

**POLICY & PROCEDURE  
FOR THE TAKING IN CHARGE  
OF  
RESIDENTIAL DEVELOPMENTS**



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Dhún na nGall  
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## **1. POLICY OBJECTIVE**

To develop a transparent and effective policy for the ‘taking in charge’ of housing estates within the functional area of Donegal County Council as a Planning Authority, so as to ensure that estates are completed satisfactorily and ‘taken in charge’ promptly, for the benefit of the occupants of new housing estates in County Donegal.

Donegal County Council’s policy in relation to taking in charge of private housing developments has regard to the requirements of Circular Letters PD 1/08 & PL5/2014 from the Department of Environment, Heritage and Local Government; and the Memorandum of Understanding and Protocols issued by the Water Services Transition Office relating to the Taking in Charge of Residential Developments and the associated transfer of Water Services Assets to Irish Water.

The Department’s Circular Letters identify the core principles underpinning the framework for taking in charge as follows:

- A statement of the facilities that will be ‘taken in charge’ and the maintenance services that will be provided;
- The issue of ‘taking in charge’ must be addressed at the pre-planning stage with the approved design facilitating the taking in charge of core facilities;
- The Planning Authority’s construction and design standards for residential areas will be set out;
- Developers will be required, through the development management process/permission, to complete residential developments to a standard that is in compliance with the planning permission granted;
- Planning Authorities must take all necessary measures in this regard in particular through securing adequate bonds, and enforcement action when necessary;
- The procedures for ‘taking in charge’ will begin promptly on foot of a request by the majority of the residents in the development or by the developer, as appropriate. Protocols, including time frames, must be set out by Planning Authorities to respond to requests for taking in charge;
- Where there are core facilities in existing residential developments which were approved by the Planning Authority on the basis that they would remain private and be maintained by a management company, these must be taken in charge if the majority of residents request it;
- Planning Authorities must not attach management companies as a condition of planning in respect of traditional housing

- estates, save in very exceptional circumstances, as set out in the annex to the circular;
- Planning Authorities should only attach planning conditions requiring management arrangements in relation to certain shared facilities in the newer type of mixed residential development in limited circumstances, as set out in the annex to the circular;
  - In relation to older estates, priority must continue to be placed on resolving those estates that have been left unfinished /not taken in charge for the longest period.

## **2. POLICY OVERVIEW**

### **2.1 Legislative framework**

Section 180 of the Planning and Development Act 2000, requires Planning Authorities to commence ‘taking in charge’ procedures in relation to residential developments, finished or unfinished, within its functional area, where certain conditions have been met.

The “Taking in Charge” of an estate is a reserved function of the elected members, as defined in Section 131 Local Government Act 2001 and amended by Section 131A of the Local Government Reform Act 2014.

### **2.2 Policy Statement**

Donegal County Council, in complying with its obligations as set out in Section 180 of the Planning and Development Act 2000, hereby states its policy for the ‘taking in charge’ of housing estates.

1. This policy shall apply in all parts of Co. Donegal for which Donegal County Council is the Planning Authority.
2. Estates of houses which have been completed to the Council’s satisfaction and comply with the relevant Planning Permissions, will be ‘taken in charge’ by the County Council.
3. The legal procedure to be followed for the ‘taking in charge’ process will be that detailed in Section 11 of the Roads Act, 1993.
4. Where a housing estate has been ‘taken in charge’, Donegal County Council will be responsible for the maintenance of facilities as set out in section 2.4 and 2.5 of this policy document within the relevant estate. However regular grass cutting in open spaces shall normally be undertaken by the residents of the housing estate.

