

**To: Chairman and Each Member of the General Purposes Committee**

**From: John McLaughlin, Director of Roads & Transportation**

**Date: 7 April 2003**

**Subject: Proposed Hedgecutting Policy Recommendation**

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Attached is the Proposed Hedgecutting Policy Recommendation that has been developed by the Roads and Transportation Strategic Policy Committee (SPC). This Policy Document has been approved at a meeting on 28 March 2003 by the Roads & Transportation SPC as a recommendation to be presented to full council for approval and adoption. The background to the development of the Policy is also attached.

The salient points of the Proposed Hedgecutting Policy Recommendation include:

1. Owner or Occupier of land shall be responsible for hedgecutting in accordance with the Roads Act;
2. Council will place emphasis on Verbal Requests, early in the cutting season, to landowners to cut overgrown hedges;
3. Council will serve a formal Hedgecutting Notice in cases of non-compliance with Verbal Request;
4. Council will as a matter of last resort, prosecute landowner/ occupiers who do not comply with Hedgecutting Notices.

It is worth noting the results from the Milford Electoral Area for the past hedgecutting season which are shown on Table 3 in Appendix "E". The results show that approximately 60% of the landowners approached cut their hedges based on a Verbal Request and a further 30% cut their hedges following receipt of a Written Notice. That Electoral Area generally followed the process presented in this Policy Document. It is hoped to similarly raise the level of response to hedgecutting in all Electoral Areas in the next season and the adoption of this county-wide policy should help add strength and uniformity to our approach in achieving those goals.

**ACTION REQUIRED BY GP COMMITTEE**

The following action regarding the Proposed Hedgecutting Policy Recommendation is required at the GP Committee Meeting:

1. Review and Approve the Final Hedgecutting Policy Recommendation. Assuming that the GP Committee approve the Recommendation, the Policy will be presented subsequently for Adoption at a future Full-Council Meeting.

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John G. McLaughlin  
Director of Roads & Transportation

## **HEDGE CUTTING POLICY**

### **1. Introduction**

Overgrown hedges, shrubs and trees along public roads can become a danger to people using or working on a public road. Examples of hazards might include dead or dying trees and trees or hedges interfering with traffic, blocking footpaths, obscuring road signs or obscuring a view of the road ahead or otherwise interfering with the travelling public. In addition, tall hedges along public roads might shade portions of the road from the sun light and may cause frost to linger on the road surface for a longer period.

At the recent Roads and Transportation Strategic Policy Committee meetings, the issue of hedgecutting has been discussed at length. The Committee recommends the following hedgecutting policy for use in County Donegal:

### **2. Policy Statement**

The Council will endeavor to ensure that the Owner or Occupier of land shall take all reasonable steps to ensure that a tree, shrub, hedge or other vegetation on the land is not a hazard or potential hazard to persons using a public road and that it does not obstruct or interfere with the safe use of a public road or the maintenance of a public road in accordance with Subsection 70 (2) (a) of the 1993 Roads Act.

### **3. Steps to be Taken by Council to Support Policy**

The Council will take the following steps in an effort to help gain compliance with its hedgecutting policy. Every effort will be made to gain compliance through cooperation with landowners and occupiers:

- a) Council will place public advertisement in the months of January and September each year reminding landowners/occupiers of their responsibilities with regards to hedgecutting;
- b) Council will endeavor to increase landowner awareness through consultation with farming organisations such as the Irish Farmers Association, posting notices at farming co-ops, marts, etc;
- c) Council will inspect hedges along roads with a view to identifying hedges that need to be cut;
- d) Council will place emphasis on Verbal Requests, early in the cutting season, to landowners to cut overgrown hedges. Monitoring Reports will be kept on these requests and follow-up action pursued. (A sample report is attached as Appendix "C");

- e) Council will serve a formal Hedgecutting Notice in cases of non-compliance with Verbal Request. (A sample Hedgecutting Notice is attached as Appendix “B”);
- f) Council will lead by example by carrying out hedgecutting early in the season on lands that they have responsibility for along public roads;
- g) Council will as a matter of last resort (but this does not lessen its significance nor the Council’s determination), prosecute landowner/ occupiers who do not comply with Hedgecutting Notices;
- h) Under exceptional circumstances where the Council determines that a landowner or occupier does not have any means financially, physically or otherwise to comply with the Roads Act in cutting their hedges and it is obvious that prosecuting such persons through the courts would not result in getting the hedges cut, the Council will take a sympathetic view towards getting the work done. For purposes of this policy, it is assumed that this might apply to less than 5 individuals in each Electoral Area each year.

