

# Appendix 1: Mechanisms for implementation

A list of mechanisms for achieving open space objectives follows:

1. Negotiation
2. Education
3. Studies
4. Special projects
5. Incentives
6. Sponsorship
7. Statutory planning
8. Easements and rights-of-way
9. Covenants
10. Trusts
11. Purchasing (or transferring) development rights
12. Land swap or exchange
13. Reserve contributions
14. Land purchase

## **1. Negotiation**

Negotiation can be very effective in achieving the aims of a long-term and widespread open space strategy. The results of negotiations may involve other mechanisms such as: land purchase, land swaps, boundary adjustments in order to secure sites with open space values, covenants and easements, getting development rights transferred or offering landowners incentives to voluntarily protect an area or manage it in a particular way. Negotiations need to be done by officers with appropriate negotiation skills who can foster a partnership approach.

Careful negotiation can often achieve a cost-effective 'win-win' result without having to resort to land purchase or lengthy and costly legal proceedings.

## **2. Education**

Helping landowners to be aware of and understand open space values can be a powerful and persuasive tool in protecting areas. The importance of this approach should not be under-estimated, and education and awareness generally should be included as an underlying part of all mechanisms.

This relies on goodwill rather than permanent legal protection but can be an extremely low cost and effective mechanism as part of a long-term strategy. The key to success is often dependent on personal contact and relationships and effective 'selling' of the strategy (which might otherwise seem vague and obscure to some landowners). Gaining their confidence is important and maintaining close and regular contact helps build this. If land is sold, then early contact with new landowners is essential to maintain

the goodwill and relationship already established with the previous owner. This approach has been very successful in Britain with conservation and open space agencies and with territorial authorities.

Landowner awareness and persuasion to voluntarily protect areas of open space can be an effective short-term measure even if the ultimate aim is to achieve a more secure form of protection. Sometimes it may be the only way to achieve at least some sort of 'protection' on private land. When landowners have an understanding of why an area is important and how it should be managed to protect intrinsic values, it can be the catalyst to ensure that such areas are not degraded by inappropriate land use activities.

At a broader scale, education and awareness of open space qualities and values of particular areas identified in the strategy can be achieved in a multitude of ways including: brochures and reports, articles in newspapers and magazines, local group meetings, etc. It is important that the community understands the objectives of the open space strategy and their role in achieving results through active involvement.

### **3. Studies**

The preparation of the open space strategy does not remove the need for specific studies to investigate a project or an issue or particular blocks of land. These should provide a sufficient level of information and/or recommendation to enable Council to decide the level of commitment that can or should be made.

The studies are not necessarily complex nor expensive. Rapid surveys, assessments or investigations will frequently provide sufficient additional information to explore the project, determine what action(s) should be taken and the anticipated costs. In some instances, after a specific study has been carried out, the recommendation may be that a particular project should not proceed or block of land be purchased, covenanted etc.

A written brief is the key to ensure that specific studies are focused and that they inform Councillors adequately so that they can make decisions, regardless of whether the work is to be completed by Council staff or outside consultants. Many studies end up being costly, too complex or failing to deliver information in a useful form because of an inadequate brief.

### **4. Special projects**

Special projects would tend to focus on a particular block of land where a whole range of initiatives and/or investigations are required. Protection of open space values in a given area may not be straightforward and an innovative approach maybe required. Handling such a situation as a 'special project' can effectively focus attention and input from a range of disciplines. It can also be used effectively in the media and to acquire funding from outside agencies and/or individuals.

The National Trust in Britain and many similar land protection/open space organisations in the United States use the 'special project' status very successfully. Operation Neptune launched by the National Trust in Britain in the early 1980s to purchase stretches of threatened scenic coastline has been spectacularly successful, with many hundreds of kilometres of coastline now permanently protected. A similar project started a decade or more earlier by the Trust was a dismal failure. However, a clear focus, a target, and the catchy Operation Neptune by-line successfully captured public and media attention and achieved results.

Initiatives such as *Our City ~ Our Future* provide good opportunities to initiate and promote special projects and for these to be subsequently picked up and promoted by the media.

