Dear Ms. Reilly,

I am directed by the Tánaiste and Minister for Justice and Equality, Ms.

Frances Fitzgerald, T.D., to refer to your recent email on behalf of the Land Use, Planning and Transportation Strategic Planning Committee in relation to legislation for high hedges and trees.

The Tánaiste has asked me to state that difficulties experienced by property owners arising from trees and high hedges on neighbouring land were discussed at some length in both the Dáil and Seanad during passage of the Land and Conveyancing Law Reform Act 2009.

During Committee Stage discussions in the Seanad 2006, Minister McDowell explained that under existing law a person could seek damages or an injunction for the removal of such hedges or trees under the tort of nuisance. In order for the nuisance to be actionable the person would have to show, firstly, that an easement existed, i.e., whether an easement of light or otherwise, and, secondly, that there had been a substantial interference with that right. Whether the court would grant an injunction to remove the offending tree or hedge would depend on all the circumstances of the case. The ensuing discussion revealed a preference on the part of the Seanad for some mechanism in planning or environmental law to address the problems arising in this area.

When the matter was raised again at Report Stage, the Minister referred to the earlier discussions which had indicated a preference for dealing with the matter under planning or environmental legislation. He said that the courts should only be required to deal with these issues as a last resort where other quicker and simpler means of resolving the dispute had failed.

In December 2006, he wrote to the then Minister for the Environment suggesting that some mechanism, preferably a form of mediation or arbitration, be included in future planning or environmental legislation to help resolve disputes concerning trees and high hedges.

The matter was discussed again when the Bill came before the Dáil in 2009.

Arising from Committee Stage discussions which echoed earlier Seanad concerns, Minister Ahern wrote to Minister Gormley in January 2009 suggesting that a mechanism for dealing with such matters, e.g. mediation or arbitration machinery, be included in future planning or environmental legislation. His view was that people often resorted to court in such situations without considering alternative means of resolving their disputes and that some form of mediation would be more appropriate in many cases involving disputes between neighbours.

The matter was also referred to the Law Reform Commission, which had been involved in drafting the 2009 Act, and it also took the view that unreasonable interference with enjoyment of a property right caused by high trees or hedges was a matter in any particular case for tort law or more generally for planning or environmental law. It was not aware of any jurisdiction which regulated trees and hedges within its land law. It mentioned, in particular, the position in the UK where complaints about high hedges are dealt with under Part 8 of the Anti-Social Behaviour Act 2003. This Act gives makes provision for the local authorities to determine complaints by the owners or occupiers of domestic property who are adversely affected by evergreen hedges over 2 metres high. The High Hedges Act (Northern Ireland) 2011, has come into operation in Northern Ireland on

31 March 2012. Helpful guidance notes for hedge owners, complainants and local authorities have been published on the web site of Northern Ireland's Department of the Environment.

As mentioned earlier, discussions in the Seanad and Dail in the context of the 2009 Act have shown a preference for local resolution of disputes, preferably by mediation, with recourse to the courts only as a last resort.

There would be a risk that easier access to the courts in such cases could lead to prolonged and costly litigation, and ultimately leave a legacy of bitterness between neighbours and ill-feeling in the local community.

The Tánaiste whill shortly be publishing a Mediation Bill to promote mediation as a viable, effective and efficient alternative to court proceedings, thereby reducing legal costs, speeding up the resolution of disputes and relieving the stress involved in court proceedings. Such proceedings will includes proceedings arising from disputes between adjoining landowners. The legislation, which is currently being drafted, will not refer specifically to the issue of high hedges but will introduce an obligation on solicitors and barristers to advise parties to consider utilising mediation as a means of resolving disputes before embarking on legal proceedings. It will also provide that a court may, on its own initiative or on the initiative of the parties, invite the parties to consider mediation as a means of resolving the dispute and provide for the suspension of court proceedings in such cases to facilitate the mediation process.

Yours sincerely

Niall Colgan

Private Secretary to the Tánaiste and

Minister for Justice & Equality