Street viewshafts:</p> <ul style="list-style-type: none"> <li>• The Chinese Garden will create a visual barrier which will stop the eye moving towards St Gerard’s Monastery.</li> <li>• The trees within the Hunter Street viewshaft are an attribute of the viewshaft. Canopy and management of the trees rather than relocation, should be considered.</li> <li>• The walls and trees of the Chinese Garden will impinge the Willeston viewshaft</li> <li>• Submitters also noted that the Chinese Garden will restrict views of the harbour from the city.</li> </ul>	<p>14, 16, 31, 44, 53, 60, 71, 73, 98</p>
<p><b>8. Relationship between the City and the Harbour</b></p> <p>Submitters in opposition of the proposal considered that the redesigned park will ignore the relationship between the city and the harbour, particularly through the high walls of the Chinese Garden and the line of trees planted along the western edge of the park.</p> <p>Submitters in support appreciated the design in the way it opens up the park to face the harbour. One submitter supported opening up the views to the harbour; however, they noted that users of the promenade will block views from west of the park.</p>	<p>5, 14, 42, 59, 60, 73, 76, 91, 93, 95, 106</p>
<p><b>9. Removal of the Amphitheatre</b></p> <p>Several submitters identified that there will be a loss of a unique performance/event space within Wellington resulting from the removal of the amphitheatre. Submitters commented that the amphitheatre provides permanent tiered seating, and has acoustic advantages in addition to providing shelter from the wind as previously mentioned.</p> <p>Submitters commented that the amphitheatre provides diversity of space on the waterfront, and the removal of this will result in a loss of amenity with a large empty green lawn.</p> <p>Submitters in support commended the new design, noting that such spaces will be a valuable part of Wellington’s waterfront and will increase the opportunity for events and recreation. It is also noted by supporters</p>	<p>5, 10, 12, 13, 14, 21, 30, 36, 42, 43, 47, 50, 51, 55, 70-73, 79, 86, 87, 89, 91, 92, 93, 98, 99, 100</p>

of the proposal that the removal of the amphitheatre (and associated promenade walls) will increase the views of the harbour from the park.	
<p><b>10. <u>Vegetation</u></b></p> <p>Submitters in opposition to the proposal commented on the presence of exotic plants and their likely survival rate in such a high wind and salt environment. Others considered exotic plants in a prominent waterfront location to be inappropriate and suggested a garden with native plantings.</p> <p>The concern was raised about the removal of existing vegetation within the park, and the proposed linear planting of pohutukawa along the western edge of the park as this may obscure views from Jervois Quay.</p> <p>Submitters in support of the proposal have commented on the mix of native and exotic vegetation.</p>	15, 22, 29, 33, 44, 51, 60, 72, 73, 79, 87, 93, 100
<p><b>11. <u>Construction</u></b></p> <p>Two submitters that the construction period (18-36 months) will be disruptive to the use of the park and the waterfront as a whole.</p>	20, 46
<p><b>12. <u>Expansion of the Playground</u></b></p> <p>Many submitters in opposition of the expansion of the playground were because they preferred the existing playground and its location adjoining the promenade. Submissions in opposition also raised matters of shade on the playground and proximity to the road and TSB servicing area, as previously mentioned under submitter topics 1 and 5.</p> <p>Some submitters supported the upgraded and expanded playground; one submitter suggested more swings be included in the design.</p>	21, 29, 30, 31, 34, 36, 42, 43, 44, 47, 48, 50, 51, 53, 55, 58, 70, 72, 73, 77, 86, 90, 91, 93, 95, 96, 99, 106, 107
<p><b>13. <u>Open Space Character</u></b></p> <p>Submitters were divided about whether a large lawn and a Chinese Garden have a place in such a prominent position on the Wellington Waterfront.</p> <p>Many submitters in opposition to the proposal considered that the redevelopment of the park will result in the loss of publicly accessible open space on the waterfront, largely resulting from the walled garden. Further to this, some submitters believed that there will be a reduction of quality and flexible open space across the waterfront as a whole.</p> <p>Submitters in support of the proposal considered the proposed design to be a positive result for the waterfront and the redeveloped park will increase the interest and variance of activities in this area of the waterfront. A number of submitters in support of the application commented on the cultural hub that exists on the waterfront through European and Maori elements. These submitters believe that the Chinese Garden will appropriately fit with these elements and add further interest and character to the already vibrant waterfront.</p>	9, 15, 16, 21, 27, 28, 31, 34, 36, 41, 42, 45, 46, 47, 51, 55, 61, 66, 76, 91, 92, 95, 106, 107

<p><b>14. Heritage</b></p> <p>A submitter opposing the proposal raised concerns about the consistency of the proposal with the Central Area policies within the District Plan relating to heritage, particularly policy 12.2.8.4 that states:</p> <p><i>“Maintain and enhance the heritage values associated with the waterfront”</i></p> <p>The submission questioned how heritage items will be developed over time if they are continually removed before they can reach this status.</p> <p>A submitter in support of the proposal commented that the Chinese Garden will be a tangible recognition of a part of Wellington’s heritage.</p>	14, 61
<p><b>15. Other Matters Raised</b></p> <p>Other matters raised by submitters can be broadly categorised as follows:</p> <ul style="list-style-type: none"> <li>• The use of funds and/or ratepayer money;</li> <li>• The priority of the project and the sense that there are more pressing matters to be dealt with in Wellington City;</li> <li>• existing park design works and does not need to be changed; i.e. status quo;</li> <li>• The relocation of the Chinese Garden to elsewhere in the City. The majority of people in opposition to the Chinese Garden component of this proposal considered there to be better locations for the garden within the city;</li> <li>• The use of foreign, Chinese labour and the conditions labourers will be working under with regards to health and safety and payment;</li> <li>• The relocation of memorial plaques and the Wahine Mast within the park;</li> <li>• The lack of Maori influence through the park;</li> <li>• The proposal will provide for greater financial opportunities as a tourist attraction and will also benefit local/surrounding businesses; and</li> <li>• Another concern raised by some submitters is the possibility of an admission fee for entrance to the Chinese Garden. The applicant has made no mention of this as a possibility.</li> </ul>	1-4, 11, 13, 14, 16-20, 22, 26, 27, 29 – 31, 33, 36 – 38, 42–45, 47, 50, 53, 55, 57, 58, 60, 63 – 66, 69 – 73, 79, 84 – 91, 93 – 96, 98, 100, 106, 107

21 people appeared at the hearing on behalf of 14 submissions. One submitter was unable to attend but provided an additional submission. Another submitter (Felicity Wong #35) changed her stance from oppose to support prior to the beginning of the hearing. The list of appearances at the hearing is included as **Appendix 2** to this decision.

The points made in the submissions and all evidence have been used to inform our analysis of the actual and potential effects of the proposal. Relevant evidence as to the applicability of any relevant policy matters and our overall conclusions are discussed in later sections of this decision.

## 5. Section 42A Report

Prior to the hearing, commissioners received and reviewed the s42A report. This attached specific comments or assessments from Mr Matthew Borich Councils' Noise Adviser, Councils' Chief Transport Planner Mr Stephen Spence, Mr John Davies Councils' Earthworks Adviser, Landscape Architect Angela McArthur, Mr Michael Donn Wind Adviser and an Urban Design Report prepared by Wellington Waterfront Technical Advisory Group (TAG).

The reporting officer Ms Moore recommended that resource consent should be granted. The report also provided the commissioners with an outline of the key issues in contention.

## 6. Necessity for and Positive Effects of the Proposal

We now turn to the applicant's views of the necessity for and the positive effects of the proposal. These are outlined in the AEE and supported in particular by the submissions of counsel for the applicant, the evidence of Mr Faherty the Project Director Waterfront, Mr Acheson from WCC in terms of events and venues and the evidence of Mr Brown from WCC in terms of the operational criteria that apply to the management of waterfront public space. These were summarised by Project Planner Mr Aburn.

It is well established that it is legitimate to consider positive effects as the definition of effect in the Act includes both positive and adverse effects. The following positive effects have been identified in the AEE<sup>1</sup> and are a useful basis for us to consider the applicant's rationale for the proposal.

1. *Enhancing the overall public amenity of Frank Kitts Park as one of the two principal open spaces on the waterfront.*

In this regard we agree with the view from both the applicant and TAG who consider that Frank Kitts Park is in need of at least a refresh or refurbishment. All parties to the hearing agreed that a high level of public amenity is a central outcome in the future use and/or development of the Park. There was however disagreement as to how public amenity would be maintained and/or enhanced.

2. *Provide an appropriate location of the Chinese Garden which can be anticipated to be a principal drawcard for visitors to the waterfront.*

We note the long history of the proposal before us for determination and includes the Chinese Garden as a central component. This was outlined firstly by Mr Faherty but also supported by a number of submitters including Mrs Fung and Mr Wu on behalf of the Chinese Garden Society. Additionally we recognise that a number of submitters in opposition either considered that a Chinese Garden should not be placed on the waterfront or if it was to be located there should not be placed on Frank Kitts Park. We consider that there would be positive effects in having a Chinese Garden in the location proposed but also recognise the views of opposing submitters as to the necessity. In any event we comment further on the principle and detail of the proposed garden more fully prior to the section on actual or potential adverse effects.

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<sup>1</sup> Frank Kitts Park Assessment of Environmental Effects of the Environment Urban Perspectives Ltd. May 2016 p21.

3. *Enhancing the amenity and attractiveness (especially to young children and their parents/ Caregivers) of the playground.*

As was outlined by Mr Brown from the applicant the playground has high usage but it has deteriorated to a stage that a complete overhaul and replacement is necessary for health and safety, aesthetic and overall user experience reasons, noting the retention of a rebuilt lighthouse slide as part of the proposal. We also note that there was little opposition from submitters to the necessity of an upgrade but some had concerns about the shifting of part of the playground towards Jervois Quay. We agree with the applicant's views on the necessity for an expansion and upgrade of the playground and comment in more detail on this component of the proposal in relation to design matters in section 8.

4. *Opening more direct views across the park to the waterfront promenade and the harbour beyond.*

As a footnote to the above, the AEE references the Wellington Waterfront Framework at page 35 where it comments that. *"There is a concern that the park faces the city and does not open out to the water's edge"*. We comment further in respect of the Waterfront Framework throughout this decision but it is apparent that the lack of a direct visible connection between the park and the water is a fundamental driver behind the design approach.

We were told in evidence by both TAG representatives and the applicant's landscape adviser Mr Bryant that the current configuration of the park turns its back on the water and has a focus towards the heavily trafficked and relatively impermeable barrier of Jervois Quay with its six lanes of traffic. This means that the usability of much of the space is compromised

This has consequences in that it necessitates the removal of the promenade wall, some established trees and the amphitheatre. This was also a key point in contention. Most submitters in opposition have a preference for retention of the promenade wall and the amphitheatre. Our view is that this is essentially a binary decision in that you cannot open up Frank Kitts Park to the water in this location without the removal of the promenade wall and the amphitheatre.

5. *Providing a more flexible/useable attractive space for public events.*

Mr Brown and Mr Acheson both explained the current limitations with the Park in terms of being able to hold larger events. This is due to the configuration of the site including established trees, the spatial restrictions of the amphitheatre and the lack of flexibility in terms of power supply and other infrastructure requirements.

