The purpose of this report is to advise members on the background of the Altgolan Wind Farm planning application, appeal and subsequent quashing of the Planning Appeals Commission (PAC) decision through JR and to decide on the appropriate way forward following the PAC requesting that the appeal be re-heard.

1 Application and Appeal background

1.1 A planning application and accompanying Environmental Statement (ES) was submitted to the Department of the Environment (DOE) in August 2006 which proposed the construction of 13 turbines at 125m to tip height, with ancillary development of substation, access tracks, met masts and underground cabling. The DOE requested Further Environmental Information (FEI) in September 2007 which was received and proposed a reduction in turbine numbers from 13 to 9 but retaining the 125m tip height.

1.2 The application was presented to Strabane District Council with a recommendation to refuse on 24 April 2012 and a decision notice was issued with the following refusal reason:

- The proposal is contrary to Policy RE 1 of the Department’s Planning Policy Statement 18 - Renewable Energy in that the cumulative effects of the development in addition to other existing and approved wind farms in the locality would, if permitted, have an unacceptable adverse impact on visual amenity and landscape character through the number, scale, size and siting of turbines.

1.3 The decision was appealed by the applicant on 30 May 2012. Following the submission of additional Further Environmental Information (FEI) to the PAC the hearing was set for 6 March 2013.
1.4 The Department having considered the FEI added a further reason for refusal to be considered by the PAC. A total of 2 reasons for refusal were now being considered by the PAC:

- The proposal is contrary to Policy RE 1 of the Department’s Planning Policy Statement 18 - Renewable Energy in that the cumulative effects of the development in addition to other existing and approved wind farms in the locality would, if permitted, have an unacceptable adverse impact on visual amenity and landscape character through the number, scale, size and siting of turbines.
- The proposal is contrary to the Departments Planning Policy Statement 18: Renewable Energy, Policy RE1 and PPS2: Natural Heritage, policy NH5, in that development would, if permitted, have an unacceptable adverse impact on biodiversity and nature conservation interests through development within and damage to active peatland and priority habitats, blanket bog and upland heathland within the site.

1.5 The PAC subsequently dismissed the appeal on 21 December 2015 finding that:

“(i) the proposed development’s cumulative impact, in conjunction with existing and approved turbines, would result in a severely adverse impact on visual amenity and landscape character; and (ii) the development would have an unacceptable adverse impact on biodiversity and nature conservation. In the evidential context of this particular case, the wider environmental, economic and social benefits that would accrue from the proposed development, including the suggested community benefits, merit the attachment of what I consider should be significant weight. However, significant weight does not equate to determining weight. Having taken account of all the evidence, I find the proposal’s adverse impacts and detriment to the environment to be unacceptable. They outweigh both undoubted benefits of the scheme and the qualified policy presumption in favour of the development. Accordingly, this proposal is distinguishable from the previous wind farm proposals approved by the Commission. The Department’s first and second reasons for refusal are both sustained and the appeal must fail.”

1.6 The applicant applied for a Judicial Review of the PAC decision on 5 February 2016 citing: Procedural Unfairness; Reaching conclusions without proper evidential basis; Error in law; Inconsistency; Failure to provide reasons; Irrationality I: Failure to engage in reasonable inquiry or investigation; Irrationality II: failure to take into account material and relevant considerations; Irrationality III: taking into account an irrelevant consideration; Irrationality IV: no other decision-maker could have made the same decision on PPS18; Error as to facts and; Breach of Section 6 of the Human Rights Act 1998 and Article 6 of ECHR.
1.7 The Council has been informed that the PAC decision has now been quashed in the High Court on 13 April 2016, however no further information on the details of the quashing of the decision have been received. A request for this information has been forwarded to the PAC and is attached in Appendix 11 for member’s information.

1.8 Members have previously been advised on 18 May that the PAC had written to the Council advising that they propose to consider the appeal afresh. Paper attached in Appendix 12 for your information.

2 Key Issues/Next Steps

2.1 The key issues remaining that would require defence at any further appeal hearing are: the detrimental visual impact of the proposal; unacceptable adverse impact on biodiversity and nature conservation (peat) and; the weighting of any potential economic/community benefits.

2.2 Since the appeal hearing the Strategic Planning Policy Statement (SPPS) has been published. The council will be required to submit a consideration of this to the PAC for consideration. A consideration of the SPPS is included in Appendix 13 for member’s consideration.