#### **4. Policy Recommendations and Approvals**

This Final Hedgecutting Policy has been approved by the Roads & Transportation Strategic Policy Committee as a recommendation to be presented to full council for adoption on:

**28 March 2003**

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*(Date that Roads SPC Approved the Policy Recommendation)*

This Final Hedgecutting Policy has been approved by the General Purposes Committee as a recommendation to be presented to full council for adoption on:

**14 April 2003**

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*(Date that GP Committee Approved the Policy Recommendation)*

This Final Hedgecutting Policy has been adopted by the Full-Council at the Council Meeting on:

**26 May 2003**

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*(Date that full Council Adopted the Policy)*

## APPENDIX "A"

This section of the Final Hedgecutting Policy provides the supporting background to its development and largely is an extract from the discussion document presented at previous Roads and Transportation Strategic Policy Committee meetings.

### **1. Introduction**

At the Roads and Transportation Strategic Policy Committee meeting on January 23, 2002, the issue of hedgecutting was discussed in length. The Committee ranked making a policy on hedgecutting high on the list of Roads issues.

### **2. Background**

Overgrown hedges, shrubs and trees along public roads can become a danger to people using or working on a public road. Examples of hazards might include dead or dying trees and trees or hedges interfering with traffic, blocking footpaths, obscuring road signs or obscuring a view of the road ahead or otherwise interfering with the travelling public. In addition, tall hedges along public roads might shade portions of the road from the sun light and may cause frost to linger on the road surface for a longer period.

The issue of hedgecutting has been debated by Donegal County Council on several occasions at both Electoral Area Meetings and County Council Meetings over the past number of years. The Council purchased some hedgecutting machines in the past although they were used to a limited extent.

Under the Wildlife Act, hedgecutting should not be carried out during the wildlife nesting season which generally starts in early spring and ends in late summer, unless failure to do so would cause a danger to persons using a public road. The wildlife nesting season currently is from March 1st to August 31st, but this may be revised from time to time in accordance with the Wildlife Act. A letter on this matter is attached as Appendix "D".

A number of farmers in County Donegal participate in the Rural Environmental Protection Scheme (REPS) and usually a requirement of the associated REPS plan is to cut the farm hedges at various intervals. This already results in a significant number of hedges being cut by landowners in the County without any influence from the County Council. If the Council requires a REPS participant to cut their hedges in a "non-plan" year or during the wildlife nesting season for road safety reasons, the Department of Agriculture will not penalise the farmer in their REPS payment. The farmer should keep a copy of the hedgecutting notice sent by the Council.

### **3. Landowner/ Occupier Responsibilities**

It is clear from the 1993 Roads Act that the landowner/occupier generally has responsibility for cutting hedges/ trees, etc. along the public roads. Subsection 70 (2) (a) of the 1993 Roads Act which covers hedgecutting, states:

*"The Owner or Occupier of land shall take all reasonable steps to ensure that a tree, shrub, hedge or other vegetation on the land is not a hazard or potential hazard to persons using a public road and that it does not obstruct or interfere with the safe use of a public road or the maintenance of a public road".*

This section of the Act makes it clear that the legal responsibility for trees/hedges rests with the landowner or occupier on whose land the tree/hedge is growing.

It is important to note that apart from dead or hazardous roadside trees there are few cases where trees can be felled without giving formal notice to the local Gardaí and/or obtaining a licence from the Forest Service in the Department of Agriculture, Food and Forestry. The main exceptions are trees standing in an urban area or within 100 feet of a building.

The appeals mechanism for a person on whom a notice has been served may appeal to the local District Court against the notice within 14 days. The grounds of appeal are set out in the Roads Act and include:

- a) That the person is not the owner or occupier of the land in question;
- b) That the tree or hedge does not present an actual or potential danger to persons using or working on the public road;
- c) That the cost of carrying out the required work would be unreasonable; or,
- d) That sufficient time was not given in order to carry out the required work.

#### **4. County Council Responsibilities**

The County Council is responsible for cutting hedges/trees on lands along the public road where it has acquired the land adjacent to the road whether it be for road widening purposes or otherwise. One example of this situation would be along the Donegal Town Bypass where the Council also acquired the land from the edge of the road to the top or bottom of the roadway side slopes. In this case, the Council is the landowner and occupier of the land and is responsible for cutting any hedges/shrubs/trees that interfere with vehicular and pedestrian traffic.

