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## DfI Roads Policy & Procedure Guide: RsPPG\_E004

<b>Title</b>	Privately Funded Planting of Roundabouts, Road Verges and DfI Car Parks
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## INTRODUCTION

### Purpose

1. This Dfl Roads Policy & Procedure Guide (RsPPG):
  - a) Is aimed at all Dfl Roads staff involved in arrangements for the provision or maintenance of planting on roundabouts, road verges and Dfl car parks;
  - b) Relates to planting and associated maintenance of roundabout central islands, road verges, traffic islands, car park verges, “island” plantings within car parks and other areas of land owned or maintained by Dfl Roads for road or car parking purposes; and,
  - c) Sets out the procedures to be followed when approving the planting and maintenance of such Dfl land by third parties.

### Definitions

**Acknowledgement** – (a). Grateful, courteous, or due recognition of an obligation, gift, benefit, etc., or of a message received; gratitude or appreciation expressed or shown, or (b). A sign, statement, gesture, etc., which indicates or is a token of such recognition; something given or done in return for a favour [Source Oxford English Dictionary oed.com].

**Acknowledgement sign** – a sign as defined in this RsPPG, which acknowledges the contribution of a third party to the maintenance and upkeep of Dfl property

**Advertisement** - means any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the preceding provisions of this definition) includes any hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use for the display of advertisements, and references to the display of advertisements shall be construed accordingly [Source - The Planning Act (Northern-Ireland) 2011].

**The Department** – the Department for Infrastructure (Dfl).

**Dfl Roads** – the part of the Department for Infrastructure responsible for the day to day management and operation of the public road network in Northern Ireland.

**RO** – the Roads (Northern Ireland) Order 1993.

**Road** – means a public road, that is to say a road which is maintained by the Department under the terms of the Roads (Northern Ireland) Order 1993.

**Special road** – a road designated as a special road under Article 15 of The Roads (Northern Ireland) Order 1993, and includes all land vested in or held by the Department for the purposes of its functions under Part III in connection with that road. In Northern Ireland the following are designated as special roads: all motorways, the A12 Westlink and the A8 from Sandyknowes to Corr's Corner.

**Third parties** – People or organisations external to the Department, such as individuals, applicants, sponsors, community groups, businesses, etc.

## **Background**

2. In order to enhance the appearance and maintenance of roundabouts, road verges and certain other areas, DfI Roads will allow improvement by third parties to the appearance of public roads and car parks by permitting certain planting and maintenance of roundabout central islands, road verges and suitable spaces within public car parks which are within the Department's control.
3. Such improvements can most readily be accommodated by sympathetic consideration of proposals presented either by local Councils or privately funded sources directly to the Department. Examples of privately funded sources can include shopping centres, landscaping companies, local businesses and community groups.
4. In approving such privately funded planting schemes, the procedures that follow shall apply.

## **Costs and Benefits**

5. The anticipated costs arising from the implementation of this RsPPG are:-
  - The Department staff time required to manage requests for planting schemes.

6. The anticipated benefits deriving from the implementation of this RsPPG include:-

- A mechanism for the management of privately funded planting schemes;
- The delivery of enhanced maintenance of roundabouts, road verges and certain other areas at times when funds are limited;
- A standard framework for the management of privately funded planting schemes; and,
- The effective use of resources and a decision making process that is robust and defensible.

## **DFI ROADS POLICY & PROCEDURE**

### **General Information**

7. This policy allows for the planting and / or maintenance by third parties on roundabouts, road verges and car parks under the Department's control.
8. The planting, landscaping and general maintenance of these areas by third parties allows the Department to meet its duties under Article 8 of the Roads (Northern Ireland) Order 1993 without using Departmental budgets, and with the added benefit that the finished work has an enhanced amenity value over the standard grass cutting that the Department would typically employ.
9. Sponsors of lands within the Department's control shall have no legal right of ownership or possession, regardless of how long they have maintained those lands under a planting / maintenance agreement.
10. Sponsors of lands under which a planting / maintenance agreement is made shall not use the specified lands for any purpose other than that set out in the planting / maintenance agreement.

