1. PURPOSE OF REPORT

1.1 To update Members of the changes to the planning system which come into force on 1\textsuperscript{st} October 2013 and highlight implications for planning and decision making within the Borough.

2. RECOMMENDATIONS

Members are recommended to:

2.1 Note the introduction of the Planning Performance Guarantee and ‘Special Measures designation’ enabling developers to bypass a Council and apply directly to the Planning Inspectorate for a planning permission for a Major Development, where that local authority has a track record of either poor performance in decision making or not acting positively to promote economic growth within its area.

2.2 Note the intention to assess the track record of Council performance in decision making on the grounds of speed and quality of decision making.

2.3 Note the greater powers afforded to Planning Inspectors to initiate costs awards in planning appeal proceedings.

2.4 Note the potential consequences of the reforms on planning fee income.

3 MAIN TEXT INCLUDING ALTERNATIVES CONSIDERED/ CONSULTATION CARRIED OUT

3.1 Members have received reports through Townships setting out proposals for the reform of the planning system and which were at that time the subject of consultation. The Government has since elected to progress these reforms and a number of
significant changes to the determination of planning applications have since been enacted.

The “Planning Guarantee”

3.2 Following concern about the time taken for planning applications to be determined, as part of the Plan for Growth (HM Treasury, March 2011), the Government committed to a “Planning Guarantee” that “no planning application should take longer than one year to reach a decision.” This would cover a period during which the planning application was considered by both the Council and, if necessary, the Planning Inspectorate/Secretary of State. The latest statistics on the planning guarantee published in June 2013 shows some Councils are not making progress in meeting the guarantee. The Act now permits the Planning Inspectorate (on behalf of the Secretary of State) to determine planning applications instead of a local authority (LPA), where the LPA has a track record of “consistently poor performance in the speed or quality of its decisions”.

3.3 On 27th August 2013, The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 were made. These come into force on 1st October and one of the new regulations requires local planning authorities to refund the fees paid for planning applications where a decision is not made within 26 weeks of the date of validation (unless an extension of time has been agreed with the applicant). This applies to all planning applications validated on or after 1st October 2013.

3.4 Although the vast majority of applications are determined well within 26 weeks, a limited number of complex and/or controversial applications have taken longer in the past. A system of monitoring is in place to ensure that all planning applications are determined within 26 weeks, or any extension beyond this time has been agreed with an applicant, to avoid any fees having to be refunded. This period must also cover time taken for the signing of any legal agreement.

Major planning applications

3.5 There is a clear message from central government that it will take planning decisions on major planning applications (eg 10 or more dwellings) away from local authorities whose decisions are deemed to be unsound or not acting positively to promote economic growth in their areas. Performance will be measured through both the soundness and speed of decision making. The existing speed of planning decision performance target to determine 60% of major planning applications within 13 weeks is retained alongside a measure of soundness around appeals performance for major development. Already, the Government has issued reports detailing authorities' comparative performance in these areas to stimulate improved planning performance. Rochdale presently sits above the special measures threshold.

3.6 The Act provides developers the right to now bypass a local authority and apply directly to the Secretary of State (delegated to PINS) for a planning permission on a planning application for Major Development, where that authority has been “designated” as poorly performing. It has since been confirmed this will apply to any authority failing to determine 30% of major planning applications within 13 weeks, or having more than 20% of its decisions on major planning applications being overturned on appeal (as a percentage of the total number of major applications determined by the authority including those that do not go to appeal). These will be reviewed quarterly and averaged out over the preceding two year period thus performance in planning decision making will be reviewed for the period April 2011
onwards. The first designation of authorities being placed into these special measures will take place from 1st October 2013. As can be seen from the figures below, Rochdale significantly exceeds the targets for being designated in special measures:

1) Speed of decision making on major applications (special measures target is to be above 30%):

- April 2011- March 2012: 69%
- April 2012- March 2013: 66.67%
- April 2013 – 6th September 2013: 65%

2) Quality of decision making on major applications (special measures target is to be below 20%):

- April 2011- March 2012: 0%
- April 2012- March 2013: 7.89%
- April 2013 – 6th September 2013: 0%

3.7 The intention is that designation will catch only a few LPAs and that any designation will be a temporary measure and last only for one year during which support would be provided to that authority to improve its decision making, to enable it to move out of special measures at the end of that twelve month period. Members are advised the implication of any special measures designation is that the Council would still be required to administer the application but receive no planning application fee and have no ability to influence the process. Local hearings would take place to allow the Inspector to hear local views. The Council could submit representations but would not make the final decision. Pre application discussions on the development could take place either with the Council or the Planning Inspectorate. PINS will introduce a charging schedule for delivery of any pre application advice.