To be successful special projects have to be soundly based and well thought through, with attention given to the briefing, desired outcomes, resources and personnel involved. Special projects have to be carefully orchestrated; they will not 'just happen'.

## **5. Incentives**

In some ways incentives are a similar tool to education and awareness. Often, a lot can be achieved for relatively little cost. Land will not be legally protected but its open space values can be maintained or improved, perhaps as an interim measure, until permanent protection can be arranged as part of the overall strategy.

Incentives may take the form of financial encouragement or a grant to a landowner to protect and/or manage a block of land in a certain way. Alternatively, incentives can take the form of public recognition, or an award, for a landowner who agrees to voluntarily comply with a desired land management activity to help the strategy to be realised. There may be costs involved for such things as fencing, weed control, track maintenance, tree planting and the like, with no guarantee of long term protection or even protection of an area beyond the current landowner. Costs will, of course, vary according to circumstances.

Incentives rely on the goodwill and commitment of the landowner and achieves a very low level of 'protection'. However, offering some form of incentive may be the only way of achieving an outcome on private land.

## **6. Sponsorship**

Sponsorship of open space projects can provide 'win-win' situations. Effectively a sponsor provides financial or other resources to assist with a project in return for positive marketing, access to the resource and other benefits. Sponsorship is more appropriate for some projects than others. Facilities like the zoo already make use of sponsorship on a small scale and there is potential for larger projects.

Sponsorship has the disadvantage of appearing to commercialise projects. In general the sponsor wants their name prominently associated with the project and this can detract attention from Council or other providers. Some potential sponsors may have negative associations, such as tobacco and alcohol companies, that Council would prefer not to be associated with.

On the positive side sponsors can add significant resources and support to projects that would otherwise not be possible. Marketing is an advantage for both the sponsor and the project in most cases, so the sponsors' marketing efforts effectively raise the profile of the project.

## **7. Statutory planning**

There are several statutory planning levels through which the open space concept can be recognised and provided for:

### *District planning*

Of particular value to the *Open Space Strategy* is the *Wellington City Proposed District Plan* which is currently in the process of hearings, decisions and appeals before it can be made operative. The plan is conveniently administered by the same body as the open space strategy and has corresponding boundaries.

Once the *Open Space Strategy* has been substantially completed changes to the district plan may be sought (assuming it is operative by that time) to accommodate the strategy intent in the plan's policies and objectives, zonings and rules. The advantage of this is that where development that may potentially affect the open space strategy occurs, and where that development requires reference to the district plan for a consent, the potential effects can be evaluated under the statutory regime of the Resource Management Act 1991 and a decision about the development made accordingly.

A disadvantage is that there may be some activities which the plan allows to occur within an area that do not require reference to the plan for a consent. For example, farming in the Rural Area may allow various activities to occur which could affect the open space concept, but which are quite lawfully being carried out under the plan.

The district plan mechanism requires the plan to reflect the strategy. If the strategy is seen to disadvantage landowners (eg restrict activities), then changing the plan to reflect the strategy will be opposed by some. Such opposition may necessitate lengthy and potentially costly hearings, and possibly an Environment Court case before a decision is made and/or compensation can be paid for any loss of value. However, once the decisions have been made, and assuming the strategy is in place, the planning mechanism will tend to look after itself and will not require large costs in ongoing policy development.

### *Regional planning*

Other statutory planning regulations are administered at the regional level, by the Wellington Regional Council in this case. There is some advantage in the regional overview that these planning regulations can have in terms of a consistent approach across the region to resource management. The Wellington Regional Council also manages a range of regional parks which the city open space concept can potentially link to.

The regional policy statement is intended to provide the regional overview on policy to manage regional resource management issues. The strategy needs to be recognised in the *Regional Policy Statement for the Wellington Region*.

In respect of the Wellington City Open Space Strategy the Regional Council has a significant role in the management of the coastal areas of the District. Where there is an interface between the land and the sea the Regional Council has statutory responsibilities and it administers a *Proposed Coastal Plan*<sup>10</sup> that covers this area.