### **The Legislative Context**

11. The Department has a duty to maintain all roads under Article 8 of the Roads (Northern Ireland) Order 1993.
12. Article 43 of the Roads (Northern Ireland) Order 1993 provides the Department with a "general power of improvement", including the "laying out, planting, maintenance and protection of trees, shrubs and grass margins in and beside roads".
13. The application of Article 43 in this context helps the Department to meet its duties under Article 8 of the Roads (Northern Ireland) Order 1993.
14. The policy was subject to legal challenge in 2019. The challenge related primarily to the use of acknowledgment signs, and whether these constituted advertisements, and if the Department had the power to approve the erection of such signs. The challenge also questioned the

Department's ability to allow local Councils to act on its behalf when discharging its discretionary power in relation to the improvement of roads. In the Judicial Review judgement (ref KEE11127, delivered 17-12-2019) Lady Chief Justice Keegan confirmed that Article 43 does provide legal authority for acknowledgement signs in the particular context.

15. Lady Chief Justice Keegan's judgement also required that version 1 of this policy be updated, in view of its age.

### **The Policy Context**

16. This RsPPG facilitates the general power of improvement under Article 43 of the Roads Order, in the context of "...laying out, planting, maintenance and protection of trees, shrubs and grass margins in and beside roads". This RsPPG will not be applied retrospectively.
17. All new and renewal applications shall comply with this RsPPG.

### **The Planning Context**

18. Responsibility for local planning rests with the local Council. Sponsors should contact the relevant Council to ascertain whether a planning application is required for any improvement works, including associated signage.

### **The Policy**

19. The policy essentially works in two ways. The work is either managed by the local Council on behalf of the sponsor, or the sponsor organises or completes the work itself. Some Councils may wish to assume overall responsibility for the management of privately funded planting schemes. In other areas, Councils may prefer a shared approach with Dfl Roads.
20. The use of the local Council has its advantages, as the Council may already have its own resources in terms of staff, plant and equipment to carry out and maintain planting, and will be able to provide the necessary insurances and indemnities.



21. Sponsors can come directly to the Department, but will either have to employ a specialist contractor to do the work or, in the cases of local community groups or landscaping companies, complete the work themselves. In either case, suitable public liability insurances and indemnities will be required, details can be found in Appendix B.
22. Privately funded planting will not be permitted on motorways and other special roads.
23. On other roads, privately funded planting may be permitted on suitable roundabouts and verges, subject to the Department's approval of individual locations and scope.
24. Where the local Council is content to manage the planting / maintenance of roundabouts, roadside verges and Dfl car parks within their area, the Council shall confirm that they will comply with the Department's policy.
25. Where the local Council is not involved and the sponsor approaches the Department directly, the sponsor will be required to enter into an agreement with the Department. A sample agreement detailing the conditions that the sponsor shall comply with is contained in Appendix B.
26. In either case, the duration of any agreement will be as agreed between either the local Council, or the sponsor, and the Department. Duration of agreements will typically be of 3-5 years.
27. Where the local Council wants to manage the private planting of roundabouts and roadside verges in its area it shall be responsible for managing all the related operational aspects of the function, including:
  - a. confirming that the scheme proposals are acceptable from a planning perspective.
  - b. confirming that the proposals are acceptable to Statutory Undertakers, and the Police Service of Northern Ireland, as well as ensuring that the proposals are not detrimental to the effectiveness of street lighting installations.
  - c. altering or protecting services, and should contact the relevant Statutory Undertaker when planting or maintenance operations are being carried out.

28. Where the sponsor comes directly to the Department, the Sponsor will be responsible for:
- a. providing evidence to the Department that the scheme proposals are acceptable from a planning perspective.
  - b. providing evidence to the Department that the proposals are acceptable to Statutory Undertakers, and the Police Service of Northern Ireland, as well as ensuring that the proposals are not detrimental to the effectiveness of street lighting installations.
  - c. altering or protecting services, and should contact the relevant Statutory Undertaker when planting or maintenance operations are being carried out.