2.3 Planning officials have been in contact with NIEA regarding their Statement of Case (SoC) and they have stated that a revised SoC will be submitted to deal with FEI information submitted during the appeal hearing. The content of the SPPS will also be considered within any SoC submitted.

2.4 It is proposed that Derry City and Strabane District Council will adopt the DOE’s evidence in whole and will provide the PAC with a supplementary statement of case which will include a policy consideration of the SPPS and any further comments from NIEA in relation to peat.

3 Financial, Equality, Legal and Other Implications

4.1 A new hearing will take place in respect of this appeal. There are considered to be financial implications as Council will now have to defend the reasons for refusal. Due to the nature of the appeal, it will be necessary to appoint Counsel to represent the Council at the appeal hearing. There are no equality, HR and other implications in taking this matter forward.
5 Recommendations

5.1 That members note the content of this paper and that it is recommended that Council prepare a supplementary statement of case to the PAC and that officers defend the DOE position at appeal.
Dear Sir/Madam,

**RE: Appeal – 2012/A0070 Altgolan Windfarm Ltd**

I refer to your correspondence dated 21 April 2016 advising that the Commission's decision on the appeal as noted above was quashed in the High Court on 13th April 2016 following an application for Judicial Review.

A Paper was presented to Derry City and Strabane District Council Planning Committee on 18th May 2016 advising Members that the Planning Appeals Commission is notifying Derry City and Strabane District Council that it now proposes to consider the appeal afresh.

At the Planning Committee Meeting on the 18th May, the Members were concerned and expressed concern that they cannot make a reasonable decision as to whether they will adopt the Departments evidence in whole or in part or to present a different case until they are furnished with all relevant information pertaining to the initial application, the appeal and
subsequent Judicial Review (JR) which quashed the PAC decision on 13 April 2016. The Council has not been provided with this information to date.

Planning Officials have sourced the DOE planning file J/2006/0840/F, the reasons for refusal of that application and the statement of case from the DOE to the PAC in relation to the Appeal 2012/A0070. We have also sourced the appellant’s statement of case and all rebuttals and additional information submitted during the appeal process.

Council respectively request that full details of the Judicial Review into the PAC decision is forwarded to Council. Following receipt of this information and in order for Derry City and Strabane District Council to consider the most appropriate form of action, a further presentation to members will be required. The first available Committee meeting available to conduct this presentation will be 8 June 2016 with the next on 6 July 2016.

The council therefore respectfully requests an extension of time on the 27 May deadline in order to fully inform Members of the details of the application and the subsequent appeal and Judicial Review and provide a full justification/response to your request. Derry City and Strabane City Council requests that the PAC allow comments by 4.00pm on 15th June 2016 on whether Members wish to adopt the Department’s evidence in whole or in part or to present a different case and/or whether Derry City and Strabane District Council will submit a supplementary statement.

Should you require any clarification please do not hesitate to contact me.

Yours faithfully

Head of Planning
1. **Purpose of Report/Recommendations**

1.1 To appraise members of the receipt of a letter from The Planning Appeals Commission to Derry City and Strabane District Council dated 21st April 2016. The purpose of the letter is to inform the Council, that the Commission's decision on this appeal, dated 21st December 2015, was quashed in the High Court on 13th April 2016, following an application for judicial review. The Commission has informed Council that it now proposes to consider the appeal afresh and will conduct a new hearing. It is recommended that Council would adopt the DOE position to refuse and would propose to make a further submission in relation to the matter.

2. **Background**

2.1 The DOE refused planning permission for a windfarm at Altgolan, planning reference No. J/2006/0840/F. The decision was appealed and the PAC dismissed the appeal on 21st December 2015. The Commission's decision was judicially reviewed and the appeal decision was quashed in the High Court on 13th April 2016. The Commission has now advised the Council that it now proposes to consider the appeal afresh. The Chief Commissioner will appoint a different Commissioner to conduct a new hearing. The PAC have advised that account will be taken of the background papers provided by the Department of the Environment (the Planning Authority that dealt with the application at first instance), the Environmental Statement and three batches of additional environmental information produced by the appellants, and all written evidence submitted by the Department, the appellants and third parties.

2.2 The PAC goes on to state that, if any party so desires, all parties will be afforded an opportunity to submit, prior to the new hearing, a supplementary statement of case to update their evidence. It will be open to Derry City and Strabane District Council, as the new Planning Authority, to adopt the Department's evidence in whole or in part or to present a different case.