5. The commencement of the 'Taking in Charge' procedure of a housing estate will commence with a request from the developer or by the majority of the home owners in the estate.
6. Where the development has not been completed to the satisfaction of the Planning Authority and enforcement proceedings have not been commenced by the Planning Authority within seven years of the expiration of the permission, the authority shall, where requested by the majority of the owners of the houses involved, initiate the procedures under Section 11 of the Roads Act, 1993. In these circumstances, the Planning Authority may spend any security still in place on the improvement of services within the estate.
7. The Council will proceed with the 'Taking in Charge' process as expeditiously as possible, having regard to the availability of resources, once a valid request for 'taking in charge' has been received.
8. The Council is prepared to take housing estates in charge on a phased basis, however, phases must be fully completed and be self sufficient in terms of services before any individual phase can be taken in charge.  
Phases served by spine roads, which are to be used for construction traffic for the remainder of a development, will not be taken in charge.
9. All services within the estate (or phase of an estate) will normally be taken in charge in one stage. However the Council may, at its discretion, 'take in charge' the public lighting within a housing estate (or phase of an estate).
10. The Council is prepared to use the funds available to it under the Security demanded by the Planning Permission for the housing estate, to encourage prompt completion of the housing estate, by the developer, or directly by the Planning Authority in default.
11. This policy will be reviewed by the Council's Economic, Enterprise & Planning Policy Strategic Policy Committee no later than 2 years after its formal adoption and a recommendation for amendments following such a review may be made to Donegal County Council.

### **2.3 Policy Implementation:**

1. A Housing Estate, for the purposes of this Policy, shall be a development which includes the construction of two or more houses, and the provision of new roads, footpaths, car parks,

watermains, sewers, open spaces and/or public lighting. The estate will be occupied on a full time basis and shall not be a scheme of holiday houses, special housing or a gated development.

The definition of a house in the Planning Act includes a building designed for use as two or more dwellings or a flat, an apartment or other dwelling within such a building of two or more houses.

2. Recreation and Amenity facilities developed with housing estates will be considered as part of the open space of the estate and will be ‘taken in charge’ accordingly as part of the normal ‘taking in charge’ process.
3. Planning Permission for housing estates will incorporate reference to the Council’s “Recommendations for Site Development Works for Housing Areas in Donegal 2007” and the Council’s “Taking in Charge Procedure for Private Housing Developments” so as to expedite satisfactory completion of the housing estate and prompt taking in charge.

Both the “Recommendations for Site Development Works for Housing Areas in Donegal 2007” and the Council’s “Taking in Charge Procedure for Private Housing Developments” will be available on the Council’s website and Intranet to ensure easy availability.

4. Donegal County Council will develop a detailed written Procedure Document which will detail all the steps involved in the taking in charge of housing estates, in conformity with this Policy. The Document shall have as its central aim the expeditious progress of the Taking in Charge process and, to this end, shall include target time frames for all the various stages involved in the process. The Procedure Document will support this Policy and will set out the processes involved ranging from the administrative part of the process to the inspection of the services to be taken in charge. The Procedure Document shall also incorporate the Taking in Charge Protocols issued by the Water Services Transition Office on 4<sup>th</sup> March 2015 which clarify the roles and responsibilities of both the Planning Authority and Irish Water in relation to the Taking in Charge of residential development and the associated transfer of Water Services Assets to IW.
5. The existing application form for the ‘taking in charge’ of housing estates will be retained (see Appendix 2) and will be incorporated in the Council’s ‘Taking in Charge’ Procedure Document which will be available on the Council’s website and Intranet.

## **2.4 Facilities to be taken in charge**

'Taking in Charge' involves Donegal County Council taking control of the following services and public areas associated with a particular development:

- Public roads and footpaths;
- Unallocated surface parking areas;
- Public lighting;
- Fire services including fire hydrants;
- Public water supply, foul and storm water drainage;
- Wastewater treatment plants and associated buffer zones if the plant is to be a long term solution to a local need.
- Public open spaces;
- Playgrounds, where these are required by condition of a planning permission as facilities for public use.

## **2.5 Measures to ensure satisfactory completion of residential developments**

It is essential that public roads, footpaths, services and open spaces in residential developments are finished by the developer to a standard acceptable to Donegal County Council for 'taking in charge' and long term maintenance.

Layouts which seek to ensure very low traffic speeds and greater priority for pedestrians and cyclists in residential areas will be encouraged.

Relevant guidance is available from;

- County Development Plan 2012-2018;
- Recommendations for Site Development Works for Housing Areas in Donegal 2007
- Guidelines on Sustainable Residential Development in Urban Areas;
- Departmental Design Manual "Sustainable Residential Design, a best practice guide";
- Traffic Management Guidelines (2003)

## **2.6 Application of Standards**

All residential developments granted planning permission must comply with the standards adopted by Donegal County Council and

set out in “Recommendations for Site Development Works for Housing Areas in Donegal”.