As a separate matter to be discussed at a later meeting of the Roads and Transportation Strategic Policy Committee, it appears that the County Council has responsibilities for trimming grass verges and there has been some debate as to what constitutes grass verge and hedge. However, there is no way a landowner can truly claim that they could not cut their hedges because the Council had not cut the grass verge.

The County Council has a duty to ensure that the roads are safe for the general public and, where there is an immediate and serious risk to road users the Council can act at once

(without serving a notice to the landowner) to remove or reduce the danger by cutting or trimming hedges and trees. In this case, the Council may recover its cost from the landowner or occupier.

### 5. Current Council Policy

The County Council has previously had a policy on hedgecutting as follows:

- i) Public advertisement in the months of January and September each year reminding landowners/occupiers of their responsibilities.
- j) Council staff inspect hedges along roads.
- k) Council staff verbally request landowner to cut overgrown hedges.
- l) Serve formal Hedgecutting Notice in cases of non-compliance with verbal request. (A sample Hedgecutting Notice is attached as Appendix "B")

It is interesting to note that as part of monitoring the effect of making Verbal Requests to landowners to cut their hedges, the Roads Section compiled a "snapshot" in mid 2000 to show the level of activity and compliance with Verbal Requests. Table 1 below shows the results. The actual cut rate against requests was approximately 60%.

**Table 1**  
**Response to Verbal Request to Cut Hedges**

Electoral Area	No. of Landowners who were given Verbal Requests to Cut their Hedges	No. of Landowners who Cut Hedges after Verbal Request
Letterkeny	35	21
Milford	100	60
Dungloe	20	12
Donegal	50	35
Stranorlar	10	2

### 6. Suggested Amendments to Current Policy

For purposes of discussion at the Committee meeting, it is suggested that the existing policy on hedgecutting be maintained with the following amendments:

- a) Increase landowner awareness through consultation with farming organisations such as the Irish Farmers Association, posting notices at farming co-ops, marts, etc.
- b) County Council to lead by example by doing hedgecutting early in the season on lands that they have responsibility for along public roads.
- c) County Council staff to place emphasis on Verbal Requests, early in the cutting season, to landowners to cut overgrown hedges. Monitoring Reports will be kept on these requests and follow-up action pursued. (A sample report which is already operating in the Stranorlar Electoral Area is attached as Appendix "C".)
- d) As a matter of last resort (but this does not lessen its significance nor the Council's determination), County Council to prosecute landowner/ occupiers which do not comply with hedgecutting notices.
- e) Under exceptional circumstances where the Council determines that a landowner or occupier does not have any means financially, physically or otherwise to comply with the Roads Act in cutting their hedges and it is obvious that prosecuting such persons through the courts would not result in getting the hedges cut, the Council will take a sympathetic view towards getting the work done. It is assumed that this might apply to less than 5 individuals in each Electoral Area each year.



## **APPENDIX "B"**

### **Sample Hedgecutting Notice**

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Your attention is drawn to the provisions of Section 70(2) of the Roads Act, 1993, which provides that:

"The owner or occupier of land shall take all reasonable steps to ensure that a tree, shrub, hedge or other vegetation on the land is not a hazard or potential hazard to persons using a public road and that it does not obstruct or interfere with the safe use of a public road or the maintenance of a public road".

You are therefore requested to arrange for the trimming of hedges/trees on lands owned/occupied by you along \_\_\_\_\_ in accordance with your obligations as set out above. Please have the work carried out by the \_\_\_\_\_. Failure to do so will result in formal enforcement of your obligations by the Council.

**If you have any queries regarding this matter, please contact (insert Engineer name), Executive Engineer, (Area and Telephone Number).**

Mise, le meas

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**for A/County Secretary**



## APPENDIX "D"

**An Roinn Ealaíon, Oidhreachta,  
Gaeltachta agus Oileán**

Department of Arts, Heritage,  
Gaeltacht and the Islands

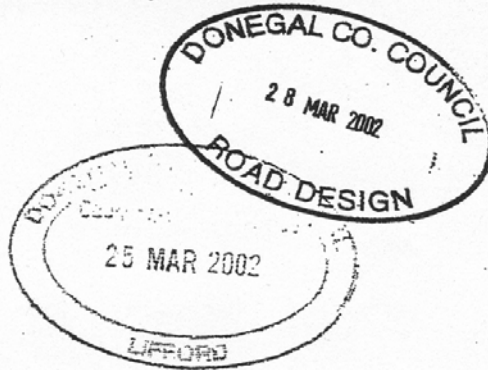
**Dúchas** The Heritage Service

County Manager  
Donegal County Council  
County House  
Lifford  
Co Donegal

**Páirceanna Náisiúnta & An Fiadhúra**  
National Parks & Wildlife

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Gao Áitiúil 1890 474 847  
Email npw@indigo.ie  
Web www.heritageireland.ie



