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## Adopted Policy on the Creation of Public Roads

(Updated to incorporate amendment made at 25 January 2016 Plenary Council Meeting)

### 1. Introduction:

This policy document was developed following representations by members and consultation with the Roads and Transportation Strategic Policy Committee.

The format of the document is to give the overall background and explanation under each heading and provide *Policy Statements* as indicated in italics.

### 2. Scope:

This policy sets out a framework for the requirements to be met in the creation of a Public Road as required by the Roads Act 1993. It is not intended to be a legal interpretation of law or legislation nor to limit the latitude of the Council in properly considering and resolving to declare a road to be a public road.

*This policy does not relate to "taking in charge" a development which includes two or more houses. This is the subject of a separate adopted policy of the Council and procedure under S180 of the Planning and Development Act.*

### 3. Definitions:

Road Authority	For the purposes of this policy is Donegal County Council
Public right of way	A right in the public to traverse land belonging to another person for the purposes to travelling from one place to another.
Private right of way	A right to traverse land of another person as access and egress from other lands.
Public Road	A road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority
The Acts and	Means the Roads Act 1993 as amended, The Local



Regulations

Government Act 2001 as amended and the 1994 Road Regulations

#### 4. Legal Background:

Under the 1993 Roads Act, a Road Authority may, by order, declare any road over which a public right of way exists to be a public road. In accordance with the Act where a road authority proposes to declare a road to be a public road it shall:

- satisfy itself that the road is of general public utility,
- consider the financial implications for the authority of the proposed declaration,
- advertise in accordance with regulations that it is proposed to declare the road to be a public road and

consider any objections or representations made to it. The consideration of objections or representations and the making of an order are reserved functions.

The advertisement process requires the Council to publish in one or more newspapers circulating in the area a notice indicating the times at which, the period (which shall be not less than one month) during which and the place where a map showing such road may be inspected and stating that objections or representations may be made in writing to the road authority in relation to such declaration before a specified date (which shall be not less than two weeks after the end of the period for inspection).

#### 5. Requirements:

##### 5.1 A public right of way must exist prior to commencing the process.

A public right of way is created by dedication and acceptance, or by CPO. Dedication is where the owner(s) of the land dedicate a piece of land for use as a public right of way. A draft form of dedication is provided as Appendix One.

##### *Policy :*

- *The Council will normally require the landowner(s) to dedicate in writing the road as a public right of way in a form acceptable to the Council prior to the commencement of the declaration process.*
- *In exceptional circumstances i.e. where a landowner cannot be identified and it is unambiguously clear that a public right of way exists across a road (for example, its use by a large number of people or vehicles daily who would not have a private right of way) the Council will be minded to accept that a public right of way exists.*



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## 5.2 Financial Implications and General Public Utility:

The Council has limited resources for maintenance of its existing extensive road network of over 6000km significant proportions of which are unsatisfactory condition. The making of an order declaring a road to be a public road is a function of municipal district. It is noted that that it is the practice of Donegal County Council to disburse funding by road length.

The Council is required to consider the implications of declaring the road to be a public road. This includes the cost of bringing the road to a satisfactory standard, the ongoing cost of maintenance and the potential cost of any legal liability for losses incurred by members of the public using the “new” public road. In some Municipal Districts this will be in the context of significant lengths of road in poor condition.

The Council is also required to satisfy itself that a road is of general public utility. The phrase general public utility although not defined suggests a wider level of benefit to the general public than a limited number of people living on or near a road who would benefit from having that road maintained at the public expense. Examples of roads that are of general public utility might include:

- Roads that access zoned development land.
- Roads that access areas of significant amenity to the Public (e.g. beaches, tourist walks etc)

### **Policy:**

- ***In general the Council will consider the following types of road to be of general public utility:***
  - ***Roads accessing amenities for use by the general public***
  - ***Roads providing access to zoned development land***
  - ***Roads connecting two public roads with through traffic volume that is comparable to the surrounding public roads.***
- ***The Council will not declare a road to be a public road as a means to alleviate the burden of maintenance of the road from individuals. However will consider whether a road is used by the public and may provide assistance by way of the carrying out of works, a financial contribution or otherwise towards the construction or improvement of the road if provision in the annual budget of the Council is made for this purpose.***
- ***The Council shall not alter the current apportionment of monies to each Municipal District based on any additional length public roads created after the adoption of this policy.***



- ***The cost of bringing a road to a satisfactory standard and the ongoing cost of maintenance of any newly created public road shall be provided from the annual allocation of funds to the Municipal District.***

### 5.3 Applications:

The process of commencing a declaration process should be set out as part of the policy:

#### ***Policy:***

- ***The Council will accept written applications/ representations from Members of the Public to create a public road.***
- ***The Council will not normally seek to declare a public road except where there is an immediately apparent benefit to the public. Examples of this would include:***
  - *Access to tourism amenities (beaches, forest walks, cycleways, parks etc.)*
  - *Access to zoned development land*

### **6. Process:**

- i. Where an application/ representation is made to the Council or where the Council itself considers that it should declare a road to be a public road, the Chief Executive will make a report to the members of the Municipal District a preliminary report on the financial implications of the declaration that includes consideration of the cost of bringing the road to a satisfactory state (including drainage and surface condition) along with remediating any results of a safety audit of the road.
- ii. The Council shall advertise the proposal to declare a road to be a public road in accordance with the Act and Regulations.
- iii. Before making an order declaring that a road is a public road the members shall consider any advice by the Chief Executive as regards the declaration and shall have regard to that advice in accordance with the law.

#### **General Note:**

The Roads and Transportation Strategic Policy Committee had previously recommended to the Corporate Policy Committee inclusion of a cap on the total length of road that could be taken in charge to a total of 100km over ten years. This cap excludes the roads that will be taken over as part of housing estates.



**Appendix One:**

**Draft form of Dedication:**

COUNTY DONEGAL

FOLIO REF: \_\_\_\_\_

Deed of Dedication made the day of 20\_\_

\_\_\_\_\_ the Registered Owner of the lands comprised in \_\_\_\_\_ of the Register County Donegal, in consideration of the payment of the sum of One Euro €1.00 to it by Donegal County Council ("the Council") (the receipt of which is hereby acknowledged) does hereby:

1. UNCONDITIONALLY AND IRREVOCABLY DEDICATE to the Council the part of the said lands specified in the Schedule hereto for use as a public road.
2. ACKNOWLEDGE the road and constructed on the said lands is a public road for all purposes in the charge of the Council and responsibility for the maintenance of which lies upon it and with the statutory rights and obligations that go with such road.
3. FURTHER ACKNOWLEDGES that the rights hereby dedicated affect the said lands without registration in accordance with Section 72(l)(f) of the Registration of Title Act.
4. INDEMNIFIES the Council against any claims made by any other person claiming an entitlement to or interest in the said lands arising from the above dedication and acknowledgement.

Signed and delivered as a deed by:  _____	ACCEPTED ON BEHALF OF DONEGAL CO COUNCIL
Address: _____  _____	SIGNED:
	TITLE:
In the presence of:	
Witness _____	
Address: _____  _____	
Occupation: _____	



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**Schedule:**

All that of the lands of \_\_\_\_\_ registered on Folio \_\_\_\_\_  
Register of Freeholders for the said County of Donegal - measuring \_\_\_\_\_  
hectares and as more particularly described and thereon delineated with a red line  
and coloured in yellow on Map \_\_\_\_\_ attached.