There are also a range of other regional plans prepared under the regime of the Resource Management Act 1991 that will have varying degrees of applicability to the *Open Space Strategy*. These other regional plans deal with landscape, soil, freshwater, air and discharges. The regional plans operate less geographically than a district plan and as a general rule tend to describe environmental qualities (e.g. x amount of water in a river), rather than activities permitted within an area. However, some regional plans will have considerable relevance to the *Open Space Strategy* and should be consistent.

The advantage of consistency between the various statutory planning documents as they apply to the *Open Space Strategy* (or any activity) should not be underestimated. Not only is it sensible to have all the documents consistent for good resource management administration, but if there are any contentious matters related to the strategy and there are inconsistencies then these will be targeted in hearings or the court. The strategy is less likely to be overlooked or undermined, if it is represented consistently in more than one set of statutory documentation.

The regional plan has similar advantages to that of the district plans but most important is that there should be a consistent approach between the district and regional levels of plans. The regional level is likely to be less costly to implement and administer than the district level, but correspondingly less effective.

### *Central planning*

The Department of Conservation has some role in the pursuit of the strategy, in that activities within coastal marine areas (generally the tidal area) require Minister of Conservation approval. Aspects of the strategy that involve the tidal areas of the coast will require consideration in respect of the *New Zealand Coastal Policy Statement*. This has an advantage for the strategy in that the statement as it stands tends to reflect the objectives of the strategy so little action may be required to gain the general level of protection for coastal activity management contained in the statement.

<sup>10</sup> Parts of this are now operative but other parts are still subject to appeal.

## **8. Easements and rights-of-way**

An easement is a voluntary restriction on property rights under legal agreement. Easements are often used when utilities, such as pipelines or transmission lines are required to cross private land. Access easements or rights-of-way to allow pedestrians and/or vehicles across land are also frequently used. An easement can be specifically targeted to a particular area of land of virtually any size or shape. Easements are cost effective with few liabilities. Compensation is often paid to the landowner as part of the easement agreement.

## **9. Covenants**

Covenants can be a very cost-effective means of securing protection. A covenant is a legal agreement involving voluntary restriction(s) on property rights. A covenant is lodged on the land title and therefore survives sale. Any subsequent owners purchase the land with the covenant in place. The Reserves Act 1977 has provision for conservation covenants and the Queen Elizabeth II National Trust Act 1977, for open space covenants. There is also provision under sections 49 and 66 (A) of the Property Law Act 1952.

Covenants can be targeted to achieve specific outcomes and there are few liabilities assumed apart than for the desired area. Covenants can also be tailored to particular requirements, either in perpetuity or perhaps for the tenure of the current owner. For example, contributions may be made to the landowner towards the cost of fencing or noxious plant and animal control. Conversely, a landowner may require restrictions to public access at certain times of the year (eg during lambing) or may periodically require the site as a venue for a particular activity. These and various other requirements can be included in a covenant document.

Covenants, however, cannot guarantee such things as public access at all times. For example, a landowner may be willing to protect a particular area or feature but may not want public access or may allow restricted access only. Such terms and requirements would be embodied in the covenant document.

As land ownership remains with the owner, there is less control than with land purchase. However, covenants have some distinct advantages in that the day-to-day management of the land remains with the owner but the desired outcome is achieved (eg protection of a block of remnant forest). Covenants require a willing landowner and are more likely to succeed and be cost-effective when they are initiated by the landowner rather than by the Council. When the Council initiates a covenant it places the landowner in a strong negotiating position and the issue of compensation for actual or perceived loss of value is often a factor.

Based on precedent, the cost of securing a covenant has been estimated as 10 percent of the land value. However, this is likely to vary depending on circumstances such as who initiated it, compensation, the amount of fencing or other works required, whether there is a 'clean' title, and whether survey is required. There are many variables. Covenants in and around urban areas are likely to be more complex and more expensive to achieve than those, for example, on farmland in 'rural' areas.