We accept that having two large grassed areas of open space would facilitate provision for larger events by allowing, for example, larger marquees than are currently possible. This is a positive effect of the proposal and was supported by submissions from some of the groups who stage events in the park. We also acknowledge the views of submitters that the current park provides opportunities for popular events. The loss of the amphitheatre is further discussed below.

We conclude that there are positive effects from the proposal overall. This was also a position that was supported by TAG and the reporting officer in her s42A report. We also accept the views of the

applicant in the AEE at page 21 that we must have regard to positive effects when forming a broad judgement on the overall impact of the proposal.

## **7. Principle of a Chinese Garden/Waterfront location**

An early matter that we need to provide comment on is the depth of feeling we saw from the submitters in support of the proposal. We therefore recognise the continuing efforts to find a site from a number of well-respected and longstanding members of the Wellington Chinese Community.

The submissions presented by Gordon Wu and Robert Lau as well as the Mr Wu and Mrs Fung from the Wellington Chinese Garden Society explained to us how long an association with Wellington, people of Chinese origins have. A harbourside location had always been the preference as it relates back to the primary way many immigrants from China arrived in Wellington. They considered that suggestions it be in other locations such as the Botanic Gardens, in Haining Street or adjacent to the Chinese Embassy neither practicable nor desirable.

In considering a waterfront location we also were advised by Duncan Campbell, Chinese Garden expert for the applicant, on the relevance of the Wellington context to his design. Specifically he has referenced the landscape while using the essential elements of a garden based upon fundamental Chinese design traditions to create a locally-inflected, site-specific contemporary Chinese Garden. It is his opinion that the site and design of this garden are in keeping with the long-standing garden making traditions of China.

We recognise the proposal has had a number of years of gestation. TAG and the applicant both are of the view that Frank Kitts Park is the right location for Wellington's Chinese Garden. Mr McIndoe also commented on the process of planning that has gone on in respect of integrating the Chinese Garden concept into the overall park design, noting that the design brief specifically required the final design to achieve a Chinese Garden and park that are complementary, and that together satisfy the Waterfront Framework requirement for high quality design that is sensitive to context.

We also acknowledge the position of the majority of other participants in this hearing process, who also considered that there was nothing in principle wrong with a Chinese Garden in Wellington but were concerned with its location in Frank Kitts Park. Dr McCombs was very clear at the outset that this was also the position of Waterfront Watch.

## **8. Actual and Potential Adverse Effects**

We now turn to actual and potential adverse effects from the proposal. This is split into the key design related components and then other effects. Comment on other matters and other non RMA matters is in the following section. To provide context to the subsequent sub sections we comment firstly on the Design Brief.

### **8.1 Design Brief**

A large number of submitters raised concerns about the need for the redesign of the park and by inference about the design brief. They argued that the park in its current form is well used for small events and informal recreation, and meets the needs of waterfront users. They questioned the priority of the project and were of the view that the park did not need to be changed i.e. 'if it ain't broke don't fix it'.

In his submission, Steve Dunn told us that the proposed redevelopment brief is based on background and decisions made in excess of ten years ago. It was his opinion that the brief may no longer be relevant.

The design brief was prepared in 2006. This was primarily in response to the comment within the Waterfront Framework. *“There is a concern that the Park faces the city and does not open out to the water’s edge.”*<sup>2</sup>.

The design brief included retention of the carpark building, inclusion of a Chinese Garden, maintaining a children’s play area, sites for outdoor performances and for temporary events, flexible use, opportunities to link heritage and cultural issues with the landscape, increasing the range of experiences provided by the waterfront promenade and increased connectivity along the edges of the park with the surrounding landscape. It also included a direction to consider exploring a further pedestrian connection between Lambton Quay and the park near Willeston Street and consideration of enhancing views into the park and harbour.

Since 2006 there have been a number of changes:

- Development along the eastern and southern edge of the carpark buildings has created a more interactive edge to the waterfront promenade;
- Improvements are underway at the southern end of the Events Centre;
- Greening of Jervois Quay is now complete;
- Increased use of waterfront for events of all kinds;
- Increased number of small public spaces along the waterfront;
- No development of the Council owned site on the corner of Willeston St and Jervois Quay (and apparently no development intended); and
- Increased number of residents living in the CBD.

Submitters may prefer that the park remain unchanged, and may not agree with the design brief. It is our view that the intention of the Design Brief, to retain Frank Kitts Park as a large green park and a centre for outdoor activities that will meet the needs of a diverse range of people and activities, remains relevant.

## **8.2 Green open space**

The question of potential loss of amenity due to the loss of open green, usable space appeared in many submissions and we heard much discussion on green space during the hearing.

In response to submissions Mr Acheson, the senior advisor with the City Arts and Events team at Council gave evidence that the proposed Harbour Lawn would allow for a greater variety of events and activities than the current park ‘which is fragmented by the amphitheatre, the high wall on the Waterfront Promenade edge and the changes in level.’

Submitters focussed on the replacement of informal grassed areas with formal lawns designed to host waterfront events and planting. Clive Anstey for Wellington Civic Trust contended that there

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<sup>2</sup> At page 35.

would be the 'loss of an expansive uncluttered open space where spontaneous meeting and activities currently occur, and a loss of sheltered nooks and crannies that capture the winter sun.' Victor Davie noted that usable space would diminish with the rain gardens, coastal gardens and expanded children's playground. Patrick McCombs speaking for Waterfront Watch suggested that the introduction of the Harbour Lawn would destroy the special amenity values of the existing Frank Kitts Park by 'displacing 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'.

After listening to submitters we were not satisfied that we had enough information before us and accordingly we requested that the applicant provide quantitative information on grass/lawn areas in the existing and proposed park designs. The information was presented to us, after the hearing had been adjourned but before it was closed.

In summary, the analysis shows that aside from a number of very small areas of lawn, the usable grassed areas on the lower part of the park will be reduced by about 1000m<sup>2</sup>, and the area above the carpark will be slightly increased.

In the submissions in reply, the applicant accepted that the proposed redevelopment reduces the area of grassed open space in the park, but provides the following context:

- a) There is a doubling in area of the children's playground;
- b) There is increased functionality and flexibility of the two new lawn areas;
- c) The location of some of the existing areas of grass is sub-optimal. TAG contends, as indeed have many submitters, that the grassed areas adjacent to Jervois Quay have limited value due to their proximity to traffic and traffic noise;
- d) The replacement of grass with planting that buffers the playground from nearby traffic; and
- e) The use of the Chinese Garden as an alternative form of open space.

We cannot argue with the City's requirement for usable, flat open spaces able to host a range of large scale events in this premier central city location. We note that the redesigned playground will cater for a wider range of age groups and activities. It also has a range of surfaces and levels that replace the existing grassed areas but continue to provide for informal play.

We agree with submitters that the proposed design creates a more formal park but conclude that the loss of unstructured open space is balanced by the increased functionality of the lawn and playground areas. We have been delegated to review the effects of the proposed park redevelopment rather than to critique the design. We find that there will not be any reduction in the open space values of Frank Kitts Park, but rather there is a change in the character of the open space and that the park will continue to provide quality amenity for Wellington residents and visitors.

### **8.3 The Amphitheatre**

A large number of submissions raised issues regarding the removal of the amphitheatre. We heard considerable evidence from submitters, some of whom provided photographs or presented information on the many and varied events that take place in the amphitheatre.

We were told that the amphitheatre functions as a multi-purpose open space and a destination for sports groups, school outings and lunchtime office workers, as well as providing comfortable seating for park users. Many submissions commented that the orientation of the amphitheatre and its stepped seating provided shelter from the wind in several directions, with Hilary Phillips noting that it made the park user friendly on days when the weather is less than clement. More specifically Alexia Pickering described the benefits of the tiered seating for less able bodied people and James Barber described the attributes of the structure as a unique performance space. David Zwartz told us that it has acoustic advantages over a flat area, noting “replacing the amphitheatre with other structures will diminish that particular quality of the present park with the amphitheatre as a place of assembly for music and other events that aren’t held elsewhere.”

Finally, Waterfront Watch described the amphitheatre both as a cultural icon and an ‘iconic landmark’. They argued that the four components of the proposed redevelopment - the playground, Harbour Lawn, Chinese Garden and City Lawn – should be considered as independent of each other. Waterfront Watch proposed, as a last resort if the redevelopment went ahead, an option where the Chinese Garden could co-exist with the retained amphitheatre.

The applicant provided expert evidence on the following individual issues:

*a) Multi-purpose functionality*

The TAG report acknowledged that some capability will be lost with the demolition of the amphitheatre that provides a structured performance space for small gatherings. However Council Events Manager Mr Acheson, as noted above, was of the view that the amphitheatre in its present form limits the type and size of events that can occur in the park. He noted the technical difficulties and increased costs of adapting the space to fit many of the larger city events.

*b) Accessibility*

The applicant recognised that the amphitheatre provides elevated built-in seating, which will be replaced by the flat grassed lawn. The recommended condition (c) requires the further detailed design to provide for formal seating opportunities at the south edge of the Harbour Lawn and against the promenade.

*c) Wind/ Shelter*

Wind effects for the overall redevelopment are dealt with as a separate issue below. On the subject of the amphitheatre, we heard evidence from two wind experts who agreed that the removal of the amphitheatre and by association the adjoining section of harbour wall will lead to worse wind conditions in this localised area whenever the wind is blowing. At the same time there would be increased shelter on the western edge of the Harbour Lawn, inside the Chinese Garden and along the northern edge of the City Lawn.

*d) Acoustics*

Council sought advice on the acoustic qualities of the amphitheatre. Mr Borich, Council’s Noise Compliance Manager provided a detailed response which we repeat verbatim for the record.

*“For an acoustical amphitheatre effect to occur numerous reflective surfaces are required, generally in a small, enclosed area, with noise levels increased by reflections off these surfaces. The seating in Frank Kitts Park consists of concrete areas but also grassed areas (which would absorb acoustic energy when sound waves impact on it.) The seating at Frank Kitts Park is also shallow and does not create a semi-circle wall of reflective surfaces and seats that I understand is necessary for a true acoustical amphitheatre. In addition the area is very exposed to high levels of traffic noise.*

*On saying that, the setup does have some advantages. The area is screened from any noise occurring along the water front, it concentrates people in a small area and people sitting in the seating area have a clear line of sight to the entertainment activity in the instance of no stage setup, being less likely to be blocked by someone sitting in front of them. However in my view the difference from the current setup and that of a flat surface setup in acoustic terms is negligible.”*

#### *e) Retaining the amphitheatre and the Chinese Garden*

In response to discussion in the hearing on the loss of the amphitheatre, TAG provided us with the minutes of a meeting held in September 2014 in response to a request from Council for TAG to advise on the design implications of a staged delivery of the park redevelopment and more specifically, retaining the amphitheatre in the redeveloped park design.

TAG concluded that retention of the amphitheatre would preclude development of the Harbour Lawn, compromise the design of the Chinese Garden and its wider setting and remove the opportunity to enhance views of the harbour from the park and the city.

We have reviewed the submissions and expert evidence. During the course of the hearing we asked questions on the range of seating options, on wind conditions inside the park and the Chinese Garden in particular, and on the range of public open spaces available along the waterfront.

We agree with submitters that the amphitheatre provides the park with a ‘particular quality’, (to quote David Zwartz), of space and function. However many of the attributes of the amphitheatre already are replicated along the waterfront or will be retained, albeit in the different location, in the redeveloped Frank Kitts Park.