**Re: Hedgerow Cutting in Bird Nesting Season – Wildlife Acts, 1976 & 2000.**

Dear Sir/Madam,

We refer to our previous letter of the 28<sup>th</sup> January 2002 regarding the above, a copy of which is now enclosed for ease of reference.

We welcome the co-operation received to date of all local authorities in eliminating or minimising the level of hedge cutting undertaken by local authorities during the restricted period from the 1<sup>st</sup> March to 31<sup>st</sup> August. However, Dúchas is continuing to receive a number of complaints from members of the public in relation to hedgerow cutting by local authorities during the restricted period. Under the circumstances, we would request local authorities to again review their operational schedules to ensure that only those hedgecutting operations which are absolutely vital for public health and safety are undertaken during the restricted period. In this regard, it would also be useful that when such operations for public health and safety are undertaken, they are clearly absolutely necessary and are identified and advertised as such.

Thank you for your co-operation in this matter.

Yours sincerely

**Bernard Moloney**

Tel: 01 6472404

National Parks & Wildlife

22<sup>nd</sup> March 2002.

«LABELSLASTown\_clerks\_of\_Town\_CouncilJan\_»

Our Ref: K13/40/3

Dear Sir/madam,

I am writing to request your co-operation on the conservation of hedgerows particularly during the nesting season between 1 March and 31 August.

In the absence of native woodlands, hedgerows form important features in maintaining wildlife diversity, particularly for birds. The commonest nesting birds found in hedgerows such as wrens, dunnocks, robin and willow warblers depend entirely on insects during the Summer months. In general untrimmed, thorned hedgerows containing species such as blackthorn, whitethorn and holly are favoured by birds as they serve as a protection against predators. It will be possible in many cases to carry out necessary work to hedgerows outside the nesting season.

Section 46 of the Wildlife (Amendment) Act, 2000 which amends Section 40 of the Wildlife Act 1976 came into effect on 12<sup>th</sup> March 2001. This section recognises the value of habitats such as hedgerows for nesting birds and provides protection against the cutting grubbing, burning etc of any vegetation on uncultivated land during the period 1<sup>st</sup> March to 31<sup>st</sup> August. The amendment stipulates that works (other than road or other construction works) done under the authority of any Minister or a body established by statute that lead to the destruction of vegetation may only be carried out during the specified period for reasons of public health and safety. There is also a provision to enable the Minister to request from the relevant Minister or body details of any such works together with a statement of the public health and safety factors involved. You should be aware that the Minister may prosecute for offences under section 40 of the Wildlife Act 1976 as amended by section 46 of the Wildlife (Amendment) Act, 2000. An exemption is provided for the destruction of vegetation in order to stop the spread of fires or for other emergency purposes.

I would be obliged if you could bring the provisions of Section 46 of the Wildlife (Amendment) Act, 2000 to the attention of your engineers and maintenance staff. I enclose for your information copies of section 40 of the Wildlife Act 1976 and section 46 of the Wildlife (Amendment) Act, 2000.

Your co-operation is requested in ensuring compliance with these provisions. Please contact either myself or Bernard Moloney at 6472412 or 6472404 if you have any queries in this matter.

Yours sincerely,

**Noreen Kerins**

Noreen Kerins,  
National Parks and Wildlife  
28<sup>th</sup> January 2002

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## APPENDIX "E"

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**Table 3**  
**Hedgecutting Summary**  
Milford Electoral Area  
September 2002 to March 2003

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Number of Personal Visits by Roads Staff	442
Number of Written Notices Issued by Roads	185
Number of Hedges Cut by Landowners	401*

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\* The final number is still being compiled as some hedgecutting is still ongoing under special agreement with Duchas.

It is worth noting the high level of cooperation afforded to the Council staff in this Area and the efforts of the landowners who have complied with the Council's request must be acknowledged.