1. **It is recommended that:**

1.1 Members note the commencement of the pre-application process for the submission of a development consent order for a Nationally Significant Infrastructure Project (NSIP) to the Infrastructure Planning Commission (IPC) for the proposed expansion of Scout Moor Wind Farm;

1.2 Members note the statutory and non-statutory role of the Local Planning Authority as a consultee as set out in the Planning Act 2008 in the process of applying for a development consent order, and the likely timescales involved;

1.3 Members note that joint working is taking place with both Rossendale District Council and Lancashire County Council as joint host authorities;

1.4 Members note the significant resource requirement and that, as the Local Planning Authority is not the determining body, no planning application fee will be payable to the Council in this case.

1.5 Members note this is the first of a series of reports or presentations which Townships will receive throughout this process.

2. **Reasons for recommendation:**

2.1 Townships received a presentation from Peel Energy on its proposals for the expansion of Scout Moor Wind Farm. This report seeks to inform Members of the statutory process which has now commenced. Peel Energy has submitted a ‘scoping report’, (in respect of the ‘scope’ of an Environmental Impact Assessment to accompany the application) to submit to the IPC. This report seeks to update Members on the work taking place and provide a more detailed explanation of the process and opportunities for Member and community engagement.
3. **Alternatives and risks considered:**

3.1 An alternative would be to not engage in the NSIP process with the IPC, or its successor organisation. However, the duties placed on local authorities through the Planning Act 2008 are statutory, and this would leave the Council open to legal challenge and carries a high risk. It is also considered that full involvement in the process will allow the local authority to best represent the views of its residents, and, if the application for development consent is granted by the IPC, ensure that the implications of the development when viewed from Rochdale Borough are properly assessed and mitigated where necessary, and that any community benefits for Rochdale Borough are maximised. Non-involvement in the process carries a high risk of a greater detrimental impact from the proposals than full engagement with the developer and the IPC.

3.2 Another alternative would be to not work closely with Lancashire and Rossendale Councils on the proposal and operate independently in dealings with the developer and the IPC. This would not be beneficial. The proposals raise complex planning issues, some of which requires specialist advice, either in house or external. It would increase the costs to the Council in supporting the process as the three authorities are already sharing the costs of specialist consultants to advise on the scoping report. Operating independently would therefore mean higher consultant costs. Additionally, working jointly with Rossendale and Lancashire is allowing some pooling of officer resources and therefore a saving in terms of officer time. The authorities are also looking at whether there are opportunities to pool in house expertise where this exists in one authority area but not in another, again to reduce costs.

3.3 An alternative is not to employ consultants to advise on landscape and peat ecology / hydrology issues. This would be a saving, however, the authority does not have this in house expertise, and would be unable to comment adequately on any of the environmental information submitted in this regard. Consequently the developer would be able to proceed in these areas without rigorous consideration of the issues and challenge where appropriate. The consultants have already provided comments on the Scoping Report which officers would have been unable to do. To not utilise qualified advice would also weaken the strength of any arguments the Council may make at a later date.

4. **Consultation undertaken/proposed:**

4.1 The Planning Act 2008 sets out a statutory requirement for developers to engage in meaningful pre-application consultation with local communities, statutory consultees, local authorities, landowners, occupiers and tenants. Rochdale MBC is a consultee under Section 43 of the Planning Act 2008. Members will recall that Peel gave a presentation to Townships on the consultation requirements. It is anticipated further reports and presentations will be provided to Townships.

4.2 Consequently, there is no requirement for the Council to undertake any public consultation on the proposals. The legislation puts the onus entirely on the developer to consult fully with statutory and non-statutory bodies throughout the process. The developer must also prepare a ‘Statement of Community Consultation’ (SoCC) which sets out how they intend to consult on the proposed development. This document was published in November 2011, having gone through previous iterations on which the LPA’s views were sought and which were incorporated into the final version.
4.3 The process of consultation has already begun, with the developer having held a number of public exhibitions across the Borough and in neighbouring local authority areas in November and December 2011. This included presentations to Townships in November 2011. Peel Energy, the developer, attended various area forums and community meetings to raise awareness of the proposals and seek the views of the community. This was the ‘Stage 1’ consultation, a broadbrush approach, prior to the specific location of turbines, access roads and other ancillary development being finalised.