The Queen Elizabeth II National Trust, for example, works primarily in rural rather than urban or peri-urban areas and has calculated that the average cost of securing an open space covenant is less than 5 percent of the land value. The National Trust, however, rarely initiates a covenant. Almost invariably the landowner approaches the Trust, a factor which undoubtedly has a major bearing on the relatively low cost of achieving these covenants. An open space covenant can only be revoked with the unanimous decision of the full board of directors of the National Trust and the landowner. A conservation covenant can be revoked with the agreement of two people, the landowner and Council.

Education about and the creation of an awareness of covenants needs to be an integral part of implementing the open space strategy. This could occur both in a general way and also be targeted at landowners or groups of landowners in particular areas, with the message coming from an independent body, rather than a government department or territorial authority.

The Queen Elizabeth II National Trust has six open space covenants either registered or under action within the Wellington City boundaries. These covenants protect small native forest remnants totalling 4.8 hectares.

Covenants are an important mechanism to secure protection of open space and, to date, have not been fully utilised in Wellington City. All forms of covenanting need to be investigated and, given that the Queen Elizabeth II National Trust is based in Wellington, Council should try and establish a sound working relationship with it and discuss initiatives that could be used to mutual benefit.

Conservation covenants are similar to open space covenants except that the covenant is between the landowner and the Council. Under both types of covenants the full cost of survey, and generally 50 percent of the cost of fencing is provided to the landowner by the respective agencies. Occasionally the Department of Conservation will assist with the cost of fencing if the area being protected has exceptional conservation value.

## **10. Trusts**

Trusts arise when one person (the settlor) gifts property to another (the trustee) to be held subject to conditions (the deed) which govern its use, and the purposes for which income and principal can be used. In most cases the Council would not transfer the open space land to a trust, but would give the trust the right to manage the land together with a funding agreement.

Trusts which manage open space have a long history. The National Trust in the United Kingdom and the Queen Elizabeth II Trust in New Zealand govern large areas of open space for the benefit of the general public. The Wellington City Council has recently established the Basin Reserve Trust to manage this historically significant sportsground.

The principal advantages of trusts relate to their ability to attract community support, expertise and funding that would not be directly available to Council. Trusts are also perceived as being more independent with less political interference than Council.

The disadvantages of trusts relate to the additional establishment and administration costs where Council is the 'settlor' of the trust, and the loss of direct control over the asset which is gifted to the trust. Where Council establishes a trust it can influence its direction, by carefully specifying the purposes of the trust in the 'deed', and by retaining the right to appoint 'trustees'. Where Council appoints 'trustees' it is generally expected to reimburse them for their involvement.

### **11. Purchasing (or transferring) development rights**

This mechanism depends upon having formalised rules for property development such as plot ratios and bonuses which can be granted for objectives which the Council is wanting to encourage. For instance, a developer might be permitted to build higher than the usual permitted height in return for setting back the building and developing a public forecourt space or, alternatively, for preserving a heritage building facade.

Such rules existed previously in the central city area but have now been dispensed with. Instead, Council relies upon negotiation through the resource consent process and the application of design guidelines for controlled activities to achieve its objectives, the idea being that this is a more qualitative and responsive approach rather than the quantitative 'rules' approach. Therefore, this mechanism is unlikely to be workable unless Council re-introduces development rights.

Council is now looking at the potential for leverage in development negotiations with regard to non-traffic uses of the road reserves that it owns in the central city. At Umbrella Park, some open space and pedestrian access was negotiated by allowing the building to extend over the Council's road reserve. Council is also looking at negotiating market returns for activities on road reserve, such as sidewalk cafes.

### **12. Land exchanges**

With careful negotiation, parcels of Council land can be swapped for privately owned blocks with high open space value to help realise the strategy. Alternatively, parcels of Council land, even isolated reserve land that contributes relatively little to the city's open space network, could be sold to a private landowner and the funds used to buy strategic pieces of land with high open space values.