We agree with TAG that the proposal should be considered in its entirety and that it is not feasible to partially redevelop the park with a ‘pick and mix’ design process. In the wider waterfront context, our understanding is that the Waterfront Framework signals its intentions for Frank Kitts Park at some future time to be realigned away from Jervois Quay, with increased visual and physical connectivity between the park and the harbour. This vision would be significantly compromised by the retention of the amphitheatre and its supporting harbour wall.

## **8.4 The Playground**

Many submissions raised concerns regarding the expansion of the playground. While there was a general consensus that the playground in its existing form is tired and in poor repair, submitters opposed the relocation of the lighthouse structure and the loss of the informal grass areas around the existing play equipment.

A number of submitters were opposed to moving the playground. Jacqueline Haydn submitted that the current playground was well sited and was loved because it was “in the thick of things.” Pauline

Swann told us that she was opposed to the ‘flattening’ of the current playground and moving it. Michael Howden was concerned that nothing had been done to increase the area.

Finally, Clive Anstey, speaking for Wellington Civic Trust, agreed that the proposed playground was a positive outcome of the redevelopment, but argued the upgrade could be achieved with minimum disruption to the park as a whole.

Providing evidence for the applicant, Mr Brown, Waterfront Operations Manager for Council told us that the current playground is no longer compliant with current playground standards. This has necessitated the removal of various components and play equipment over recent years.

Frank Stoks informed us from a CPTED perspective, the play equipment is being over-loaded and used in a manner not designed for.

The applicant also noted that the new playground would provide more varied experiences than the existing playground and this necessitates suitable ground treatments other than grass.

It is apparent that some submitters may have found the plans difficult to interpret, and perhaps were focussed on the lighthouse structure to the exclusion of the other more specialised play areas within the playground. We have reviewed the plans, the submissions and the expert evidence and make the following observations:

- a) The playground is not relocated but has been expanded and re-orientated with the new playground encompassing most of the original play area. The new play area is double the size of the current playground.
- b) The redeveloped playground includes specialised areas for younger children, which are located towards the harbour edge of the playground on the site of the lighthouse and slide structure, with the play equipment for the very young, (1-3 year olds), enclosed and at the centre of the wider playground area. Areas for older children involving more active play such as the flying fox and the refurbished lighthouse and slides have been placed on the perimeter of the playground.
- c) The playground is contained by a timber screen fence and bands of rain garden and coastal planting that buffer the playground from the service lane south of the TSB Area and Shed 6 buildings and the park promenade. This is in contrast to the current playground where areas of grass used for informal play open onto the service lane, and the lawn promenade.
- d) The existing grass mounding has been replaced by more formalised playmounds and climbing equipment.
- e) The playground layout provides a range of seating options for carers including seating walls, terrace edges and changes in level, together with standard waterfront seats.

We agree that the redeveloped playground has a more structured character that provides a different range of more specialised play activity but with fewer areas for informal free play. While the playground could have been extended further south along the waterfront, we conclude that the park redevelopment has balanced the requirement to expand the playground with the need for a larger event space and the increased connectivity between the wider park and the harbour promenade.

## 8.5 City to Sea focus and pathways across the park

The s42A report observed that there is a general sense from submitters in opposition that the redeveloped park will reduce access between the city and the harbour and that the layout of space within the park reduces the ease of movement through the park. Steve Dunn submitted that the pathways across the site are restricted to the edges of the Harbour Lawn. Main paths are located to the outer edges of the park along Jervois Quay. With the construction of the Chinese Garden in the centre of the park, pedestrian access is directed around peripheral edges whereas the current layout provides direct accessible routes accommodating large numbers of people.

More specifically, Waterfront Watch argued that the proposal reduces rather than enhances the physical access between the harbour promenade and the city through the removal of the major spine walkway that aligns with Willeston Street. It also submitted that the proposed alternative dog-leg' path is less direct and inviting.

We note that in the period between notification of the application and the hearing, the proposal to remove the existing pedestrian overbridge over Jervois Quay north of Harris Street and replace it with a street level crossing was withdrawn on the advice of Steve Spence, Council's Chief Traffic Adviser.

No-one provided data on the number of pedestrians entering Frank Kitts Park from Jervois Quay, the relative use of the different pedestrian crossings and cross park paths, or the use during different periods of the day. We questioned Steve Spence on this issue. No quantitative study has been undertaken, but he informed us that Council has progressively achieved improved pedestrian access of the Quay but there remain deficiencies in the current crossings where pedestrians may have to wait for long periods for a green signal to cross Jervois Quay. He suggested in conclusion that any changes to crossings or additional crossings as suggested in the application would require a wider review of pedestrian and traffic patterns along the Quays and Cable Street.

We reviewed the plans and the pedestrian connections across Jervois Quay. We observed that neither of the current Jervois Quay street level crossings provide optimum pedestrian connection to Frank Kitts Park. The Hunter Street crossing brings pedestrians north of the carpark access to the Events Building, and they must cross this driveway and the Hunter Street service lane to get to the park. The Willeston Street crossing brings pedestrians to the Jervois Quay lawn, some 16 metres north of the city link walkway.

On the issue of access into the park from the CBD, we find that the existing pedestrian entry and egress from the Jervois Quay frontage is more or less retained in the proposal and may even be improved by the relocation of the cross link pathway closer to the Willeston pedestrian crossing.

On the issue of accessibility across the park, we were told that the new 'dog-leg' path will be narrower than the existing 4 metre walkway. We agree with Mr Spence, who considers that a wider path should be provided to deal with potential pedestrian movements, with a more walkable surface than the proposed lime chip for this 'key connection through the park.'

In his closing submissions, counsel for the applicant Mr Laing informed us that the applicant would be prepared to review both path width and surfacing if the redevelopment proceeds and in light of actual usage. Based on our consideration of the submissions and the expert evidence provided this specific matter has been added to the conditions.

## 8.6 Plaques/Wahine Mast

Several submitters raised concerns about the relocation of memorial plaques and the Wahine Mast within the park. Victor Davie argued that the relocation of the Wahine Mast was an insult to the citizens of Wellington and families of those who died in the Wahine storm. Jane Campbell opposed the relocation of the memorial plaques away from their intended position by the sea to the edge of the park alongside Jervois Quay, which will be a danger to gathering groups at memorial services. David Stevens submitted that the waterfront promenade is made more interesting by the commemorative plaques. He noted that the plaques and the Wahine Mast have high visual prominence in their current location.

The urban design report has provided us with background on these features. It notes that the park lies on reclaimed land and character items such as the Wahine Mast have been brought to this location. Furthermore, the memorial plaques are sited at the edge of the waterfront promenade, rather than on the site of the Jervois Quay original seawall that was located further to the west.

We conclude that as an expression of history and heritage, the visual prominence of these features is more important than their historically accurate location. The Wahine Mast will be relocated at the edge of the waterfront promenade and we consider this to be appropriate. On the issue of the memorial plaques, TAG has recommended that detailed design explore the location of the memorial plaques to confirm that they are appropriately located, readily visible and accessible in all weathers. This has been included in the condition (c).

## 8.7 Pavilion and pergola structures

Victor Davie raised concerns regarding the potential effects of the pavilion and pergola structures proposed for the upper level of Frank Kitts Park around the edge of the City Lawn. He argued the roof of the pavilion will dominate the park, and the pergola will shade and restrict views. The Mount Victoria Residents Association similarly submitted its concern that these structures would further obscure views of the harbour and surrounding hills from the CBD.

In response to conflicting information between the plans and expert evidence, we sought clarification with regard to the materials used in the pavilion, pergola and barrier structures around the upper area above the carpark. The applicant's landscape architect told us that:

- Sections of the parapet on the east and south faces of the carpark building will be cut down and replaced with visually permeable railing
- The City Lawn pergola at the southern edge of the City Lawn overlooking Whairepo Lagoon is an open frame structure that extends over the pathway promenade below. Glass will be used in sections of the pergola to provide shelter from the rain. Climbers will provide shade from the direct sun.
- The teahouse /pavilion is an open-sided structure with 'floating' roof forms and areas of glass panelling.

We conclude that these structures will provide amenity for people using the City Lawn terrace in the form of summer shading, protection from the rain and increased visibility between the terrace and Whairepo Lagoon, the harbour promenade and the wider waterfront. Given that the structures are visually permeable in the main, we find the benefits of increased amenity for park users

outweighs the adverse effect of a slight reduction of distant views to the harbour and background hills from city streets and buildings to the west.

## **8.8 Seating**

Few submissions made specific reference to seating in the redeveloped park, although Yon Yi Sohn, speaking on behalf of Wellington Civic Trust, argued that people prefer open green spaces and a few park benches over the proposed seats and seat walls in the playground, the Chinese Garden and around the City Lawn.

Submitters opposed to the removal of the amphitheatre and adjoining harbour wall commented that the existing sheltered seating in this area provides opportunities for small gatherings, quiet conversation and picnic lunches.

We examined the park furniture details in the application, and during the course of the hearing requested confirmation of the seating options in the Chinese Garden and the tea house /pavilion. It was confirmed that seating has been incorporated into the design of the Chinese Garden. Seats will be provided around the tea house /pavilion, although tables and chairs under the roof - pergola structure would be managed by the teahouse operators.

We also sought confirmation from the Wellington Chinese Garden Society that food and drink were culturally acceptable within the garden. Esther Fung assured us that the society anticipated the garden would be used at lunch times and coffee breaks.

We find that the redevelopment provides a range of seating options for a variety of locations and activities but agree with TAG that additional seating should be considered. The TAG report has identified areas along the north and south edges of the Harbour Lawn where seating would allow more choice of outlook. This aligns with Alexia Pickering's submission that less able-bodied people find sitting on the grass difficult.

Condition (c) requires the detailed design to address the formal seating provided throughout the park. Condition (f) provides for a post-occupancy review of the finished park with an opportunity to monitor the seating to increase its range and quantity if required.

Acknowledging that the Chinese Garden will provide the most sheltered areas within the redevelopment, we have expanded the second bullet point in Condition (c) explicitly addressing the issue of seating in the Chinese Garden.

## **8.9 Views and viewshafts**

The potential effect of the park redevelopment and more specifically the Chinese Garden, on views and viewshafts from the city appeared in a number of submissions.

We have read the submissions and listened carefully to those who presented their concerns at the hearing. We also visited the viewpoint location for the Hunter and Willeston Street viewshafts and assessed each view in terms of the context and focal elements detailed in the District Plan.

### Viewshafts

Since the viewshafts were first described, there have been a number of changes to the city landscape that provides the viewing context. For example the Overseas Passenger Terminal (now

Clyde Quay Apartments) building has an additional storey and we can confirm Mr Dunn's observation that the widening of the Willeston Street footpath, new traffic lights and street trees has compromised the viewshaft from Lambton Quay down Willeston Street. Given the difficulties of determining the effects of the potential view changes, we requested further information from the landscape architect and this was supplemented by evidence from members of the TAG.