3. **Key Issues**
3.1 The DOE defended the decision to refuse planning permission for "Amendment to proposed windfarm application to include amended layout and a reduction from 13 no. wind turbines with tubular steel towers and composite fibre rotor blades to 7 turbines with a maximum base to tip height of 125m, tower height 80m and blade diameter of 90m. at Altgolan TD and Meenclogher TD, Killen, Castlederg, Strabane". As the PAC’s decision on the appeal has been quashed by the High Court, the appeal will be heard afresh and it will fall to Derry City and Strabane District Council to defend the reasons for refusal. It should be noted that a letter of support for the proposed windfarm was received by the PAC on 20 May 2012 from Strabane District Council.

3.2 To enable the Commission to make the necessary arrangements, Derry City and Strabane District Council must inform the PAC by 27th May whether they wish to submit a supplementary statement. It is proposed that Derry City and Strabane District Council will adopt the Department’s evidence in whole and Members are advised that Council does propose to make a submission in relation to the matter.

4. **Financial, Equality, Legal, HR and Other Implications**

4.1 A new hearing will take place in respect of this appeal. There are considered to be financial implications as Council will now have to defend the reasons for refusal. Due to the nature of the appeal, it will be necessary to appoint Counsel to represent the Council at the appeal hearing. There are no equality, HR and other implications in taking this matter forward.

5. **Recommendations**

5.1 That Members note the content of this paper and that it is recommended that Council write to the Planning Appeals Commission and confirm that officers have been authorised to defend the DOE position at appeal and that Council propose to submit a statement to the PAC in relation to the matter.

Consideration of SPPS for Altgolan Appeal

1. **The weight to be attached to the wider environmental, economic and social benefits of a proposal**

   - Policy RE1 of Planning Policy Statement 18 on Renewable Energy dated August 2009 ("PPS 18") states that “the wider environmental economic and social benefits of all proposals for renewable energy projects are material considerations that will be given significant weight in determining whether planning permission should be granted.”
Paragraph 6.225 of the Strategic Planning Policy Statement dated September 2015 (“the SPPS”) states that “the wider environmental, economic and social benefits of all proposals for renewable energy are material considerations that will be given appropriate weight…” PPS 18 is currently a retained policy under the transitional arrangements of the SPPS and has not yet been superseded by any relevant council Plan Strategies. It is therefore a relevant policy document for any renewable energy development proposal. However, there is clearly a conflict between the two policy statements regarding the level of weight to be attached to the wider environmental, economic and social benefits of renewable energy proposals. Paragraph 1.12 of the SPPS states that “any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS.” It is clear, therefore, that the level of weight to be attached to such benefits is appropriate weight.

- In practice, the SPPS states, at paragraph 3.4, that “the relevance of, and weight to be given to social, economic and environmental considerations is a matter of planning judgment in any given case.” The Council therefore consider that it is for the decision-maker (the PAC) to weigh up all the material considerations that are relevant to this particular case, giving to each the weight that is appropriate in all the circumstances of the case.

2. **Developer Contributions and Community benefits**

- Paragraphs 5.69 and 5.70 deal with developer contributions which are relevant to the proposed development. Paragraph 5.71 deals with contributions which are not relevant to the proposed development and makes it clear that such benefits (“community benefits”) are not material considerations in decision-making.

As stated by the Department at the appeal hearing, it is considered that the community benefits should not form part of the Commission’s decision. The council would refer the Commission to a recent appeal decision (2012/A0186) wherein the Commissioner commented ‘I am not, however, persuaded that this potential social benefit could be secured by a planning condition, negative or otherwise. I therefore attach little weight to it.’

- The council would also refer the Commission to the Department of Energy and Climate Change Best Practice Guidance for England on Community Benefits from Onshore Wind Developments document and particularly the comments made on page 30 in terms of ‘Community benefits and the planning system.’


3. **Active Peat**

- Paragraph 6.226 of the SPPS advises on the importance of active peat for Northern Ireland for its biodiversity, water and carbon storage qualities. The SPPS advises ‘Any renewable energy development on active peatland will not be permitted unless there are imperative reasons of overriding public interest as defined under The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 as amended. ‘Policy RE1 of PPS 18 states ‘Any development on active peatland will not be permitted unless there are imperative reasons
of overriding public interest.’
This matter was discussed at length at the appeal hearing. Paragraph 1.12 of the SPPS states that “any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS.”