3.8 The Planning service has worked hard to ensure the delivery of timely and sound planning decisions through having well written policies, knowledgeable members and building up positive relationships with consultees and developers. Rochdale is viewed positively in this regard and it will be important to maintain this approach and be seen as a place to invest. The Council currently performs well above these criteria and there is no immediate suggestion the Council would face any special measures designation or loss of income in this regard. However, without such an approach to development the threat is there.

3.9 The Majors target is highly sensitive and will be monitored closely. It is based on a small number of planning applications which tend to be controversial and require careful negotiation, the views of the Township Planning Sub Committee and/or the Licensing and Regulatory Committee and then the drafting of a legal agreement. Currently, the Council receives around 50 of these Major Developments a year so can afford no more than 20 decisions out of time to meet the national target.

**Planning Proceedings - Costs Awards**

3.10 In its statement on 6 September 2012 the Government announced that it intended to give the Planning Inspectorate (PINS) more power to initiate an award of costs in planning appeal proceedings where “it is clear that an application has not been handled as it should have been with due process”.

3.11 The Act provides the Secretary of State with increased powers to award costs between the parties’ planning appeals and other certain proceedings, and to recover the
Secretary of State’s own costs from the parties. In practice, these powers are normally exercised by the PINS.

3.12 The Act allows the Secretary of State to recover a portion of the costs incurred at a local planning appeal inquiry, not just the whole costs as the current legislation implies, and to recover costs where a planning appeal is not conducted as an inquiry, but by way of written representations. It also allows costs to be recovered where an inquiry or hearing has been arranged, but does not take place i.e. is cancelled at short notice. Further guidance setting out the procedure for circumstances relating to when costs may be awarded between parties or recovered from the Secretary of State at planning appeals conducted by written representations, inquiries or hearings i.e. what behavior or actions by parties might result in costs being awarded or recovered is being issued. These changes will allow a Planning Inspector to award costs to either party where he/she considers that party has acted unreasonably, even in cases where no applications for costs is made by any party.

4. FINANCIAL IMPLICATIONS

4.1 This report is for information only, however the introduction of the Planning Guarantee and changes to appeals rules could have financial implications, but it is difficult to quantify the scale of these at this stage. The reforms could potentially have cost implications for increased costs in planning appeals and a reduction in planning fee income. This has been summarised as follows:

<table>
<thead>
<tr>
<th>Type of Cost</th>
<th>Likely Impact</th>
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<tbody>
<tr>
<td>Planning Appeals</td>
<td>The volume of planning appeals where costs awards are considered are few in number. The Act provides the ability to increase the frequency by which a costs application may be made against or for the Local Authority. At this stage a provision for increased costs is not required however this will be closely monitored with future appeals.</td>
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<tr>
<td>Planning Fee Income</td>
<td>The return of planning fees for applications which take longer than 26 weeks to determine (unless an extension has been agreed) and the potential loss of fee income if the local planning authority are designated in special measures could have significant financial implications. However, performance is currently above the thresholds identified in the report and effective performance monitoring systems are in place to monitor decision speed performance on a monthly basis.</td>
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4.2 The reforms are not expected to create significant financial pressure however the above budget areas will be closely monitored throughout 2013/14 and any material issues will be addressed by the Service and reported to Cabinet through the Finance Update Report.

5. LEGAL IMPLICATIONS

5.1 There are no specific legal implications arising from this report. Again, any future issues would be the subject of separate reports to Members.

6. PERSONNEL IMPLICATIONS

6.1 There are no personnel implications arising from this report.

7. CONCLUSIONS
7.1 The Government is prioritising growth and recognises the opportunities for the planning system to positively promote and support local growth and jobs. To monitor authority’s performance, new performance measures will be introduced from 1\textsuperscript{st} October 2013. This will see the option for planning decisions to be taken away from poorly performing local authorities seen as not acting soundly or positively to promote economic growth in their areas. To be viewed in this light by government and the development industry will have reputational risks to the Borough. These measures also have financial risks to the Council through reduced income generation and risk of costs being awarded to appellants at appeals and will therefore be managed carefully and reported to Members.

For further information and background papers: For further information about this report or access to only background papers please contact Mark Robinson, Head of Planning Email: mark.robinson@rochdale.gov.uk