4.4 Although the developer has stated views on the proposals are welcomed at any time, there are intended to be two further periods of intensive consultation; ‘Stage 2’, which is likely to be Spring / Summer 2012 and ‘Stage 3’ which is likely to take place in Summer / Autumn 2012. Stage 2 will give a range of development options, including details of turbine locations and access roads and seek the views of the community to their preferred approach.

4.5 Stage 3 consultation will be on a final preferred option and will thereafter form the basis for a draft Environmental Impact Assessment.

4.6 The quality and scope of the consultation is an essential part of the package which the developer must put forward to the IPC. The IPC can refuse to consider an application for development consent if it believes the consultation carried out was insufficient; it has already instructed one applicant to carry out further consultation. It is therefore in the developer’s own interest to ensure public consultation is as comprehensive and wide ranging as possible. The LPA has a statutory duty to comment on the adequacy of the developer’s consultation.

4.7 Members views will be sought at both Stage 2 and Stage 3 consultations and it is likely that the developer will return to Townships later in 2012 to present further information and seek feedback.

5. Main text of report:

Background

5.1 In Summer 2011 the Council was approached by Peel Energy (the developer) to begin pre-application discussions with regard to the expansion of the existing wind farm at Scout Moor. Consent for the existing wind farm was granted under S.36 of the Electricity Act (now superseded by the Planning Act 2008) in April 2005 and it comprises 26 turbines with a hub height of 60m and a blade tip height of 80m. The decision to approve consent was made by an Inspector following an Inquiry which took place over 17 working days in late 2004 and early 2005.

5.2 Although the precise details of the expansion have not been finalised, it is clear that potential areas of expansion were threefold; infilling between the existing turbines; expanding northwards towards Whitworth and expanding eastwards towards Prickshaw / Broadley Fold. The height of the turbines has also not been finalised but information to date suggests they would be 80-100m to hub and 100-135m to tip, depending on the model chosen. It is intended to finalise the locations and heights of the turbines through the completion of detailed constraints studies and through consultation with the community and other stakeholders. The final location of the turbines will also give some certainty to the location and scope of access roads and other infrastructure. The developer has however stated that, at a maximum, the number of turbines would double. As demonstrated in Section 3 of this report, the pre-application consultation required
from the developer is extensive. It is therefore envisaged the application for development consent would be lodged in the last quarter of 2012.

5.3 As the project would generate more than 50Mw of electricity per annum it falls into one of the categories of ‘Nationally Significant Infrastructure Projects’ under the Planning Act 2008. The Council will therefore not be the determining authority; rather the decision is made by the Infrastructure Planning Commission (IPC), a central government body. The Localism Act 2011 proposes the merging of this organisation into the Planning Inspectorate, under a new National Infrastructure Directorate (NID). The only change to the process would be that the final decision on proposals would be made by the Secretary of State rather than IPC Commissioners. The merger into the Planning Inspectorate is scheduled to take place in April 2012 but advice from government is that developers and LPAs should continue to treat applications for development consent as if they were being dealt with by the IPC until such time as the merger takes place. On that basis this report refers to the IPC rather than the NID.

Joint Working

5.4 A significant proportion of the land both within the existing wind farm and the proposed expansion area falls outside Rochdale’s administrative boundary, within Rossendale’s jurisdiction as district authority, and Lancashire County Council having responsibility for county planning matters. The three authorities (Rochdale, Rossendale and Lancashire) are deemed the ‘host authorities’ under the Planning Act 2008 and as such have various statutory responsibilities. Officers from all three authorities have been working closely for several months, and have held a number of collaborative meetings to provide joint responses to the various statutory and non-statutory requests.