In general the standards will cover:

- The construction of roads, footpaths, public lighting, walkways, grass verges etc;
- The installation of drainage services, water mains and treatment plants, including a specification of the regime of testing to which these services must conform;
- The location of services provided and maintained by other service providers (telephone, cable television, broadband services etc.) in relation to those provided and maintained by the authority;
- The quality of planting and seeding of landscaped areas, required treatment of public boundaries such as walls and fences, as well as specifications for particular elements in landscaped areas, such as play equipment, where these are to be provided.

## **2.7 Early identification of the areas to be ‘taken in charge’**

The Planning Authority will address the ‘taking in charge’ issue at pre-application consultation stage, when the type of residential development and the standards proposed can be discussed. Applications for residential development should delineate on the site layout map the area that would, in accordance with this document, potentially fall to be taken in charge. It is envisaged that, generally, certain core services will always be taken in charge and the Planning Authority will ensure that the design of the approved development will facilitate this by separating the areas/facilities that will be taken in charge from those that will not.

Sewers and water mains should preferably not be located under landscaping or allocated parking areas that will not be taken in charge.

## **2.8 Appropriate Planning Conditions**

Section 34 of the Planning and Development Act 2000 provides the legislative basis for attaching conditions to planning permissions. Appropriate conditions may be attached to grants of permission for residential development including:

- The giving of adequate financial security [S.34(4)(g)] and the length of time the security must remain in place;
- The facilitation of inspections by the Planning Authority;
- The phasing of the development, if appropriate [S.34(4)(h)];

- The completion of the development in accordance with specified standards;
- The evidence to be produced by the developer to demonstrate that the residential development has been completed to the appropriate standards and the time period for the production of such evidence;
- The maintenance by the developer of the residential development until it is ‘taken in charge’.
- The vesting in the authority by the developer, upon taking in charge, of the areas to be taken in charge.

A developer is obliged to comply with the conditions of the planning permission granted for the Estate including the payment in full of all development contributions. The Council may take enforcement action under planning legislation if the development is not being or has not been carried out in accordance with the permission granted.

The attention of developers is brought to the provision of Section 35 of the Planning and Development Act, 2000 as amended which deals with the failure of a developer to comply with the terms of a previous planning permission and allows the Council as Planning Authority to refuse a current planning application. If the Council is satisfied that a developer has not complied with a previous planning permission or that a development would not be carried out in accordance with the conditions of the planning permission, the Council may refuse planning permission subject to giving prior notification and an opportunity to respond.

## **2.9 Phasing of the development**

The Planning Authority will consider whether it is appropriate to attach a condition regarding the phasing of the development in order to ensure that residents do not have to live in uncompleted residential developments for lengthy periods.

A phasing condition could include requirements relating to the completion of roads, public lighting, open spaces, etc. which are necessary for, or ancillary to, the completed units in each phase.

In devising any phasing arrangement Donegal County Council will ensure that main sewers, surface water drainage systems, main distributor roads, etc., are completed at an appropriate stage so that the first and each subsequent phase will, on completion, be fully serviced and independent in the event of other phases not proceeding.

## **2.10 Inspection of Construction**

Ensuring that residential developments are completed in accordance with the planning permission is an essential part of the Council's 'taking in charge' policy.

The Planning Authority will carry out a site inspection of the development following the submission of a Taking in Charge application and shall liaise with the developer setting out those issues of non-compliance or snags that need to be addressed prior to the formal Taking in Charge of the development.

## **2.11 Enforcement action**

While the Council has the option of claiming on the provided security where a development is not being completed in accordance with the terms of the permission, the Council will consider taking enforcement action in such cases.

## **2.12 Preparation of a Procedure/Protocol**

As part of its 'Taking in Charge' policy, Donegal County Council will prepare a Procedure or Protocol – "Taking in Charge Procedure for Private Housing Developments" - for the actual process of 'taking in charge' of a residential development in response to a request from either a developer or a majority of the residents.

## **2.13 Management Companies**

Management companies will not be required in planning conditions for traditional housing estates (that is estates of houses with individual private gardens) except in the most exceptional circumstances, e.g. to maintain a specific facility in that estate, which is for residents use only (such as a private playground or a temporary water or wastewater treatment plant) or in the case of holiday homes.

Management companies will normally be considered necessary for multi-unit structures (i.e. apartments and/or apartments and duplex houses) of four dwellings or more or for 'gated developments'. In such developments management companies are necessary to maintain:

- shared exteriors of buildings: e.g. external walls and roofs;
- shared internal areas: e.g. stairways, lifts and lobbies.

