

Subject:	Council Land	Status:	For publication
Report to:	Full Council	Date:	11 th July 2012
Report of:	Head of Finance	Portfolio Holder:	Finance & Resources
Key Decision:	<input type="checkbox"/> Forward Plan <input type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
Community Impact Assessment:	Required:	No	Attached: No
Biodiversity Impact Assessment	Required:	No	Attached: No
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1.	RECOMMENDATIONS
1.1	That Members consider the report and make a recommendation to either accept or reject the proposal from Coronation Power Limited.
1.2	That any contractual requirements are delegated to the Director of Business and the Head of Finance in consultation with the portfolio holder for Finance & Resources.

2. PURPOSE OF REPORT

- 2.1 The purpose of the report is to consider the granting of access rights over the area of land known as Landgate, Whitworth, for the construction, maintenance and eventual decommissioning of a maximum of 12 wind turbines.

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **A clean and green Rossendale** – creating a better environment for all.
 - **A healthy and successful Rossendale** – supporting vibrant communities and a strong economy.
 - **Responsive and value for money local services** – responding to and meeting the different needs of customers and improving the cost effectiveness of services.

4. RISK ASSESSMENT IMPLICATIONS

- 4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:
- Differing local and community opinions, perceptions or otherwise as to the impact on the environment of wind turbines
 - Ensuring that Council assets are used to obtain best value, value for money and the promotion of Council's Corporate Priorities.

5. BACKGROUND AND OPTIONS

- 5.1 The Development Control Committee has previously granted planning permission in relation to access arrangements using an access route from A671 at Shawforth, along Landgate, through Middle Hill Quarry and over Rough Hill to serve an approved Wind Farm at Crook Hill on the Rochdale & Calderdale border. The development is a Coronation Power Limited (CPL) project.

The original proposal was to access from the north, which would have entailed a significant and permanent intrusion on the landscape of the current rock face at the entrance of Landgate. This and other matters caused some concern from the local community. These

matters were raised with Members of the Development Control Committee who granted planning permission in relation to access. CPL have agreed that if Members approve access rights:

- They will use reasonable endeavours to obtain the necessary approvals to ensure the turbine delivery come via the south. This will avoid having to cut into the rock face. If Rochdale Highways Authority will not agree to delivery of turbine components via the south then delivery will come via the north.
- If delivery comes from the north, any cut to the rock face will be minimised and will be no more than as set out in drawing number 182195-200D1.2 (Appendix 1). This is a reduction of a cut in depth from 12 to 5 metres.

5.2 Council Officers have recently registered title of the area immediately off the A671, known as Landgate. Title is however disputed by the Lord of the Manor, Rochdale (LOM). Council officers have agreed to suspend the land registration pending the outcome of Members preference to CPL accessing Landgate.

5.3 CPL limited has offered £100k in payment to Council for access rights across Landgate. The following outlines the position, possible options and outcomes including financial risks and reward:

- CPL and the proposed wind farm land owner (LOM) have given some assurance (some of which is captured in formal planning consents) as to:
 - Access to be restricted to the purpose of:
 - A maximum 12 Turbines and infrastructure commissioning/construction
 - A maximum 12 Turbines and infrastructure decommissioning
 - Maintenance of a maximum Turbines and infrastructure
 - LOM to acknowledge RBC's title over the land gate properties.
 - CPL will use reasonable endeavours to obtain the necessary approvals to ensure the turbine delivery come via the south (not the north as per current approvals).
 - The Rock face at the entrance of Landgate will be preserved in the event of a southern access. As noted above if delivery comes from the north, any cut to the rock face will be minimised.
 - Any changes necessary to the verge and/or grassed areas at the entrance of Landgate to be agreed in advance with RBC and to be re-instated after completion CPL's expense (as per the current planning consent).
 - Confirmation that the quarries will be decommissioned as part of the wind farm development project (as per the planning consent)
 - Confirmation that the LOM will commit to the restoration of the common at Middle Hill and Hades (as per the planning consent)
 - CPL to obtain all local authority planning consents (where applicable) prior to access.
 - Working with the authority to reduce fly tipping in the area of the two quarries (as per the planning consent).
- Landgate ownership and title is disputed due to Council (and we presume LOM) never having in its possession the original lease title, presumed to be 999yr. Officers have sought barrister's opinion. Officers believe the Council has good title, with a reasonable chance of success. LOM will withdraw their claim if Council agrees to grant the developer, CPL, access across the land.
- As previously noted planning permission re access has been granted by Rossendale

Borough Council. A £50k s106, to use as it “sees fit in particular to fund renewable energy or energy efficiency projects” has already been agreed as part of the Rossendale planning application – CPL have indicated that they will agree to any necessary changes to the s.106 if Members would like to see a wider community use. The current 106 sum is split equally to a local school (£25k) and the community (£25k).