5.5 The three authorities intend to continue to work collaboratively throughout the process to minimise the use of resources and maximise the sharing of costs. In particular joint commissioning of consultants has already taken place to advise on the scoping report, where in house expertise is absent, for example the technical expertise required for peat ecology and hydrology.

The Process

5.6 The process by which an application for development consent is submitted and considered by the IPC is extensive. Most of the work is expected to take place before the application is submitted. The LPA is required to take a front line role in the process; the host authorities being a crucial statutory consultee under Section 42 of the Planning Act 2008. A chart demonstrating the process is included in Appendix A. Briefly, the process has six stages; pre-application (where we are currently); acceptance; pre-examination; examination; decision and post-decision.

5.7 Despite the application being in the early part of the pre-application stage, significant work has already taken place. Officers have been involved in the following, since the first approach by the developer in summer 2011, in chronological order;

(i) setting up a Member briefing on the proposals;
(ii) commenting on the Statement of Community Consultation (statutory duty);
(iii) organising and attending a presentation by the IPC on the process and role of LPAs;
(iv) attending a ‘visualisation event’ set up by the developer which demonstrated their visualisation software;
(v) attending the public exhibitions as an observer;
(vi) Producing and collating comments on the Scoping Report and attending the associated Technical Working Groups (statutory duty).

Approximately 80 hours of officer time have been spent on the project so far and at least eight officers are involved to varying degrees.

**Scoping Report**

5.8 The main piece of work which has taken place so far, and is taking place at the time of report preparation, is the analysis and commentary on the Scoping Report submitted by the developer to the IPC. The scale and nature of the development proposal means it comprises ‘Environmental Impact Assessment Development’ under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. As such the application for development consent must be accompanied by an Environmental Statement. The Scoping Report sets out the ‘scope’ of the environmental information which will be provided in the Environmental Statement. The LPA is required by the IPC to provide their comments on the Scoping Report within 28 days of it being lodged with the IPC. The start date has been delayed as the IPC have requested further information and at the time of report preparation it is anticipated the deadline for comments will be around the 15 March.

5.9 The Scoping Report is divided into chapters, each of which covers a discrete discipline, albeit some are interlinked. The three LPAs do not have the necessary in-house expertise in peat ecology, hydrology and landscape in order to be able to comment sufficiently on these chapters. As a result, consultants have had to be employed with the costs shared by the three authorities. In order to reduce costs and avoid the duplication of work, the consultants used for the existing wind farm, and for the Crook Hill wind farm, have been commissioned. In all other respects, the Council is obtaining advice from internal specialist Officers or the shared AGMA planning units.

5.10 A number of Technical Working Groups (TWG) have taken place set up by the developer. These have covered four topics areas; cultural heritage; landscape and visual assessment; transport and ecology, hydrology and peat. These took place in late January 2012 attended by representatives of each of the three authorities, our consultants, GMEU and GMAU and local interest group representatives, for example the Campaign for Rural England and the Lancashire Bat Groups. Other issues, such as noise, were not considered to warrant their own TWG but are the subject of separate discussions between the Councils and developer. The Local Authorities have also requested issues of recreation and access are the subject of separate TWG meetings.

5.11 The three authorities, their consultants and the Greater Manchester units have made significant progress on producing and collating comments to send to the IPC as a formal consultation response on the Scoping Report. A number of joint authority meetings have taken place and more will be needed. Officers have worked collaboratively across and between authorities. It is therefore envisaged
there will be no difficulty in submitting a response to the IPC on or before the mid-
March deadline.

**Future Workstream**

5.12 Excluding the involvement in the Scoping Report, discussed above, the following
duties are required of the LPA between the current time and the time at which a
decision is taken on whether to grant a development consent order.