We have examined the annotated photographs and simulations provided by the applicant. Based on this information, the urban design report and the expert evidence provided by the TAG, and disregarding the removal and reorganisation of a number of specimen trees in Frank Kitts Park, we find:

- a) The Hunter Street viewshaft will remain much the same.
- b) The Willeston Street viewshaft will change with views of a green edge of Frank Kitts Park replaced by the Chinese Garden structures, back dropped by the wider harbour context of St Gerard's Monastery, Oriental Bay residential development, Mt Victoria and the Te Ranga a Hiwi ridgeline.
- c) The removal of the City Link walkway in its current form reduces the sense of pedestrian connectivity from Willeston Street through the park across for observers on Lambton Quay.

Given the viewing distance, the complexity of the view and the now intervening streetscape elements, we concur with the applicant and TAG that the effect on the viewshaft is minor.

### Views

Submitters have also noted that the Chinese Garden will restrict views of the harbour from the city, the structures on the City Lawn will further obscure views and views from Jervois Quay and adjoining city streets will be limited by the proposed mounding and planting along the eastern side of the Harbour Lawn.

The cross-sections and simulations provided by the applicant indicate that the existing harbour wall is above eye-level when viewed from Jervois Quay and areas west of the park. It screens immediate views of the harbour, although the City Link walkway is slightly lower and potentially allows a 9m wide vista through to the boat masts in Chaffers Marina when viewed from Lambton Quay.

The applicant acknowledges that the redevelopment will not create new direct views to the water. We note that with the harbour promenade sited some 2.5m above water's edge, there will only ever be opportunities for distant harbour views. In this respect, the Chinese Garden will not restrict views of the harbour from the city.

Structures around the City Lawn will screen elements of the view from the city towards Oriental Bay, although much of the pavilion and pergola structures will be glass. Conversely, the replacement of the solid harbour wall parapet with a visually permeable railing will improve views into the park from Whairepo Lagoon and the City to Sea Bridge.

We discuss the issue of proposed mounding and planting in detail in a later section on bunds, but are satisfied that it will not obscure views into the park. People walking towards the park from the

CBD, and drivers and pedestrians on Jervois Quay will see activity on the lawn and on the harbour promenade.

Although not raised directly in submissions, we note that the removal of the harbour wall will improve the visual connection between the lawn areas and the wider harbour landscape.

### **8.10 Loss of trees**

Submitters raised a number of issues regarding vegetation and tree removal.

- Some, like the Mount Victoria Residents Association and Alana Bowman, opposed the proposed removal of trees to accommodate the design, noting that the trees provide protection, shade and gathering places for people. On the other hand, Jane Campbell argued that pohutukawa are not appropriate near lawns and Anne Ryan was of the view that the increase of trees would increase shade on the park.
- Bronwyn Brown opposed the replacement of the existing informal tree layout with long straight lines of planting. This was reiterated by Steve Dunn, who regretted the potential loss of the opportunity to sit under a large tree on the lawn.
- Catharine Underwood was concerned that the relocated trees alongside Jervois Quay will restrict potential views of the harbour and hills from the road.
- Steve Dunn argued the redevelopment disregards iconic vegetation and historical reference by removing the Norfolk Island pines along Jervois Quay, submitting that this tree type is very much a cultural planting that is an identifiable signature of coastal locations.
- Chris Horne and Barbara Mitcalfe preferred any new plantings on the waterfront to be ecologically appropriate native plants although when questioned, conceded the amenity that the existing pohutukawa trees provide.
- Many submitters commented on the exposed conditions within the park and the vulnerability exotic vegetation, particularly deciduous trees, in this maritime environment.

We have reviewed the application documentation and the applicant's response to these submissions. Allan Brown, Waterfront Operations Manager provided evidence that the positioning of trees in the grassed areas limits the use of the park for the larger events that Council wishes to accommodate. Martin Bryant, the landscape architect, noted the poor condition of the Norfolk Island pines, and variation in height and canopy width.

On the issues of sightlines, we note that all the trees along Jervois Quay shown in the proposed plan are trees that currently exist in and around the park. We have been told that the trees will be limbed up to allow 2 metres clear trunk between the canopy and the ground. On this basis we can confirm that the relocated trees will allow improved views from Jervois Quay road and footpath over the park to the harbour and beyond.

We raised the issue of the plant species proposed for the Chinese Garden and asked the expert on Chinese Garden design whether he would be comfortable with using native plants in the garden. Duncan Campbell assured us that the proposed garden is to be a Wellington site specific reinterpretation of the classic Chinese Garden and he would welcome the use of native plants in the planting plans.

We appreciate the concerns Wellington residents show for their waterfront and its existing vegetation. Overall we note that like the issue of sunlight in the park, there will not be many more

or fewer trees but rather a redistribution of existing trees, with the notable removal of the Norfolk Island pines. We believe conditions (b), (c), (d) and (e) will provide quality assurance for the soft landscape works including all specimen trees and suitable replacement species should the proposed species not be successful.

### **8.11 The Harbour Lawn Bund**

Steve Dunn raised specific concerns regarding the bund along the western edge of the Harbour Lawn. He contended that views into the park from Jervois Quay would be blocked by the proposed mounding, the relocated pohutukawa, the coastal garden planting and the rain garden vegetation, and this would compromise natural surveillance.

We requested clarification from the applicant on this issue who explained that the height of the bund and low level planting, in conjunction with 'limbed up' pohutukawa trees, will allow views from cars on Jervois Quay and from the Quay footpath over the top of the bund and across the harbour lawn between 1-2 metres above the lawn. While the lawn itself will not be visible, people standing and sitting on the lawn will be seen.

Dr Stoks, the applicant's expert on CPTED issues, gave his opinion that the proposed bunding, and the planting either side of the park promenade will at the worst have a minor impact on natural surveillance over the lawn, and at best, will improve it. He further noted that there would be good surveillance from the park promenade to the Harbour Lawn and improved surveillance between the harbour promenade and the Harbour Lawn.

In further discussion on the issue of the bund, we were told that the double avenue of trees, planting and bund along Jervois Quay focus the Harbour Lawn towards the water and the harbour promenade, away from Jervois Quay. The bund provides a backrest, thereby attracting people to populate the edges of the lawn and increasing natural surveillance over both the lawn and the harbour promenade.

We heard concerns over the course of the hearing with regard to the exposure of the Harbour Lawn to the prevailing nor' west winds. A number of submitters suggested that vegetation in areas west of the bund be made denser and higher to provide a wind screen. This issue is discussed more fully under wind effects. A review of the wind environment is addressed under condition (t) where the Council's wind adviser and TAG will determine the appropriate balance between the benefits of additional wind shelter versus other design matters such as views, accessibility and safety (CPTED) requirements to ensure natural surveillance over the Harbour Lawn is not compromised.

### **8.12 Maori influence**

Catharine Underwood submitted that the proposal failed to reinforce the importance of the waterfronts Maori history or cultural heritage. The Mount Victoria Residents Association commented that the name of the park should be changed to something that reflects its early Maori relationship.

Both the Wellington Tenth's Trust and Palmerston North Maori Reserve Trust support this proposal. Wellington Tenth's Trust considered the Chinese Garden as being an appropriate addition to the cultural landscape of Wellington City and see the overall redevelopment as a positive addition to this part of the Waterfront around Whairepo Lagoon.

Neither of these submitters has commented on the name of the park, or has requested that the name of the park should be changed to reflect its Maori relationship. In any event, we consider that the naming of the park is a Council policy issue and not one in which we have a role.

### **8.13 Accessibility**

Several submitters were concerned that the redeveloped park will not provide full access for all those wishing to visit it. The issues raised included the changes in level including steps and path gradients, and the location, width and surfacing of paths. A submission opposing the Chinese Garden because of the steepness of its paths was withdrawn prior to the hearing.

Alexia Pickering told us that wheeled pedestrians found gravel surfaces difficult to move on, noting that electric wheelchairs in particular were hard to rotate on these loose surfaces.

In response to concerns from submitters, we requested more information on path surfaces and the accessibility of the route through the Chinese Garden. We were provided with a plan indicating all pathways within the redeveloped park that met the NZS 4121 standard with gradients no greater than 1:12.

#### Path gradients

There are accessible routes through the playground, across the southern edge of the Harbour Lawn and up to the City Lawn. The applicant acknowledged that while there will be an accessible route through the Chinese Garden, some smaller paths and access points have steps that limit wheelchair users from experiencing all areas in the garden.

#### Path surfacing

The applicant confirmed that the path surfaces variously described in the application as lime chip paving or gravel are the compacted limestone mix used in other public spaces around Wellington such as in Waitangi Park. We visited the park and observed that the limestone functions well so long as it is regularly and adequately maintained as a smooth chip free surface.

Overall we agree with the TAG report that the issue of accessibility needs further scrutiny as the project progresses through detailed design. This is to ensure that path widths and surfaces facilitate accessibility through the park and that there is at least one accessible route through the garden.

We therefore support and have included conditions (b) and (v) as recommended.

### **8.14 CPTED (Crime Prevention Through Environmental Design)**

A great many submissions raised issues and concerns regarding public safety and the proposed night-time closure of the Chinese Garden. The matter of reduced public access to a portion of Frank Kitts Park public open space during night-time hours is dealt with as a separate issue.

Catharine Underwood spoke for other submitters when she said “If the public can’t be safe in a Chinese Garden with walls, so that it has to be locked at night, effectively excluding the public from the space, then maybe it shouldn’t be there at all.”

Clive Anstey, speaking for Wellington Civic Trust supported the improved design in relation to CPTED principles but argued the negative effects arising from locking the Chinese Garden at night outweighed the positive effects of improved public safety.

Frank Stoks provided expert advice on the issue from a CPTED perspective, concluding that there are inherent, essential and largely unavoidable aspects of the design of the Chinese Garden that create CPTED challenges. However he also noted that existing areas of shelter and small seating alcoves along the edge of the existing harbour wall provide places for questionable congregation and activity at night.

We agree with submitters that our preference is to avoid locked areas but accept that the walled garden not only replaces shelter of the amphitheatre but introduces a range of sheltered and small scale spaces that will provide additional amenity for the park users. Overall we consider the closure of the Chinese Garden at night to be an acceptable loss of access to a small area of Frank Kitts Park and waterfront open space. This is also at times when there is a lower levels of activity on the waterfront.

#### Locking of the Chinese Garden at night

A number of submitters argued that locking the Chinese Garden at night was contrary to the principles of the Waterfront Framework for a safe waterfront at all times of the day. The Architectural Centre opposed the intention to lock the garden after hours, submitting that excluding people from public open space appears to be contrary to the ethos of the waterfront. Waterfront Watch also spoke for many when it noted that there is no suggestion in the Framework that any areas other than building sites would not be publically accessible.

We acknowledge the designers have had to compromise between the formation of sheltered small scale areas where people sit and meet in comfort and creating spaces with potential for concealment or entrapment. The redeveloped Frank Kitts Park will be predominantly accessible to the public and in that respect is broadly consistent with the Waterfront Framework.

### **8.15 Shading**

A number of submitters have raised issues regarding potential shading in the park and the playground in particular. They are concerned that the lighthouse slide will be in shade in the middle of the day, and prefer it to be left on its present site where it enjoys maximum sun.

The submitters' comments are general and did not provide any specific sun/shade analysis. A number of submitters illustrated their presentations with photographs of the playground and wider park area in use over summer and in the sun. Yon Yi Sohn, submitting for the Wellington Civic Trust provided photographs of the shading over the playground sites created by buildings on Jervois Quay. In contrast, Steve Dunn provided a photograph illustrating the existing groups of tall trees over lawn areas near the playground, noting that they give shade and are well used.