### **Design of Planted Areas**

29. The nature and scale of the planting proposals, by way of plant species and layout, must be in keeping with the general character of the surrounding area, and road verges, roundabout islands, etc., and should not be artificially sub-divided into small areas to accommodate planted areas out of keeping with the general scale of the surrounding environment.
30. Where large-scale planting is considered appropriate, the local Council should also be consulted to ensure that proposals are acceptable. Proposals should be submitted by the sponsor to DfI Roads in the form of a suitably scaled map accompanied by a schedule of plant species. Sponsors are encouraged to engage the services of qualified landscape designers in the preparation of scheme proposals.
31. Sponsor's logos laid out in floral planting schemes will not normally be accepted, but this will not preclude, where considered appropriate, the laying out of logos associated with civic features, events and festivals.
32. Care is required in approving planting schemes within sight lines, to ensure that these are not obstructed by tall plants. Normally, planting which will not exceed 500 mm maximum height will be permissible, but this will be dependent on the approach gradients of adjacent roads.

33. Solid objects such as standing stones, boulders, sculptures, etc. that could present a potential impact hazard to an errant vehicle or a distraction shall generally not be permitted.

### **Installation of Planting**

34. Planting must only be undertaken under cover of a Road Opening Consent, Temporary Traffic Regulation, liability insurance and bond, as appropriate.

### **Maintenance of Planting**

35. The extent of maintenance operations necessary for any particular scheme will depend on the design of the scheme and its stage of maturity. Sponsors must submit their maintenance proposals with the initial design; this may include the need for temporary traffic management arrangements.
36. In granting Road Opening Consents to others following completion of the planting scheme, care must be taken to ensure that the planting is restored by those who disrupt it, and that no resultant cost becomes attributable to the Department or sponsor.

### **Acknowledgement Signs**

37. To encourage third party involvement, sponsor acknowledgement signs will be permitted. For the purposes of this RsPPG, an acknowledgement sign is a sign which serves to identify and give recognition to the sponsor(s) of a third party funded planting scheme.
38. Acknowledgement signs must not contain any detail beyond the sponsor's name, logo and wording acknowledging their involvement (e.g. 'Planting and Maintenance Sponsored by...').
39. For the purposes of uniformity, acknowledgement signs for third party funded planted areas shall conform to the diagram in Appendix A.

40. Care must be taken to ensure that acknowledgement signs do not constitute an unacceptable distraction. The number of signs permitted will depend on the particular circumstances of the area being treated and the nature of the planting. The siting, size and number of signs will be agreed as part of the application process, but will typically be no more than one sign per approach road.
41. Sponsors should be encouraged to design acknowledgement signs in keeping with the nature of the planted area. Provided they are of sound construction, signs shall be mounted in a similar manner to road traffic signs or street name signs.

## **Safety**

42. In order to avoid the need for coning on the carriageway and to minimise traffic disruption and safety hazard to maintenance operatives, planting is generally not be permitted closer to the edge of the carriageway than:
  - 1.5m on single carriageway roads with speed restrictions of 40mph and above and on all dual carriageways; or,
  - 800mm on roads with a speed restriction of less than 40mph.
43. Planting must not unduly compromise sight lines.

## **References in Advertising Literature**

44. No restriction will be placed on sponsors which would prevent them making reference in advertising literature to planting schemes funded by them.

## **COLLECTIVE IMPACT ASSESSMENTS**

### **Equality Impact Assessment (EQIA) Section 75 of the N. Ireland Act 1998**

This guidance document has undergone EQIA screening and it was considered that a full Equality Impact Assessment was not required.

A copy of the completed 'Equality Screening Analysis Form' has been signed off and forwarded to the DfI Equality Unit.

### **Rural Proofing**

This guidance has undergone Rural Needs Impact screening and it was considered that a full Rural Needs Assessment was not required, as any potential impact will need to be considered at a local level on a scheme-by-scheme basis.

### **Privacy Impact Assessment**

No personal information will be gathered as a result of the application of this so a Privacy Impact Assessment is not required.