- St Michael & St John CoE Primary School (*nb one school*)
- Shawforth for renewable energy or energy efficient projects
- During informal discussions between the land agent and council officers, the land agent put forward a provisional figure of £100k for access rights. On 2nd March 2012, Council officers put to the developer CPL, via the land agent, a request of £200k as an “access fee”. On the same day the land agent responded back that CPL “will not go to anywhere near to £200k”. CPL have now confirmed that their maximum offer would be £100k.
- Any negotiated payment to RBC would be for access rights only and not a disposal of land or property
- It is understood that CPL have an alternative route via Calderbrook Road which is outside our Borough and which will therefore not impact on Rossendale.
- It is understood that the LOM arrangements with CPL is for the LOM to use its “best endeavours” in securing the Landgate access. It is understood that this would include taking reasonable legal action and challenge against Council as to the legal title of Landgate. The agent has indicated that a fund of £40k originally set aside as an access fee will be used to make a legal challenge against the Council.
- It is also understood that CPL could use compulsory purchasing powers under the Electricity Act 1989 should an agreement not be reached.

5.4 Appendix 2 summaries a number of points of principle agreed with CPL should Council agree to granting access.

5.5 Options & Consequences:

1. If Council declines the offer and defends its position:
 - a. LOM will instigate a legal challenge re ownership, Council will incur legal costs of a defence and put financial resources (estimated at between £40 and £50k) at risk.
 - b. If Council win CP will either seek to renegotiate or utilise the Calderdale entrance, in this latter case:
 - i. S106 of £50k will not be paid
 - ii. No additional capital sum to Council.
 - iii. Legal costs will be incurred
 - iv. CPL may seek further legal address against RBC as they see our “late” land registration as unreasonable as to its timing following the planning permission and inconsistent with the planning consent – Officers have contended that we have simply been fortuitous.
 - v. Middle Hill and Hades quarries will not be restored
 - c. If Council lose:
 - i. s106 of £50k will be paid in its original form
 - ii. CPL may choose not to access from the north thus making intrusions into the Landgate rock face
 - iii. No additional capital sum to Council
 - iv. Legal costs will be incurred (estimated at between £40k and £50k)
 - d. RBC’s reputation may be put at risk in not seeking best value.
 - e. CPL may apply for a compulsory purchase order (CPO) to acquire landgate.

This will incur additional expense, resources and time from both sides. Should a CPO be granted the compensation for market value is thought to be minimal.

2. Council accepts the Offer:
 - a. £50k for s.106 money is secured and subject to planners approval is renegotiated to a wider community use,
 - b. c.£100k additional resources are secured and
 - i. goes to bridge the Capital funding gap or
 - ii. is top-sliced for Whitworth projects (eg: Pool, Healy Dell).
 - c. Council is seen to have sought best value.
 - d. Council maintains control of Landgate.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

- 6.1 Members should ensure that Council assets promote and work towards the achievement of Corporate Priorities and in bridging the financial gap identified in the Council's Medium Term Financial Strategy.

7. MONITORING OFFICER

- 7.1 The legal costs for defending a claim brought by the LOM would in my view exceed £40k and the Council has no guarantee of success.

8. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

- 8.1 There are no People and Policy implications.

9. CONSULTATION CARRIED OUT

- 9.1 Internal only

10. CONCLUSION

- 10.1 The matter of Landgate is an opportunity for Members to determine the best interests of the Council.

Background Papers

Document	Place of Inspection
Planning application 2011/0030	Council Website



Continue on A671 to junction with Land Gate.
At junction turn left onto Land Gate.
OPTION 2 FOR 39M BLADE