We have visited the park and reviewed the plans and make the following observations. Frank Kitts Park receives good sun throughout the day, with many localised areas of shade under the large pohutukawa trees, below the harbour wall and within the amphitheatre. The proposed park layout does not increase the amount of shade over the site but rather reorganises the various elements within the park.

For example, the existing trees will be relocated to the western (Jervois Quay) edge of the park to create the open and sunny Harbour Lawn, and the playground will be extended and reoriented, with specialised play equipment for young children located on the former lighthouse slide site.

Mr Moody provided us with a Shading Assessment that indicates the relocated lighthouse slide will receive up to 55 minutes less sun per day, with an average loss of 20 minutes per day over the year. At the same time, the harbour promenade will receive more sun in the late afternoon and the proposed Chinese Garden walls will cast similar shadows to the existing walls that are to be replaced. He concludes that “there will not be any loss of amenity but rather a re-allocation of the existing amenity.”<sup>3</sup>

Based on our consideration of the submissions, and the expert evidence provided by Mr Moody, we find that the changes in shading effects will be less than minor. Shading will not affect the use and enjoyment of the park and potentially will provide additional amenity in the form of shady, sheltered areas within the Chinese Garden for users of the park over summer.

### **8.16 Wind**

From our own experience from living and working in Wellington we have observed that wind conditions within Frank Kitts Park can be variable. Indeed as was stated by a number of submitters at the hearing Wellingtons often tempestuous weather can make the enjoyment of open space challenging. For Frank Kitts Park this depends on where in the park one is located as well as the strength and direction of the wind.

We heard expert evidence from Mr Jamieson on behalf of the applicant and from Mr Donn on behalf of WCC as consent authority. There was agreement that there will be a change in the wind conditions with the proposal in place and there will still be areas of the reconfigured park where park users can be provided with shelter. In our view we agree with the summary made by Ms Moore which is supported by both wind advisers that, users will adapt and find other areas within the redeveloped park in which to find shelter from the wind.

As recommended by both wind advisers we consider that much of the additional wind relief can be considered in detail after monitoring and by attention to detailed design matters. To this end we agree with the recommendation that a review condition is placed on this consent specifically to address the detailed design of potential wind mitigation measures.

### **8.17 Traffic and Pedestrian Flows**

The s42A report included expert commentary from Mr Spence, Councils Chief Traffic Adviser. He concluded that in terms of vehicular traffic, for example for servicing and maintenance, that the existing arrangements can easily be modified with the reconfigured layout of Frank Kitts Park. We note that there was no comment on this aspect at the hearing and conclude that subject to conditions that vehicle servicing requirements can be appropriately managed.

In terms of pedestrian access across Jervois Quay we note that the applicant has chosen with the support of Mr Spence to retain the pedestrian footbridge to Harris Street. While acknowledging the limitations of this connection in terms of width and the steep steps at the Harris Street end and with the absence of an alternative at grade crossing, we believe that this is a pragmatic approach. In other respects the crossing of Jervois Quay in proximity to Frank Kitts Park remains the same.

In respect of pedestrian path width within the park we noted the comments from Waterfront Watch amongst others about the primary spine being of insufficient width to accommodate

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<sup>3</sup> H Moody. Shading Assessment Technical Report. Page 4

pedestrian activity. We have also considered this and have recommended along with other like issues that the width and surfacing of the pedestrian pathways be reconsidered if necessary. As such an appropriate review condition has been imposed.

#### **8.18 Use of the Carparking Building as a Market**

We heard a submission from Wendy Jasper the owner/director of what is known as the Wellington Creative Market that currently utilises the Frank Kitts Carpark on Saturdays and other specific days a year. Her concerns were primarily around about the importance to the community of the Market as well as continuity of business during the construction period. We were advised that there is no intention of changing any existing arrangements that apply to the weekend market and that construction could be managed to avoid undue disruption. This will be addressed in the detailed Demolition and Construction Management Plan provided for in condition (h).

#### **8.19 Construction Effects/Earthworks**

There was very little stated at the hearing in respect of construction effects nor earthworks. We are of the view that construction effects (noise, dust, vibration, traffic effects, lighting) can be managed through the conditions and have endorsed the recommended standard conditions of consent.

### **9. Other Matters**

This section discusses other matters that were raised at the hearing that require our comment. Not all are specifically effects of the proposal but for completeness we discuss these further here.

#### **9.1 Adequacy of Consultation**

A number of submitters and in particular Waterfront Watch through Ms Bowman raised issues of adequacy of consultation. Results of an on-line survey were presented to us. Those who responded to the survey showed opposition to the proposal.

In our view there are often concerns raised about consultation and these concerns are often larger the more prominent the proposal. However we are satisfied that interested parties have had the opportunity to express their views to both TAG and the applicant prior to the application being submitted including at the time of consideration of the design brief. While consultation is not mandatory it is commonplace where there is the potential for adverse effects. Importantly this hearing is a further way that groups or individuals can express a differing view on the proposal from the initial design principles through to detailed design.

#### **9.2 Alternative Sites and Locations**

We have already commented on the Design Brief and the process explained by both the applicant and TAG as to the design approach. We are familiar with the TAG report about the more detailed options within the park. We also are aware of the significant process from 2006 utilising appropriately experienced and qualified experts and reviewers to prepare the concept and the more detailed plans.

Similarly we have commented on the location alternatives for the Chinese Garden and accept that the site and location options have been appropriately considered.

### **9.3 Permitted Baseline**

We are of the view that trying to consider a permitted baseline approach to consenting this proposal, as suggested by Mrs Allen in her submission, does not assist us in any way as structures per se on the waterfront and indeed the whole application requires a consent as a discretionary (unrestricted) activity. What we are assessing is firstly the existing environment, the proposal, considering environmental effects and then assessing the proposals against the relevant statutory framework to make a conclusion as to Part 2.

As we stated earlier the decision is essentially binary in our view. The Council either renovates the existing park or builds to a new concept. The existing environment and some submitters' preference to maintain part or all of the status quo has been considered under the effects section above.

### **9.4 Non RMA issues**

We agree with Ms Moore's view that the following points made in submissions are not matters that we can consider.

- The use of funds and/or ratepayer money
- The priority of the project and the view that there are more pressing matters to be dealt with in Wellington City.
- The use of foreign, Chinese labour and the conditions they will be working under with regards to health and safety and payment.
- The view that the proposal will provide for greater financial opportunities as a tourist attraction and will also benefit local/surrounding businesses.
- The possibility of an admission fee for entrance to the Chinese Garden. The applicant stated that this has not been contemplated.

### **10. Relevant Policy Instruments - s104(1)(b)**

The resource management planners who presented evidence to the hearing and some submitters, provided an analysis of the statutory instruments which the proposal is required to be assessed against. These are the:

- National Environmental Standards
- National Policy Statements
- The New Zealand Coastal Policy Statement (NZCPS)
- The Regional Policy Statement (RPS)
- Wellington City District Plan and the relevant Plan Changes

There are no relevant National Environmental Standards or National Policy Statements in relation to this application. The other statutory instruments are considered below.

## 10.1 The New Zealand Coastal Policy Statement 2010 (NZCPS)

As outlined in the AEE and in Ms Moore's report the NZCPS is relevant to the subject site as it adjoins the Coastal Environment. Of some relevance is Objective 1<sup>4</sup> that relates to *"Safeguarding the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land"*.

In itself we find nothing in this objective within the application that the proposal would be inconsistent with, as the proposal is for an existing park in an already modified environment. In terms of stormwater management through the rain gardens the proposal would be positive in terms of meeting this Objective.

Of more particular applicability is Objective 4 replicated in full

### Objective 4:

*To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:*

- *Recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy*
- *Maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that this is not practicable providing alternative linking access close to the coastal marine area; and*
- *Recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.*

We consider that Objective 4 can be met with the proposal as:

- The project provides or a reconfiguration of an extensive area of public space for the public to use and enjoy while recognising the sites relationship with the coastal marine area location being Wellingtons waterfront. Indeed the opening up of the park to the waterfront promenade specifically enhances this relationship.
- For similar reasons we consider that the project maintains and enhances public walking access to and along the area that adjoins the coastal marine area.
- We are not aware of any particular issues with the location of the park and the potential for impacts of climate change.

In terms of NZCPS policies as methods to achieve objectives we consider that there is nothing directly determinative to whether the application should be granted consent or not.

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<sup>4</sup> Full text of Objective 1 page 9 NZCPS 2010.

## 10.2 Regional Policy Statement for the Wellington Region (RPS)

The Regional Policy Statement for the Wellington Region (RPS) outlines the resource management issues of significance to the Wellington region and provides a framework for managing its natural and physical resources in a sustainable manner.

Chapter 3 of the RPS outlines the regionally significant resource management issues and objectives, and Chapter 4 outlines the policies and methods to achieve these. Section 4-2 outlines the regulatory policies to be considered when assessing and deciding on resource consent applications.

There are several RPS issue/objective/policy subject areas which are relevant to the application, being Public Access to the Coastal Marine Area, Natural Hazards; Historic Heritage; and Regional form, design and function. There was no evidence that the proposal was contrary to the relevant provisions particularly public access to the coastal marine area, nor around urban form and function under Objective 22 of the RPS which is particularly broad. In any event the RPS places the responsibility for implementing the urban form and function policies upon District Councils through the respective District Plans.

We note that Mr Aburn for the applicant, Ms Moore for WCC and Mrs Allen on behalf of the Wellington Civic Trust shared our view that neither the NZCPS or the RPS are particularly determinative in respect of whether this proposal is consistent with the higher order planning framework.

## 10.3 District Plan Objectives and Policies

The objectives and policies of the District Plan were commented on by three parties being Mr Aburn on behalf of the applicant, Mrs Allen on behalf of the Wellington Civic Trust and Ms Moore from WCC.

We note that in closing Mr Laing was of the view that we should make little weight of the evidence of Mrs Allen as it was not lodged as expert evidence and he considered that it was advocacy on behalf of the Trust. We accept that Mrs Allen has extensive planning experience so we have taken her views into account to the extent necessary but as can be seen we do not agree with her overall conclusions in making our own assessment below.

We also should note that Mrs Allen put some emphasis on the principles contained within the District Plan and whether the proposal was consistent with the achievement of these principles. In fact Mrs Allen went so far as to say that the proposal was contrary to the principles. While the principles are a factor being a statement of Central Area values, we prefer to make an assessment on the relevant objectives and the policy framework which supports the principles. I note that Mr Aburn and Ms Moore chose that method.

We therefore provide brief comment on what were the recognised objectives and policies of relevance.

*Objective 12.2.8 To ensure that the development of the Lambton Harbour Area, and its connections with the remainder of the city's Central Area, maintains and*

*enhances the unique and special components and elements that make up the waterfront.*

This is the primary objective of relevance particularly as Frank Kitts Park is one of the city's most important and well used areas of public space. Its proximity to the most densely urbanised part of the CBD and its central location on the waterfront, means that it has very high value to residents and visitors. The site has limitations in that the area of the Park that adjoins the Jervois Quay arterial has lesser amenity due to proximity to six lanes of traffic but we also recognise that for some submitters the current configuration is worth retaining.

Similarly we consider that there has been specific recognition of the unique and special components and elements that make up the waterfront in the design brief and in the application before us. This means that the park can now focus on the waterfront as opposed to the city, a key outcome of the Waterfront Framework.