### **Impact Assessments (IAs) - formerly referred to as Regulatory Impact Assessments**

This RsPPG does not introduce any new regulatory burden so an Impact Assessment has not been carried out in the updating of this document.

### **Lifetime Opportunities – Government’s Anti-Poverty Strategy (replaces New TSN)**

This RsPPG updates the procedure for the private maintenance of DfI roundabouts, verges and car parks. Anti-Poverty issues have not been identified in the development of this RsPPG.

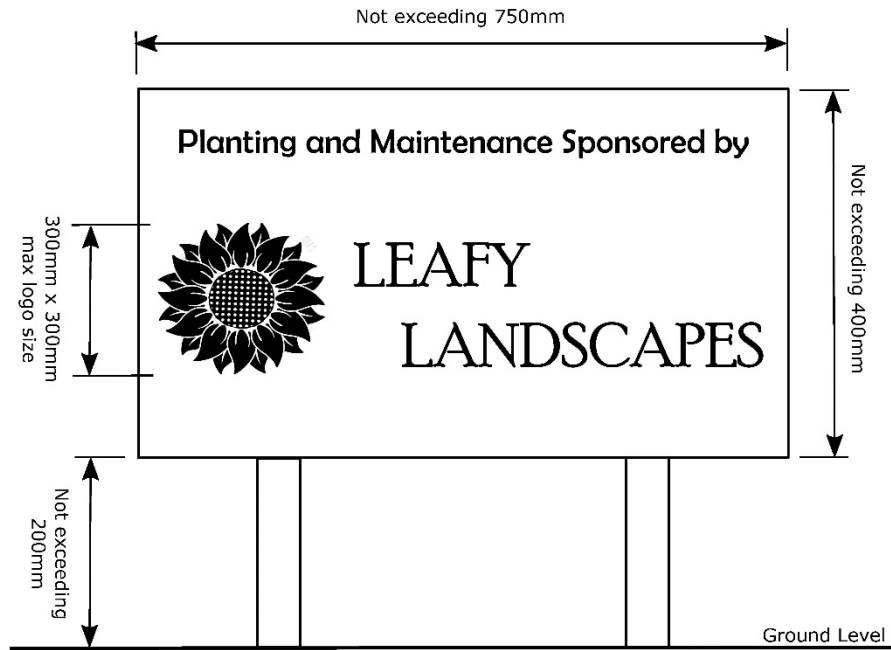
## REFERENCES

Neutral Citation No: [2019] NIQB 104. Ref: KEE11127. In the Matter of an Application by Gordon Robinson and in the matter of a Decision by the Department for Infrastructure

<https://judiciaryni.uk/sites/judiciary/files/decisions/Robinson%27s%20%28Gordon%29%20Application.pdf>

## APPENDICES

### Appendix A – Acknowledgement Sign



## **Appendix B – CONDITIONS TO BE INCLUDED IN MAINTENANCE CONTRACTS FOR PRIVATELY FUNDED PLANTING OF ROAD VERGE**

The appropriate maintenance schedule and period will be specified in each sponsorship agreement.

The Sponsor, their Agent or Sub-contractor, who undertakes maintenance operations will for the period of the initial planting and for the period of the maintenance contract indemnify the Department, its officers and servants against any and all claims in respect of accident, injury or damage to persons or property by reason of or in connection with the planting, maintenance or existence of the plants, the use of chemicals and with associated signs if erected, and against any and all actions or proceedings which at any time may be brought against the Department, its officers and servants in consequence of such accident, injury or damage and against any and all costs and expenses in connection therewith, and shall maintain and cause any Sub-contractor to maintain such insurances as are necessary to cover the liability of the sponsor or as the case may be of any such Sub-contractor in respect of personal injury to or death of any person whomsoever or in respect of any injury or damage whatsoever to any property real or Personal arising out of or in the course of or caused by the performance of this Contract not due to any act or neglect of the Department or any person for whom the Department is responsible.