Such initiatives cannot, however, be considered in isolation. Blocks of land perceived as currently having little or no value as open space need to be assessed in a broad context to determine where they fit into a long-term strategy. Councils all around the country are grappling with whether to dispose of unwanted or unused reserves or areas of open space acquired under different circumstances years previously. Subsequent developments in the area, changes in population structure, strategic direction or changes in the emphasis of open space provision may mean that some areas are surplus or do not fulfil current open space objectives. Conversely, the strategic importance of an area purchased for reserve may not be realised for decades.

Disposal or exchange can open up tremendous strategic opportunities and effectively meet both Council and landowners' objectives. However, provision of open space should be a determinant of development and not simply allowed to be those areas left over after development has occurred. Wellington's open space strategy will provide the framework for looking at disposal and exchange opportunities.

Conversely, reserve land is sometimes difficult to dispose of because of its location or its contour or, perhaps, because it is not contiguous with other areas. If Council initiates a land swap or some other form of exchange with a landowner who holds a strategically located piece of open space, completion of the exchange also requires a willingness on the part of the landowner. This can place a landowner in a strong negotiating position. Often it is an opportunity based situation where skilful negotiation is the key to success.

As with land purchase, land exchange results in full ownership and control for development and management but may bring with it some liabilities in terms of management.

Channelling funds realised from reserve disposal towards acquisition of a strategic piece of open space can be an effective means of maximising resources and achieving open space goals provided it is done after careful assessment as part of a comprehensive open space strategy.

### **13. Reserve contributions**

There is provision under the Resource Management Act 1991, and transitionally under the Local Government Act, for reserve contributions to be taken by Council where new residential subdivisions occur. The *Proposed Wellington City District Plan* sets the regime for the acquisition of reserve contributions<sup>11</sup>. The contribution is able to be given as either a monetary contribution, or as land for reserve purposes respectively. The theoretical basis on which reserve contributions are made is to provide for reserve land for the benefit of the people of the district in which the subdivision is to occur. However, reserve contributions have only been effective where there is a strategy for acquisition and the *Open Space Strategy* will provide direction for future reserve contribution assessments.

If managed well, reserve contributions provide the advantage of allowing key areas identified in the concept for open space to be set aside as part of subdivision at no direct cost. If the subdivision contains no key areas within the open space concept, then a monetary contribution can be taken which can be assigned to a fund for the achievement of the strategy in another form.

The subdivision itself will often result in the loss of open space through development. In some instances this may be in conflict with the strategy and therefore may be perceived as a disadvantage. However, the ability of landowners to develop land must also be recognised. The key is to ensure that subdivision and the resultant reserve contribution is the best outcome that can be achieved for the open space strategy.

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<sup>11</sup> The proposed Plan is not yet fully operative. It is anticipated that some changes to the provisions of the Plan will be likely to occur before it is made operative.

## **14. Land purchase**

Outright purchase of a block of land, gaining freehold title and possibly gazetting the area as a reserve provides the highest degree of control. It also generally involves the greatest cost. Purchase allows the Council full control over the development and management of an area. Council can also determine the type and level of public access according to management objectives.

In addition to the relatively high cost involved, another disadvantage of outright purchase is the need for a willing seller. When Council initiates a purchase it puts an owner in a strong negotiating position and it may not be possible for the parties to agree on a purchase price. However, having a long term open space strategy in place puts the Council in a position where most land purchases could become opportunity based, with the Council opting for purchase when a particular block of land that would further the objectives of the strategy comes up for sale, rather than the Council being the initiator of the transaction.

There will be some sites, such as ecologically important forest remnants, where early purchase is warranted in order to halt irreversible deterioration. Whilst skilled negotiation in these situations is essential, education and awareness should not be under-estimated. Making an owner aware of the intrinsic values of such key sites should be an integral part of the Council's negotiation strategy.

Land purchase brings with it ongoing management costs and responsibilities. Council may also have to purchase some liabilities. For example, only part of a particular block of land may be needed to effect the open space strategy but the Council may have to purchase a much larger area in order to secure it. Subdivision and on-selling of the land not required may be necessary, and is often a complex operation.

Based on precedent, land purchase should be costed on the basis of 110% of the market value, ie the cost of land plus legal and administrative costs.