*Policy 12.2.8.1            Maintain and enhance the public environment of the Lambton Harbour Area by guiding the design of new open spaces and where there are buildings, ensuring that these are in sympathy with their associated public spaces.*

For the reasons outlined in the section on effects and under our assessment of the primary objective above we agree that the proposal enhances the public environment.

*Policy 12.2.8.2            Ensure that a range of public open spaces, public walkways and through routes for pedestrians and cyclists and opportunities for people, including people with mobility restrictions, to gain access to and from the water are provided and maintained.*

This policy is met in that there are a range of spaces with different character being the playground, the Harbour Lawn, the Chinese Garden and the City Lawn. The design of new open spaces has been in our view carefully considered.

*Policy 12.2.8.3            Encourage the enhancement of the overall public and environmental quality and general amenity of the Lambton Harbour Area.*

We have already considered the aspect of amenity in our assessment under the guiding objective 12.2.8 and in our assessment of effects. The existing park is at least in need of a refresh and based on our assessment of effects we consider that the proposal provides for an enhancement of the overall public and environmental quality of this part of Wellingtons Waterfront.

*Policy 12.2.8.4            Maintain and enhance the heritage values associated with the waterfront.*

The Park has been modified over the years and indeed is located on reclaimed land. The heritage values are more recent with much of these relating to associations with the park since it has been built. This includes the memorial plaques and the Wahine Mast. We are satisfied with conditions dictating appropriate relocation at detailed design that heritage values can be maintained.

*Policy 12.2.8.5 Recognise and provide for developments and activities that reinforce the importance of the waterfront's Maori history and cultural heritage.*

We received submissions in support from two representatives of Iwi and little other comment. Therefore we consider that this policy has been met.

*Policy 12.2.8.6 Provide for new development which adds to the waterfront character and quality of design within the area and acknowledges relationships between the city and the sea.*

The focus of much of the hearing was the concept and location of the Chinese Garden. We have recognised the cultural associations Chinese have with Wellington and we have acknowledged this in making this decision. In relation to the remainder of the proposal we consider that the proposal better acknowledges the relationship between the city and the sea. In some respects we consider it unfortunate that methods of crossing from the city to the waterfront have not been realised with this application but can understand Mr Spence's views of the challenges of safely and efficiently doing so from a transport perspective.

*Policy 12.2.8.8 To provide for and facilitate public involvement in the waterfront planning process.*

Waterfront developments have often been controversial as they involve decisions about Wellington City's premier urban environment. Indeed our understanding is that there have been opportunities for individuals or groups to express their views prior to this application being submitted. Importantly public notification has also allowed submitters to explain their concerns and the values that they considered to be lost or compromised on the site. In plain English we recognise that some parties do not like either the principle or some of the detail in the proposal. In the end our decision is based upon all information of which the historical development of this proposal is but one factor.

*Objective 12.2.2 To facilitate a vibrant, dynamic Central Area by enabling a wide range of activities to occur, provided that adverse effects are avoided, remedied or mitigated.*

We consider the effects of the proposal and the contribution the proposal makes to facilitating a vibrant, dynamic Central Area. While recognising views to the contrary any adverse effects of the proposal are in our view acceptable for the reasons we have outlined under our assessment of effects. We also accept that there are positive effects from the proposal.

*Policy 12.2.3.2 Promote a strong sense of place and identity within different parts of the Central Area.*

The proposal provides for four different user experiences being the playground, the Harbour Lawn, the Chinese Garden and the City Lawn. This is in addition to the waterfront promenade that would then be opened to Frank Kitts Park north of the proposed Chinese Garden. We consider that each of these spaces promote a strong place and identity.

We also recognise the views on the importance of the sense of place that exists but overall the replacement of one user experience with another is not sufficient reason to decline the application based on our assessment of adverse effects.

#### Applicability of the Central Area Design Guide.

A further matter that requires comment is that Mrs Allen considered that the Central Area Design Guide was also applicable to our assessment of the proposal under the statutory instruments. Our view is that the primary focus of the Design Guide is upon the built environment and is not overly directive on Central Area public space. In any event we have considered both effects as well as consistency with the relevant objectives and policies and have concluded that the proposal is acceptable.

### **10.4 Statutory Matters Conclusion**

Based upon the above the proposal is considered to be consistent with the policy instruments that apply. While we recognise that Mrs Allen takes a contrary view to Mr Aburn and to Ms Moore, we accept Mr Aburn's view that if positive effects are recognised and adverse effects avoided remedied that there is no policy barrier to approval of the application. This is because the primary objectives and policies are effects based.

### **11. Other Matters – s104(1)(c)**

In addition we have also had regard to other matters under s104 being the provisions of the other documents such as frameworks and strategies prepared outside of the Resource Management Act. The primary one is the Wellington Waterfront Framework with other strategies outlined in the s42A report being of lesser consequence to our evaluation and not requiring any additional comment.

#### **11.1 Wellington Waterfront Framework**

During the hearing there was much comment from a number of submitters about the proposal and consistency or otherwise with the Framework produced in 2001. While a dated document in our view, the specific principles that applied then still have relevance today recognising the significant physical changes to the waterfront environment since the adoption of the Framework.

In terms of the status of the Framework we agree with Mr Laing and Mr Aburn that while the document is of particular relevance, it does not carry the same weight as the District Plan objectives and policies noting that the Framework is referenced as a method or as context to some relevant objectives and policies.

There is a specific page (p35) within the Waterfront Framework concerning Frank Kitts Park. We observe the following about the matters it contains.

- The introduction states that there is a concern that the park faces the city and does not open out to the water's edge. We consider that the proposal addresses this concern. Additionally without the removal of the amphitheatre and promenade wall this concern is not ameliorated.

- At the time of the Framework, work on Frank Kitts Park was not a priority. We were advised by Mr Faherty for the applicant that the time for a redevelopment of the park had come.
- Safety along the Jervois Quay edge was considered a priority without compromising natural surveillance. The proposal responds to this by making more areas of the park usable and safer in relation to proximity to Jervois Quay.
- In relation to pedestrian access there are no improvements proposed for pedestrians to cross the Quay. Should additional or enhanced opportunities come about we definitely would support them. Additionally there are limited improvements proposed to parking, drop off spaces and vehicle access as envisaged.
- In terms of the promenade and improvements at the water's edge, some changes have been achieved already. However the focus of the application is on better integrating the park with the promenade as opposed to the promenade and the water's edge.
- This proposal is a change to the open space with the Harbour Lawn primarily replacing the open space function of the amphitheatre and the lawn. While no major work was proposed in 2001 we were advised of the need to provide for a more flexible open space concept. We accept the applicant's justification for this.
- There was no mention of a Chinese Garden. We do not find that the inclusion of the garden undermines the remainder of the Framework.

Our view is that the proposal is broadly but not entirely consistent with the Waterfront document but this is not fatal to the application. However the TAG had informed us that the further work on the design brief had the Framework as a central focus. Therefore in terms of s104(1)(c) of the Act we have considered the most relevant other matter being the Waterfront Framework in coming to our conclusions.

## 12. Conditions

There was very little comment from submitters about the precise nature of conditions but we note that both Ms Moore and Mr Aburn have come to an agreement as to wording. We accept that these conditions are appropriate for the following reasons

1. A number could be termed standard and relate to construction related effects.
2. There is provision for some flexibility in terms of matters not completely resolved. In this category are detailed matters such as seating, pathway widths/surfacing and materials. Importantly the precise location and treatment of the memorial plaques needs to be resolved at detailed design stage.
3. Effort is also required in terms of detailing. In supporting these conditions we agree that particular attention is required in terms of design and materials. The quality of both needs to reflect the very high values attributed to the site by Wellingtonians and visitors.

4. There also needs to be a degree of monitoring and potential design review. This is particularly the case regarding any measures to manage wind effects that may arise.

Overall apart from some minor matters we have accepted that the conditions are fit for purpose. Our changes to that proposed conditions recommended in closing are marked with deletions marked as ~~strikeout~~ and additions underlined.

### **13. Part 2 Considerations and Overall Conclusions**

In terms of whether the proposal represents the sustainable management purpose of the Act we have outlined above the principle matters and constituent parts of s104. In terms of Part 2, the following are our findings.

#### **13.1 RMA Part 2 Considerations**

While we must have regard to the matters listed in s104, those matters are subject to Part 2 of the RMA and appropriate weight should also be given to the relevant provisions of s5, 6, 7 and 8. Of particular relevance to this application are:

- a) The definition of 'sustainable management' in s5 which includes:

*S5(2) Enabling people and communities to provide for their social, economic and cultural wellbeing.*

This is relevant to the application because in simple terms the proposal is about the Wellington community providing for its wellbeing in an area that is highly valued. We consider that approval of this proposal meets the definition of sustainable management for reasons outlined in this decision.

*S5(2)(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations.*

This is directly relevant and we have considered the context of the site on the waterfront as well as the function and purpose of Frank Kitts Park. While different from what currently exists we consider that the proposal meets the needs of future generations of Wellingtonians and visitors.

*S5(2)(b) Safeguarding the life supporting capacity of air, water, soil and ecosystems.*

There are no s5(2)(b) matters that are directly applicable to determining this application.

*S5(2)(c) Avoiding, remedying or mitigating adverse effects on the environment.*

We discuss the concerns about the range of potential adverse effects raised by submitters earlier in this decision. What we did consider is the view on retention of some or all of the Park as a method of avoiding, remedying or mitigating adverse effects. We have accepted the applicants and the TAG view that you cannot pick and mix parts of the park design and that the removal of the amphitheatre and promenade wall is necessary to achieve the applicants objectives for the site.

Overall and subject to the imposition and implementation of conditions of consent, we are satisfied that the adverse effects of this proposal can be adequately avoided, remedied or mitigated.

- b) We have also given particular regard to the following section 6 matters that need to be recognised and provided for:

*s6(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development -;*

With mitigation we do not see that the proposal is contrary to s6(a) of the Act. The natural character of the coastal environment has already been compromised. Indeed the proposal is considered to support s6(a).

*s6(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.*

While the access from the city to the Park is not improved it is maintained across Jervois Quay with the proposal enhancing access in our view between the Park and the edge of the coastal marine area.

*s6(f) The protection of historic heritage from inappropriate subdivision, use and development.*

We have recognised the associations that Wellingtonians and others have with Frank Kitts Park. There are however no listed structures. In relation to the memorial plaques and the Wahine Mast we consider that these can be appropriately located without undermining historic heritage values.

There are no outstanding features or landscapes s6(b) nor is there any s6(c) indigenous flora or fauna values that require to be protected.

Additionally there are no s6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga as well as s6(g) recognised customary activities issues, identified. Supportive submissions were received from tangata whenua and there are no recorded sites of significance within the District Plan.

- c) In terms of s7 of the Act we have also had particular regard to:

*s7(b) The efficient use and development of natural and physical resources.*

In our view utilising a primary open space on Wellington's Waterfront for a range of open space uses is an efficient use of natural and physical resources.

*s7(c) The maintenance and enhancement of amenity values – section 7(c).*

In terms of other amenity values this has been a key component throughout our decision. For the reasons outlined above amenity values are maintained and enhanced with the proposal.