The circumstances where Donegal County Council might consider attaching a planning condition relating to the maintenance or management of a development are limited and may include the following:

- (a) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain external private shared facilities

- that are exclusive to the development (e.g. boiler houses, switch rooms, bin storage areas communal private gardens/private open spaces, private playgrounds), where a management company is considered essential having regard to the nature and scale of such facilities.
- (b) In developments comprising houses, apartments, duplexes or a mix of any of these, to maintain facilities which though not necessarily inaccessible to the general public, are not required to be taken in charge, in accordance with this document, e.g. facilities such as highly landscaped open spaces, allocated car park spaces.
  - (c) To maintain holiday home developments, that is, residential developments where planning permission was applied for, or granted, on the basis that the residential units are holiday homes, or residential developments used entirely for short-term letting.
  - (d) To maintain gated developments that will not be taken in charge.

When a Management Company is considered necessary, the permission will have a condition that a properly constituted management company be established for the purpose of maintaining the public lighting, roads, footpaths, parking areas, services and open spaces. The said public lighting, roads, footpaths, etc. shall be conveyed to the Management Company.

Even if a Management Company is proposed for a development, it will be a requirement of the planning permission that the roads, footpaths, services etc. are constructed in accordance with the technical standards outlined in "Recommendations for Site Development Works for Housing Areas in Donegal". Any security lodged with the Planning Authority for such a development will not be released until the satisfactory completion of the works and the said roads, footpaths, services etc. are conveyed to the management company.

### **3. GENERAL PRE-CONDITIONS FOR TAKING IN CHARGE**

1. The development is an authorised development.
2. All development contributions have been paid in full.
3. All connection fees have been paid in full.
4. The development has been constructed in accordance with the planning permission granted.
5. The roads, footpaths, sewers, drains and water mains have been

constructed in accordance with the guidance put forward at 2.6 above, save where the conditions otherwise require.

6. Evidence shall be provided to the Council that all necessary wayleaves for services are reserved in perpetuity in the transfer documentation to house purchasers. A minimum width of 10 metres (to include at least 3 metres on each side) shall be required in respect of any wayleave for sewers or water mains. This width may be reduced in certain circumstances, but only after consultation with the Council.
7. Where an area designated as Open Space is to be transferred to Donegal County Council, where possible all necessary transfer documentation will have been completed.

#### **4. PROCEDURE FOR TAKING IN CHARGE OF A DEVELOPMENT**

As set out in 2.3.4 (above) the Planning Authority will produce a comprehensive Procedure Document for the Taking in Charge of Estates, notwithstanding this, it will be procedurally required that:

- When a taking in charge application is being made by the developer, four copies of "as constructed" drawings (scale 1:500) of the development shall be submitted to the Council. At the request of the Council these drawings may be required in digital format. The drawings shall indicate the following information:
  1. The estate boundary depicted in red, open spaces coloured green, all roads, footpaths and public lights.
  2. All services including watermains, valves, hydrants, sewers, road gullies, Telecom ducts/poles, ESB ducts/poles, cablelink (NTL) ducts and all manholes. The invert and cover levels of all manholes shall be indicated relative to Malin ordnance. The longitudinal sections of all sewer line (both foul and storm) shall be indicated on the drawings along with their diameter.
- 4 copies of a recent CCTV survey/manhole survey of the collection systems will be submitted to the Council along with the application form for taking in charge. The survey shall be completed at the developers expense. The sewers to be surveyed shall be thoroughly cleaned out first. The CCTV Survey shall be carried out using a camera, which is capable of measuring distances from one manhole to another.

The report shall include a summary of any defects in the systems. Any defects in the systems shall be corrected by the developer at his own expense, prior to taking in charge. High-resolution

photographs and quality DVD recordings shall supplement the printed report.

- Subsequent to an application being lodged with the Council for taking in charge of an estate, the Council will in conjunction with the developer carry out an inspection of the estate.
- A letter of confirmation/certification is required from the E.S.B. that they are satisfied with the public lighting on the development.
- The developer and/or his agent shall be responsible for any costs or losses as a result of inaccuracies or derivations from the certified “as constructed” drawings following the taking in charge of the development.
- The Planning Authority shall seek the approval of Municipal District Members to initiate Section 11 of the Roads Act 1993 in accordance with Section 180 of the Planning & Development Act for estates in the relevant Municipal District.
- Following consent of the members to take the estate in charge, the Planning Authority shall initiate procedures under the Roads Act 1993, to declare the estate road a public road. (See Appendix 1).