The insurance in respect of claims for personal injury to, or the death of, any person under a contract of service or apprenticeship with the Sponsor, their Agent or Sub-contractor as the case may be, and arising out of and in the course of such Person's employment, shall comply with current legislation. For all other claims to which this section applies the insurance cover for any one occurrence or series of occurrences arising out of one event shall be at least £10,000,000 (ten million pounds) or such greater sum as the Sponsor, their Agent or Sub-contractor may choose.

As and when reasonably required to do so, the Sponsor, their Agent or Sub-contractor shall produce for inspection by the Department documentary evidence that these insurances are properly maintained. Should the Sponsor, their Agent or Sub-contractor make default in insuring or continuing to insure in this regard the Department may itself insure against any risk with respect to which the default shall have occurred and may take such steps as are necessary to return the area of planting to the condition which pertained before the planting contract was agreed. All costs and expenses consequent thereon



shall be borne by the Sponsor and shall be a sum of money recoverable as a civil debt.

The Sponsor or their Agent will give an undertaking that, in the event of being unable in the future to maintain the planted area, they will, if so required by the Department, restore the planted area to a condition where the Department can resume its normal maintenance activities. The Sponsor shall not without the previous consent in writing of the Department, assign or transfer the Contract or any portion thereof, and shall not without the previous consent in writing of the Department, Sub-contract or sub-let any Portion of the Contract.

Sponsors of lands within the Department's control shall have no legal right of ownership or possession, regardless of how long they have maintained those lands under a planting / maintenance agreement. Sponsors of lands under which a planting / maintenance agreement is made shall not use the specified areas for any purpose other than that set out in the agreement.

At any stage, a planting / maintenance agreement can be withdrawn by the Department.

A suitably scaled map showing the area referred to, together with a description of the nature of planting to be used or, if appropriate, a schedule of species adopted, will accompany any letter of approval from the Department.

Signs, if erected, will be maintained in a clean, legible and sound condition.

The Sponsor, their Agent or Sub-contractor shall:-

- a) be responsible for finding a suitable location to dispose of all cuttings and other debris, etc., which have to be removed from site and for obtaining the approval of the Department / Council to the proposal;
- b) obtain the Department / Council's approval for the siting of any heaps of grass, spoil heaps, etc., and for the routes by which vehicles, plant and equipment is brought to the site;
- c) ensure that workers are only in the area(s) of work on site as shown and defined in the Contract;
- d) ensure that the site is not used for any purpose other than that of carrying out the works agreed in the Contract;
- e) prevent the trespass of workers on any third party property adjoining the site;

- f) prevent damage to adjoining property or to public or private roadways and shall prevent material, plant, rubbish, debris, etc, collecting thereon; and, shall supply and maintain all temporary surfacings, runways, etc, as may be necessary to protect roads, service mains, cables, pipes, under, over or adjacent to the site and make good damage (if any) due to same and in addition clean all carriageways and footways and flush out gulleys and drains free from dirt droppings, etc
- g) exercise care to ensure that damage is not caused to grass sward, plant beds, plants, service markers, services, service covers, paths, kerbs, edges, fences, walls, gates, signs, etc., within or adjacent to the site;
- h) consult with the Statutory Undertakers about alterations or protection measures necessary to services during planting and maintenance operations and advise them when initial planting is to be carried out;
- i) exercise extreme care to ensure that damage is not caused by chemical spray drift or by the use of unapproved chemicals, mixtures of chemicals, methods or rates of application. Repair of damage resulting from such use will be charged to the Sponsor; and
- j) make good or, at the opinion of the Department, pay compensation for all damage occurring to any property occasioned by them or by their servants.

The Department will accept no responsibility for the loss of or damage to plants or signs within the area of the contract however caused and will require that the Sponsor takes steps to replace such in order to retain the scheme as originally approved.

The Sponsor, their Agent or Sub-Contractor will be required to notify the Department in writing of the chemicals which they intend to use to carry out maintenance operations and to further notify the Department in writing of any variation proposed. Only those chemicals approved by the Health and Safety Executive (GB) for non-crop use may be applied.

The Sponsor, their Agent or Sub-Contractor will be at liberty to make reference in promotional papers or otherwise to the scheme approved by the Department and undertaken by them.