(i) **Response to formal consultation by the developer under S42 of the**
**Planning Act 2008**

The applicant must consult each authority in which the development falls.
Although informal consultation is ongoing, the developer is likely to formally
consult the LPA during Stage 3 of the public consultation when the precise detail
of the proposals and a draft Environmental Statement will be available. i.e.
towards the end of 2012, but it must be before the application is formally
submitted to the IPC. The LPA will have at least 28 days to respond directly to
the developer (not to the IPC; this is carried out separately) and can frame this
response around the local development framework or any other aspect they
choose. This is an opportunity to put forward any mitigatory measures which the
LPA considers necessary so that the developer can consider these before
finalising their proposal. Members’ views will be sought on this consultation
response before it is submitted to the developer, through the Licensing and
Regulatory Committee.

(ii) **Drawing up of heads of terms of Section 106 planning agreement**

The developer will seek to present a draft S106 planning agreement as part of
their application for development consent. Notwithstanding any views held on the
proposals, the LPA will need to consider what S106 planning obligations would
be necessary if the IPC were to grant a development consent order. It is likely
that Rochdale will work jointly with Rossendale and Lancashire on this draft S106
agreement and that the agreement, if required, would be entered into jointly. This
work will be ongoing but is likely to be most focused in late 2012 around the
Stage 3 consultation, when the precise detail of the proposals and a draft
Environmental Statement will be available. This work will also be linked to the
formal consultation response discussed in (i). Officers have delegated powers to
deal with this matter but Members’ views expressed in response to the formal
consultation will be incorporated, where possible, into the heads of terms.

(iii) **Advise IPC on adequacy of consultation response**

Following the submission of the application for development consent, the IPC
have 28 days to determine whether they are able to accept the application. A
fundamental part of this is determining the adequacy of the consultation. The
LPA is given an extremely short period of 14 days to prepare a response,
however it is expected that the LPA’s views on the adequacy of the consultation
are collated across the entirety of the process. This statement will be required by
the IPC in late 2012 / early 2013. This will be undertaken under Officers’
delegated powers but again the adequacy of consultation will have been fed back
to the developer during 2012, including representations from Townships.

(iv) **Drawing up and submission of Local Impact Report**
Once the application has been accepted by the IPC, the LPA is invited by them to submit a ‘Local Impact Report’ (LIR) on the final proposal, which sets out what the local authority believes will be the likely impacts of the proposed development on its area, or any part of its area. LIRs are intended to allow local authorities to represent the broader views of their residents and can cover a range of local interests and impacts. It is the means by which the local authority submits its views to the IPC. It is however, distinct from any representation the authority may choose to make in respect of the merits of the application i.e. the LIR would state whether an impact was positive or negative but not conclude whether the application should be refused or approved on that basis. The LIR is sought from the LPA in the first three months following acceptance and an LPA normally has around 3 months to produce the document. It is expected that this will be completed in the early part of 2013. The decision making process for this will need to be clarified as the provisions are not covered within the current Delegation Scheme. However, it is anticipated that Members' views on the LIR, will be sought through Townships with a final decision made by the Licensing and Regulatory Committee.

(v) Making representations on the application as interested party at the Examination

The LPA may also make representations on the merits of the application at the Examination. This would effectively operate in the same way as at any Public Inquiry, although the process is not intended to be adversarial. Written statements of evidence would be produced and submitted and officers or consultants acting on behalf of the local authorities, if necessary, would be invited to make oral representations to the Commissioners. Also, in the same way as at Public Inquiry, the LPA and the developer would work together on a Statement of Common Ground to clarify the areas where there is agreement and disagreement in order to save time at the Examination. The production of written statements of evidence would be undertaken under delegated powers, as takes place with any planning appeal. The authority’s representations will of course be based on the views of Members sought through the formal consultation response and LIR process. Members may be asked to represent the Council and are of course entitled to attend the Examination of their own choice as individuals representing community interests.

Decision

5.13 The decision will be taken by the Secretary of State under advice from the successor organisation to the IPC. The LPA will play no further role in the decision making process following the Examination – it is a decision which is, and is intended to be, independent of the local authority.