*s7(f) Maintenance and enhancement of the quality of the environment.*

The character of the environment will be changed with this activity from Frank Kitts Park as we now know it to a different design concept with some different components. This proposal has gone

through significant thinking and design evaluation. Based on the evidence we consider that the quality of the environment is maintained and enhanced.

*s7(g) Any finite characteristics of natural and physical resources.*

Land is a finite resource and open space on the Wellington waterfront even more so. Frank Kitts Park will remain as one of Wellington's premier open spaces and that function has not been lost with the proposal in place.

d) There are no s8 matters (taking into account the principles of the Treaty of Waitangi) that have been brought to our attention that we have to take into account.

### 13.2 Conclusions

In the context of Part 2 of the Act there is a clear overall judgement to be made between the effects identified by submitters and the proposal from the applicant. We are satisfied that so long as the conditions are observed by the applicant, with monitoring and review where required, that the proposal represents the sustainable management purpose of the Act.

### 14. Decision

In accordance with the authority delegated to us by the Wellington City Council, and pursuant to s104 and s104B of the Resource Management Act 1991 we **grant** resource consent to the application for the redevelopment of Frank Kitts Park including the construction of buildings and structures and associated earthworks subject to the conditions contained in Appendix 1 to this decision. This is for the reasons explained throughout this decision.

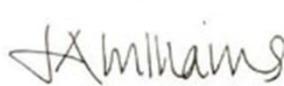


Lindsay Daysh

**Independent Commissioner  
(Chair)**

For the Wellington City Council

Decision dated **11 November 2016** at Wellington



Julia Williams

**Independent Commissioner**



Sue Piper

**Independent Commissioner**

Appendix 1  
**Conditions of Consent**

## **Conditions of Consent**

- (a) The proposal must be generally in accordance with the information provided with the application Service Request No. 358352 and the following plans:
- Drawing No. LA RC 0-03, titled 'Demolition plan'
  - Drawing No. LA RC 0-04, titled 'Earthworks /cut and fill plan'
  - Drawing No. LA RC 1-00, titled 'Site Plan – Level 0'
  - Drawing No. LA RC 1-01, titled 'Site Plan – Level 1'
  - Drawing No. LA RC 1-02, titled 'Existing and proposed levels'
  - Drawing No. LA RC 1-03, titled 'Proposed landscape finishes'
  - Drawing No. LA RC 1-04, titled 'Pedestrian access'
  - Drawing No. LA RC 1-05, titled 'Vehicle access'
  - Drawing No. LA RC 1-06, titled 'Lighting levels strategy'
  - Drawing No. LA RC 1-07, titled 'Chinese garden security plan'
  - Drawing No. LA RC 1-08, titled 'Seating'
  - Drawing No. LA RC 1-10, titled 'Cultural, artworks + interpretation'
  - Drawing No. LA RC 1-19, titled 'Detailed site plan 01/02'
  - Drawing No. LA RC 1-20, titled 'Detailed site plan 02/02'
  - Drawing No. LA RC 1-21, titled 'Proposed landscape levels 01/02'
  - Drawing No. LA RC 1-22, titled 'Proposed landscape levels 02/02'
  - Drawing No. LA RC 2-00, titled 'Proposed site elevations- AA'
  - Drawing No. LA RC 2-01, titled 'Proposed site elevations- BB'
  - Drawing No. LA RC 2-02, titled 'Proposed site sections – CC + DD'
  - Drawing No. LA RC 2-03, titled 'Proposed site sections – EE + GG'
  - Drawing No. LA RC 2-04, titled 'Proposed site sections – FF'
  - Drawing No. LA RC 3-00, titled 'Chinese garden walls - Heaven's Well'
  - Drawing No. LA RC 3-01, titled 'Chinese garden walls – north + east'
  - Drawing No. LA RC 3-02, titled 'Chinese garden walls- Pool of Still Waters'
  - Drawing No. LA RC 3-03, titled 'Chinese garden walls – internal'
  - Drawing No. LA RC 3-04, titled 'Park furniture details 01/02'
  - Drawing No. LA RC 3-05, titled 'Park furniture details 02/02'

Note: The above plans are subject to further detailed design as per conditions (b), (c), (d), (k), (l), (t), (u), and (v) below.

### Landscape Plan:

- (b) A Final Landscape Plan and Detailed Design Plan must be submitted to, and approved by, the Compliance and Monitoring Officer prior to any works being undertaken on site. The Landscape Plan must show the following details:
1. An acceptable standard scale;
  2. The individual location and species (with both scientific and common names); and details regarding suitable replacement species should the proposed species not be successful or available.
  3. Nursery Grade PB or size of proposed plants; and
  4. Details of plants to be removed or pruned.
  5. The gradients of accessible pathways
  6. Details of paving materials and compaction
  7. Access points to memorial plaques
  8. Materials to be used for park furniture

The final Landscape Plan must be provided prior to the commencement of work on site, to the satisfaction of the Council's Compliance and Monitoring Officer who ~~will~~ shall consult with the following advisers:

- Parks, Sport and Recreation Team
- City Arts and Events Team
- Wellington Accessibility Advisory Group
- Wellington Waterfront Technical Advisory Group (TAG)
- The Council's Landscape Architect Consultant
- The Council's Chief Transport Adviser

Note: Where possible, plant species should be locally sourced from the Wellington area.

(c) Further detailed design must be submitted to and approved by the Compliance and Monitoring Officer prior to works being undertaken. The detailed design must address the following matters:

- Provision of further wind shelter elements, structures or landscape features associated with the Harbour Lawn, to provide moments of shelter.
- Formal seating provided throughout the park, including additional seating opportunities at the south edge of the Harbour Lawn, ~~and~~ against the promenade and in the Chinese Garden.
- Resolution of the memorial wall, including potential to continue to utilise some remaining parts of the carpark wall adjoining the promenade, and in any event, documentation describing the intended approach and placement of existing plaques.
- Resolution of the path linking the Jervois Quay footpath to the Waterfront promenade on the southern side of the Harbour Lawn, including its dimensions and paving material.
- Details of the areas and measures to ensure the safe closure (at night) of the Chinese Garden This should include details of any contracts to ensure this is given effect to.
- Any outstanding CPTED-related risks.

The above detailed design matters must be provided prior to the commencement of work on site, to the satisfaction of the Council's Compliance and Monitoring Officer who will consult with the following advisers:

- The Council's Parks, Sport and Recreation Team
- Wellington Accessibility Advisory Group
- Wellington Waterfront Technical Advisory Group (TAG)
- The Council's Landscape Architect Consultant
- The Council's Chief Transport Adviser

Should the consent holder decide not to address any of the above matters, clear and reasonable justification for not doing so must be provided to the Council's Compliance and Monitoring Officer. The Compliance and Monitoring Officer will consult with relevant advisers to determine the appropriateness of this.

- (d) A 'Tree Management Plan' detailing trees to be removed, retained and relocated, prepared by a suitably qualified arborist, must be submitted to, and approved by, the Council's Compliance and Monitoring Officer, in consultation with the Council's Landscape Architect Consultant, prior to works being undertaken. This must detail the following:
1. All tree protection measures and construction methodologies for the Frank Kitts Park upgrade.
  2. All other relevant standards relating to trees must be cited and approved, including 'Health and Safety: the Tree Relocation Methodology' and 'Future Maintenance', and conditions required for Wellington City Council's 'Guide to Working Around Trees'.
- (e) The final Landscape Plan, approved under condition (b), must be ~~completed~~ implemented by the consent holder within 3 months of completion of works. The plantings must be monitored for 18 months from time of planting in order to allow for plant establishment to the satisfaction of the Council's Compliance and Monitoring Officer, in association with the Council's Parks Sport and Recreation Team. This includes the removal of weeds within the vicinity of the plantings and the replacement of plants that die or are removed unlawfully within this period in the same location, with the same species and sized plants. Any plants that fail must be replaced at the expense of the consent holder.
- The landscaping and planting must continue to be maintained by the consent holder thereafter.
- (f) The Council may undertake a review of landscape conditions (b) - (e) above under section 128 of the Resource Management Act to address any adverse effects of the exercise of the consent in respect of unsuccessful establishment of plants, trees and planting areas, ~~and~~ any potential requirement for additional seating throughout the park and any potential requirement for widening and/or resurfacing the two link paths across the Park either side of the Harbour Lawn. The review may be undertaken within 18 months of the undertaking of the landscape works relating to any one stage of the overall works.

Construction Management:

- (g) A Construction programme, which shall include a programme of works that seeks to enable the project to be constructed in a manner that is timely, adequately coordinated and manages the adverse effects of construction on the environment, must be submitted to and approved by the Council's Compliance and Monitoring Officer prior to the commencement of any works.

Note: The Compliance and Monitoring Officer will approve this programme in consultation with the Council's Networks Transport Planning team.

- (h) A final detailed Demolition and Construction Management Plan (DCMP) must be prepared, submitted to and approved by the Council's Compliance and Monitoring Officer prior to the commencement of all work on site. The DCMP must include methods to avoid, remedy or mitigate adverse construction traffic effects during the development of the site.

The DCMP must include, but is not limited to, the following matters:

- Temporary pedestrian safety measures including directional signage where applicable. The temporary pedestrian safety measures shall have regard to CPTED-related risks.
- Measures to ensure that access is available to/from the three entry points to the markets (Wellington Underground Market) operating from the carpark.
- A limit on the days and hours of work for heavy vehicles. E.g. trucks may be restricted to operate outside commuter traffic peaks and school start and finish times.
- An emergency (24/7) contact phone number.
- A public complaints register.
- Measures to deal with any collateral damage to vehicles and property.
- Any related occupation of the public footpath or carriageway for construction related purposes.
- Construction vehicle routes.
- Acknowledgement of sensitive sites along the route e.g. schools.

Note: The Compliance and Monitoring Officer will approve this plan in consultation with the Council's Networks Transport Planning Team.

- (i) As far as practicable all construction activity related to the consented development must take place within the confines of the site.

Traffic Safety:

- (j) The sign materials and the content that the sign displays, must be designed and maintained throughout construction, in accordance with the objectives and standards of the New Zealand Transport Agency Road Traffic Safety Standards RTS7 *Advertising Signs and Road Safety: Design and Location Guidelines* and must meet the following:

- The minimum letter size for words is to be 150mm for the main message and 75mm for any secondary message (RTS7 Appendix 2.3 for 60, 70, 80, 95, 115 km/h zone);
- The fonts used for words must be in accordance with RTS7 Appendix 2.4;
- No reflective materials shall be used;
- No flashing lights shall be used; and
- No three dimensional elements, moving or animated components shall be used; and
- Colours used must be in accordance with Section 5.2 of RTS7.

Final Servicing and Loading Plan:

- (k) Prior to works commencing on site, a site servicing and loading plan must be submitted to, and approved, by the Council's Compliance and Monitoring Officer, in consultation with the Council's Networks Transport Planning Team. This must detail the following:
- Servicing and loading points surrounding the park, beyond the existing servicing area to the north of the site, adjoining the TSB Arena.
  - Vehicle Access points from Jervois Quay.

#### Final Lighting Strategy and Maintenance Plan:

- (l) Prior to works commencing on site, a final lighting strategy and associated maintenance plan must be submitted to, and approved by the Council's Compliance and Monitoring Officer in consultation with the Wellington Waterfront Technical Advisory Group (TAG).