****Caution****

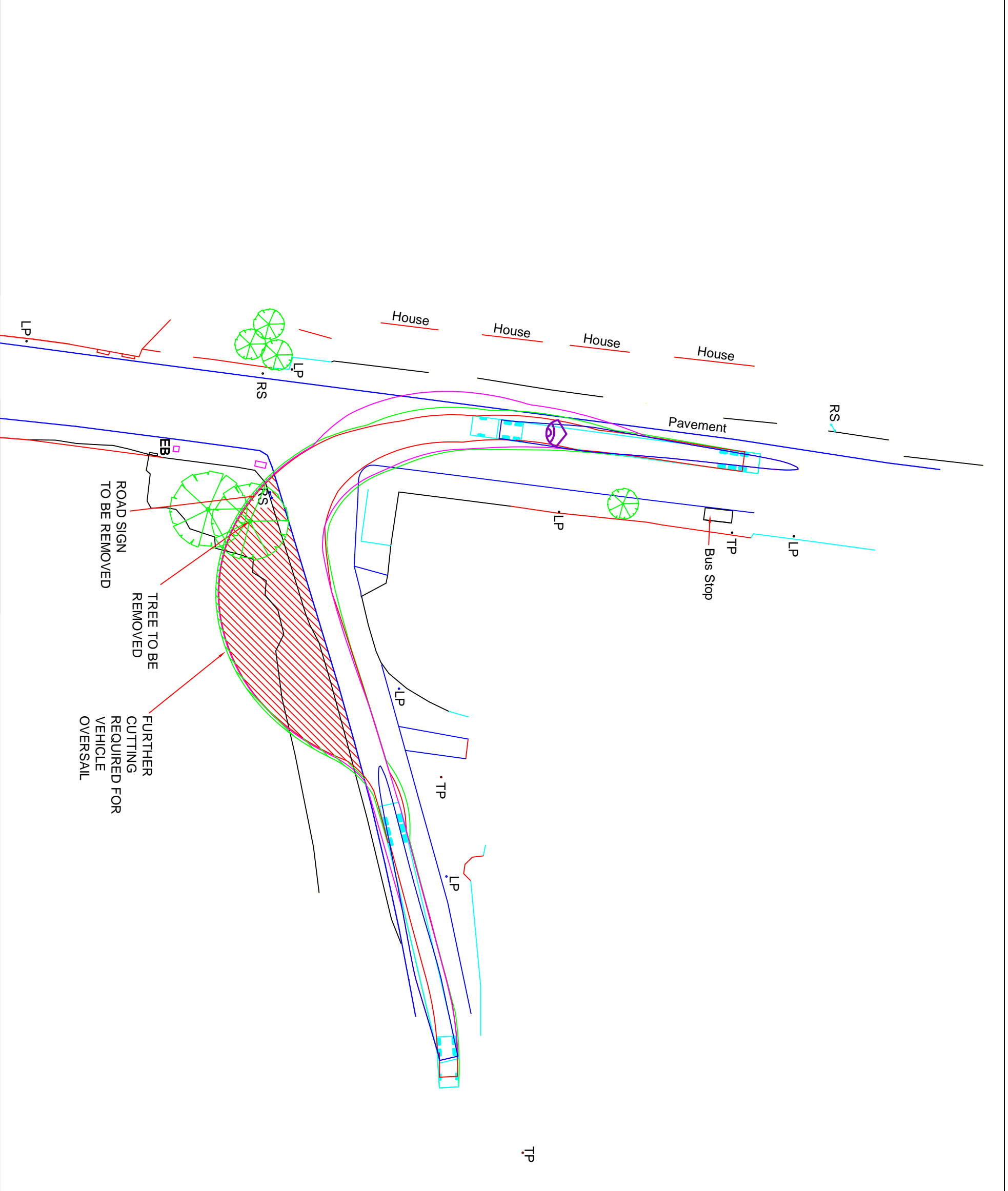
- The rock face will require cutting back to allow the tractor unit to achieve the correct alignment to avoid 3rd party land at the junction.
- Ground to be prepared to accept suitable axle loadings.
- Tree to be removed.

39m Blade on a 34m Trailer

Swept path indicates trailer utilising MANUAL steering

Grid Ref: SD 89146 20289

- Area within green outline will be oversailed by trailer bed and projections
 - Area within magenta outline will be oversailed by load and projections
 - Area within red outline will be swept by tractor and trailer axles
 - Hatched area within red outline to be levelled and prepared to accept axle loadings
-  Direction of view



Points of principle:

Coronation Power (CP) and Rochdale Lord of the Manor (LOM)

- 1) Access fee of c. £100,000 payable to Rossendale Borough Council (RBC). This is in addition to the previously agreed s. 106 contributions.
- 2) Access to be restricted to the purpose of:
 - a. A maximum 12 Turbines and infrastructure commissioning/construction
 - b. A maximum 12 Turbines and infrastructure decommissioning
 - c. Maintenance of a maximum of 12 Turbines and infrastructure
- 3) LOM to acknowledge RBC's title over the Landgate land and properties.
- 4) CP will use reasonable endeavours to obtain the necessary approvals to ensure the turbine delivery come via the south. If Rochdale Highways Authority will not agree to delivery of turbine components via the south then delivery will come via the north.
- 5) If delivery comes from the north, any cut to the rock face will be minimised and will be no more than as set out in drawing number 182195-200D1.2 (attached with this document).
- 6) CP to agree to changes to the s.106 agreements for a wider community use (currently restricted to local renewable energy schemes or energy efficient projects) if necessary.

Points to be noted as controlled by planning conditions in the report

- 7) Any changes necessary to the verge and/or grassed areas at the entrance of Landgate (as a result of 2a and 2b above) to be agreed in advance with RBC and to be re-instated after completion of 2 a & b at CP's expense.
- 8) The nature and extent of the rock face cut and any works done to restore the Landgate junction to be agreed with the Local Planning Authority (LPA).
- 9) Confirmation that the quarries will be decommissioned as part of the wind farm development project and restored to create new moor land.
- 10) CP have obtained all local authority planning consents (where applicable) prior to access which is in place.
- 11) Condition 26 of the Rossendale permission states that a lockable gate to prevent access to the more top by vehicles has to be put in place. This is to be agreed with the LPA.