## **5. OLDER ESTATES**

### **5.1 Assessing/categorising requests**

In relation to those requests for ‘taking in charge’ estates currently on hand where the planning permission has expired, the Council will as soon as possible assess the status of such estates. These will generally fall into the following categories:

- Estates which have been completed to ‘taking in charge’ standard but not yet taken in charge;
- Estates which have not been completed in accordance with the terms of the permission and where enforcement action/calling in the bond is still possible;
- Estates which have not been completed in accordance with the terms of the permission and enforcement action was not taken within the specified period;
- Estates which have not been completed in accordance with the terms of the permission and enforcement action was taken, but was unsuccessful.

- Estates for which an engineering recommendation on ‘taking in charge’ is awaited.
- New requests for ‘taking in charge’ of older estates will be promptly assessed and then dealt with in accordance with the procedures set out below.

### **5.1.1 Estates satisfactorily completed**

Where an estate is completed in accordance with the terms of the planning permission, it will be ‘taken in charge’ without undue delay on foot of a request to do so. The procedures to effect such a ‘taking in charge’ including timescales, will be as set out in the Council’s “Taking in Charge Procedure for Private Housing Developments”.

### **5.1.2 Priority list for estates not completed satisfactorily**

A priority list will be drawn up of requests from residents for the ‘taking in charge’ of uncompleted estates, taking into account such factors as the date of application, the condition of the estate and the length of time it has been left unfinished. New requests for the ‘taking in charge’ of unfinished estates will be added to the priority list, as appropriate.

All unfinished estates which are the subject of a request to be ‘taken in charge’ will be kept on this list, including estates where it may be possible to have the estate completed at the expense of the developer, through enforcement action or calling in the bond so that these estates remain on the priority list for remedial works by the Council in the event that enforcement action or calling in the bond fails.

### **5.2 Action in relation to uncompleted estates**

Any of the actions already referred to that are still possible in terms of getting the estate completed, other than at the expense of the Council, will be pursued as quickly as possible. It is not acceptable that residents should have to continue to live in an unfinished estate for many years. When the estate is brought to a satisfactory standard it will be ‘taken in charge’. i.e. do remedial works prior to ‘taking in charge’ rather than ‘taking in charge’ prior to undertaking remedial works.

### **5.3 Remedial Works on Unfinished Estates**

In accordance with section 180(2) of the Planning and Development Act 2000 and the guidance set out in Circular Letter PL05/2014, Section 11 of the Roads Act 1993 will have to be complied with in respect of unfinished estates (those which have not been completed satisfactorily and where enforcement action has not been commenced within 7 years of the expiration of the life of the permission) where the

majority of residents so request and it follows that where enforcement action or calling in the bond is not possible, or has been unsuccessful, the Council will have to meet the remediation costs in relation to roads, footpaths, public lighting and open space, with remediation costs associated with Water Services being met by Irish Water.

#### **5.4 Estates serviced by Developer Provided Water Services Infrastructure**

There are many estates in the County containing developer provided infrastructure such as wastewater treatment plants and associated pump stations. Such infrastructure is stand alone and is not connected to public water and sewerage networks for which Irish Water is now responsible. In Circular PL 5/2014 the Department recognises that the taking in charge of estates containing developer provided water services infrastructure needs to be considered separately, as in many cases the infrastructure may need upgrading and remediation. The Department is currently carrying out an assessment of developer provided water services infrastructure serving housing estates, as part of a project to formulate a national strategy, including funding options to address problems in these estates. Donegal County Council is actively participating in the project. It is proposed that any new strategy from the Department of Environment, Community and Local Government on this matter shall be incorporated into the Council's Taking in Charge policy.

### **6. APPLICATION OF POLICY**

The Commencement Date for this policy will be one month after the date of adoption by Donegal County Council and it will apply to all estates for which planning permissions are granted after that date and to all requests for "taking in charge", whether on foot of existing or future permissions, received by the council on or after that date.

The "Taking in Charge Procedure for Private Housing Developments" will apply to all requests that are received after the adoption of this policy.

# APPENDICES