#### Earthworks Stability:

- (m) The consent holder must engage a suitably experienced Chartered Professional Engineer (CPEng) to monitor and advise on the engineering aspects of the earthworks, during the development of the site.
- (n) The CPEng, required under condition (m) will advise on the best method to ensure the stability of the land, and to ensure that the work does not cause damage, or have the potential to cause damage, to neighbouring land or buildings. The consent holder must follow all the advice of the CPEng, in a timely manner.

#### Management of Erosion, Sediment and Dust:

- (o) An Earthworks Management Plan based on the erosion and sediment controls as detailed in the Earthworks and Erosion & Sediment Control Measures and as indicated on sediment control plan (Ref: LA RC 0-02), must be submitted to and approved by the Council's Compliance and Monitoring Officer and be implemented for the duration of the site works, and continue until the ground surface has been stabilised by construction, paving or grassing to the satisfaction of the Officer.
- (p) The discharge of dust created by earthworks, transport and construction activities must be controlled to minimise nuisance and hazard. The controls must be implemented for the duration of the site works and continue until the site stops producing dust.
- (q) All parts of the Earthworks Management Plan must be complied with to the satisfaction of the Council's Compliance and Monitoring Officer for the duration of the site works. If necessary, the Officer may require changes to the implementation of the plan, to address any problem that occurs during the work or before the ground surface is stabilised.

#### Transportation of Material:

- (r) Any earth, rock, vegetation or demolition material that falls on the road, footpath, berm or neighbouring property, must be cleaned up immediately. The material must not be swept or washed into street channels or storm water inlets, or dumped on the side of the road.

#### Code of Practice for Land Development:

- (s) It is the consent holder's responsibility to comply with the Council's Code of Practice for Land Development 2012, in relation to works involving pipes and drainage.

Note: Any works involving the disturbance of drains or pipes, or the increase of impermeable surfaces should be discussed with the Wellington Water Land Development Team prior to any works commencing.

Review of Wind Environment:

- (t) The consent holder must undertake a review of the wind environment within the park 6 and 12 months after the completion of works, to identify whether (or not) the following comfort levels of wind are achieved:

*Mean hourly wind speed = 2.5m/s for more than 73 days/year in any part of the Park previously sheltered from such wind speeds.*

- (u) Should areas assessed not meet this level of comfort, the consent holder must explore additional wind shelter options. These must be submitted to Council's Compliance and Monitoring Officer for certification. The Compliance and Monitoring Officer will consult with the Wellington Waterfront Technical Advisory Group and the Council's wind adviser to determine the appropriateness of the additional wind shelter, having regard to other design matters such as views, accessibility and safety (CPTED).
- (v) The Council may undertake a review of condition (t) and (u) above under section 128 of the Resource Management Act to address any adverse effects of the exercise of the consent in respect of the wind environment. The review may be undertaken within 18 months of the works being completed.

Maintenance of Chinese Garden:

- (w) The consent holder must establish and maintain the features within the Chinese Garden. A maintenance programme must be submitted to and approved by the Council's Compliance and Monitoring Officer prior to works commencing.

Monitoring and Review:

- (x) Prior to starting work the consent holder must advise of the date when work will begin. This advice must be provided at least 48 hours before work starts to the Council's Compliance and Monitoring Officer either by telephone (801 4017), facsimile (801 3165) or email (rcmonitoring@wcc.govt.nz) and must include the address of the property and the Service Request Number.
- (y) The conditions of this resource consent must be met to the satisfaction of the Council's Compliance and Monitoring Officer. The Compliance and Monitoring Officer will visit the site to monitor the conditions, with more than one site visit where necessary. The consent holder must pay to the Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions), or supervision of the resource consent as set in accordance with section 36 of the Act. These costs\* may include site visits, correspondence and other activities, the actual costs of materials or services, including the costs of consultants or other reports or investigations which may have to be obtained.

\* Please refer to the current schedule of Resource Management Fees for guidance on the current administration charge and hourly rate chargeable for Council officers.

Appendix 2

**Persons who attended and presented evidence or submissions at the hearing**

**Applicant**

- Duncan Laing, Solicitor (Lawyer, Simpson Grierson);
- Michael Faherty (Project Director, Wellington City Council City Shaper);
- Martin Bryant, Design (Professor of Landscape Architecture and Director of Landscape Architecture Programme at Victoria University of Wellington );
- John Hardwick-Smith, Architect (Director, Athfield Architects Limited);
- Duncan Campbell, Chinese Garden Design;
- Toby Acheson (Senior Adviser Events, Logistics & Venues Wellington City Council);
- Allan Brown (Waterfront Operations Manager Wellington City Council);
- Neil Jamieson, Wind (Research Leader (Wind Engineering) at Opus Research a business unit of Opus International Consultants);
- Hudson Moody, Shading (Director, Spencer Holmes Limited);
- Frank Stoks, Crime Prevention Through Environmental Design (Director, Stoks Limited);
- Alistair Aburn, Planning (Senior Consultant, Urban Perspectives Ltd.

**Submitters (in order of appearance)**

- Dr Patrick McCombs; Waterfront Watch
- Pauline Swann; Waterfront Watch
- Lindsay Shelton; Waterfront Watch
- Alana Bowman; Waterfront Watch
- Catharine Underwood; Waterfront Watch
- Alexia Pickering;
- Michael Gibson;
- Pauline Swann for herself and Athol Swann;
- Steve Dunn;
- Chris Horne & Barbara Mitclafe;
- Clive Anstey; Wellington Civic Trust
- Yon Yi Sohn; Wellington Civic Trust
- Sylvia Allan; Wellington Civic Trust
- Gordon Wu;
- Robert Lau;
- Harvey Wu; Wellington Chinese Garden Society;
- Esther Fung Wellington Chinese Garden Society;
- Wendy Jasper;

- Bronwyn Barber;
- James Barber;
- Victor Davie

**WCC Advisers**

- Claire Moore, WCC Planning Officer;
- Steve Spence, WCC Traffic Adviser;
- Michael Donn, Wind Adviser (School of Architecture, Victoria University of Wellington);
- Angela McArthur, WCC Landscape Adviser;
- Graeme McIndoe, Waterfront Technical Advisory Group;
- Chris McDonald, Waterfront Technical Advisory Group;
- Robin Simpson, Waterfront Technical Advisory Group;

Appendix 3

**All Submissions Received**

<b>Submitter Number</b>	<b>Name</b>	<b>Support/ Oppose</b>
1	Kate Bevin	Support
2	Michael Gibson	Oppose
3	Mary Munro	Oppose
4	Iain Southall	Support
5	Venetia King	Neutral
6	Mark Coburn	Neutral
7	Janice Kirk	Oppose
8	James Beattie	Support
9	Wellington Chamber of Commerce Attn: Sam MacKinnon	Support
10	Pat Van Berkel	Oppose
11	John Bryden Williamson	Oppose
12	Pam Stainton	Oppose
13	Geraldine George	Oppose
14	Catharine Underwood	Oppose
15	Alana Bowman	Oppose
16	Ann McCrone	Oppose
17	Richard Darlow	Oppose
18	G. O Schipfer	Oppose
19	M. Wallace	Oppose
20	Pauline and Athol Swan	Oppose
21	James Barber	Oppose
22	Adele Harris	Oppose
23	Bettina Bradbury	Oppose
24	Edward Zhang	---
25	Lucy Lu	Support
26	David Underwood	Oppose
27	Rachel Underwood	Oppose
28	The Wellington Division Cancer Society	Support
29	Jacqueline Haydn	Oppose
30	Hilary Phillips	Oppose
31	Philippa Boardman	Neutral
32	Sandra Kinney	Oppose
33	Jane Campbell	Oppose
34	Wellington Tenths Trust Attn: Morris Te Whiti Love	Support
35	Felicity Wong	Support
36	David J Stevens	Oppose
37	Steven Young	Support
38	Adele King	Oppose
39	Yap Khin Long	Support
40	Alexia Pickering	Oppose
41	Sam Kwok	Support

<b>Submitter Number</b>	<b>Name</b>	<b>Support/ Oppose</b>
42	Susan Watt	Oppose
43	Bea Hamer	Oppose
44	Wellington Chinese Garden Society Inc	Support
45	Robert Lau	Support
46	Wendy Jasper	Support
47	Diana Siklosi	Oppose
48	Liz Ngan	Support
49	Alan Hu	Support
50	Chris Greenwood	Oppose
51	Bronwyn Brown	Oppose
52	Tung Jung Asso NZ Inc Attn: Gordon Wu	Support
53	Frances M C Lee	Oppose
54	Wgtn Chinese Sports & Cultural Centre Attn: Malcolm Young	Support
55	Milton Hollard	Oppose
56	Juping Zhou	Support
57	Luke Qin	Support
58	Michael Howden	Support
59	Wellington Civic Trust Attn: Sylvia Allan	Oppose
60	Steve Dunn	Oppose
61	Lindsay Fung	Support
62	Maggie Zhou	Support
63	Brandy Yining Zhao	Support
64	Wujun Zhao	Support
65	Beifen Li	Support
66	Judith Graykowski	Oppose
67	Chiao Tam	Support
68	Yijuan Chen	Support
69	Manaaki Mgmt Ltd/Karaka Cafe Attn: Paul Retimanu	Support
70	Euan Galloway	Oppose
71	Waterfront Watch Attn: Patrick McCombs	Oppose
72	Barbara Mitcalfe & Chris Horne	Oppose
73	Mt Victoria Residents' Assoc Attn: Craig Palmer	Oppose
74	Mo Cong	Support
75	Ming Zhang	Support
76	Tom Hurdley	Neutral
77	Adam Lynch	Support

<b>Submitter Number</b>	<b>Name</b>	<b>Support/ Oppose</b>
<b>78</b>	Shannon Wallace	Support
<b>79</b>	Bernard Campbell	Oppose
<b>80</b>	Xixing Li	Support
<b>81</b>	Songzhi Qiao	Support
<b>82</b>	Suping Zhang	Support
<b>83</b>	Youkai Tang	Support
<b>84</b>	The Palmerston North Maori Reserve Trust Attn: Liz Mellish	Support
<b>85</b>	Te Raukura (Te Wharewaka) Attn: Tracey Betham	Support
<b>86</b>	David Zwartz	Oppose
<b>87</b>	Denis & Carol McCord	Oppose
<b>88</b>	Eileen Eckford	Oppose
<b>89</b>	Winifred Edith Ryan	Oppose
<b>90</b>	Anna Rosemary Hesp	Oppose
<b>91</b>	Anne McKinnon	Oppose
<b>92</b>	Janice Fraser	Oppose
<b>93</b>	Anne Ryan	Oppose
<b>94</b>	Lynette & Brian Burrell	Oppose
<b>95</b>	Victor Davie	Oppose
<b>96</b>	Craig Palmer	Oppose
<b>97</b>	Ellen Yang	Support
<b>98</b>	Beris G Butler, Diana S. Andrews Ian D MacLean Christopher J Nevill	Support
<b>99</b>	Fran Parkin	Oppose
<b>100</b>	Fay McIntyre	Oppose
<b>101</b>	Liu Guoxing Guociai	Support
<b>102</b>	Cai Deqin	Support
<b>103</b>	Xu Caiping	Support
<b>104</b>	Li Qixia	Support
<b>105</b>	Zhang Shuxia	Support
<b>106</b>	Architectural Centre Inc.	Neutral
<b>107</b>	Marion Leahy	Oppose