Monitoring and Discharge of ‘Requirements’

5.14 If the IPC (or the Secretary of State through its successor organisation) grant a development consent order there will be further work for the LPA beyond this as the DCO will be subject to a number of ‘requirements’ (the Planning Act 2008 term for conditions) and is also likely to be subject to various obligations within a S106 agreement. The LPA has the statutory role in the discharge of any requirements and S106 obligations and is also responsible for enforcement and monitoring of the development consent order. Any other application for planning
permission or related consents granted by the Planning Inspectorate or the Secretary of State is dealt with in the same way. If development consent is granted, it is likely that the discharge of requirements and S106 obligations and development monitoring will take place until 2017/18 and would therefore be a long term project.

6. Personnel Implications:

6.1 It is clear that the process, including the preparation of a formal response to consultation, a Local Impact Report and maintaining a presence and giving evidence at the Examination will take up significant officer time over the next eighteen months. This will have to be met from existing staff resources with a nominated senior Lead Officer as a main point of contact.

6.2 Discussions around the sharing of Officer time with the other host authorities are ongoing. However, it is expected the Lead Officer will need to devote the equivalent of an annual 0.5FTE to the project, up to and including the Examination. Other officers will be involved to a lesser extent, with around four officers devoting 0.05 – 0.1FTE (annualised) and others assimilating it into their existing workloads.

7. Financial Implications:

7.1 The Council will not receive an application fee for this development. The fee, which will be significant, is paid to the IPC as they are the determining body. There is therefore no statutory means of recovering in full or in part the Council’s costs in participating in what is a statutory process. The Council is discussing with the IPC, Rossendale and Lancashire and the developer whether staffing and external consultants costs can be recovered and how the authorities can most effectively and efficiently participate in this process. Should no external support be forthcoming, a bid for internal resources to support the process will be made.

7.2 Whilst their use will be minimised wherever possible, such is the breadth and complexity of issues raised by the proposal, the need for external consultant advice is likely to continue throughout the process. Advice will be needed on the formal consultation response and the Local Impact Report and it is likely they will need to make representations to, and appear at, the Examination. This will be a significant financial commitment from the Council but is considered to be necessary as outlined in Paragraph 3.3. These costs cannot be quantified at this time but would again be the subject of discussion with the other host authorities, the IPC and the developer to seek cost recovery, wherever possible.

7.3 The Council costs for advice on the scoping report will be around £3,000. This costs will be met from existing budgets.

8. Conclusions:

8.1 The submission of a NSIP application to the IPC requires significant involvement by the local authority even though they are not the determining body. The officer and financial resource required is similar to, if not greater than a large scale major planning application requiring determination through a Public Inquiry.

8.2 The pre-application process for the Scout Moor Wind Farm expansion is now gathering pace. The LPA is currently, in conjunction with Rossendale Borough and Lancashire County Councils, jointly appointed consultants and the Greater
Manchester Ecology and Archaeology Units, working on a response to the IPC in respect of the developer’s EIA Scoping Report. This joint working will continue throughout the process.

8.3 This is just the beginning of the process and significant Council resources will be required to see the application through to a decision. The local authority has significant statutory and non-statutory obligations throughout. Members will be involved in the process. It is likely that a decision will be made in late 2013 and work on the project will be almost continuous until the conclusion of the Examination. If the development consent order is granted, the LPA is statutorily responsible for the monitoring and discharge of requirements and S106 obligations associated with the grant of consent.

8.4 There is no application fee payable to the local authority and therefore the Council’s participation in this process, as it is statutorily required to do, is at a cost. Ways of minimising these costs are being explored but are likely to be significant. If no alternative sources of funding are agreed, these will have to be met from existing resources.

For further information and background papers: For further information about this report or access to any background papers please contact Rebecca Coley, Team Leader – Development Management  Tel: 01706 924315

Peter Rowlinson - Service Director: Planning and Regulation
Appendix 1: Chart referred to in Paragraph 5.6