

FALKIRK COUNCIL

Subject: BIRKHILL CLAY MINE
Meeting: FALKIRK COUNCIL
Date: 2 MARCH 2011
Author: DIRECTOR OF COMMUNITY SERVICES

1. INTRODUCTION

- 1.1 The purpose of this paper is to advise Members that a decision has been taken not to open Birkhill Clay Mine on 1 April 2011 due to the significant risks to staff and unauthorised visitors due to the dangerous state of the buildings on the site. The report outlines immediate works required to minimise this risk together with options for further work required in respect of access and underground safety for authorised visitors and staff.

2. BACKGROUND

- 2.1 Birkhill Clay Mine is situated on the route for the steam and diesel trains which run on the Bo'ness to Kinneil Railway which is run by the Scottish Railway Preservation Society (SRPS). The site consists of the following elements:
- Station building and platform (owned by SRPS; staffed by Falkirk Council);
 - Miscellaneous mine buildings including processing plant, workshops, mine manager's bothy and public toilets (the main buildings are in a dangerous condition, and are not accessible to the public);
 - Spoil heaps;
 - The Mine, whose entrance is situated at the foot of the Avon Gorge and is accessed via 137 steps which run alongside the original tramway; the underground circular tour consists of approximately 1 km of roadway. The roof of the mine is sandstone and relatively stable; the walls are fireclay and as such, less stable;
 - Rural footpaths through meadow and woodland lying alongside the Avon Gorge which has SSSI status; this includes a Public Right of Way CF19 (asserted) which is also a route in the recently adopted Falkirk Council Core Paths Plan-path ref. 008/1480 which crosses a bridge linking the station and the steps into the gorge.
- 2.2 Birkhill Clay Mine closed as a business in the early 1980s. The Mine was seen as a destination for the Scottish Railway Preservation Society, and its management was taken on as the responsibility of Bo'ness Development Trust (BDT) in 1989. When BDT was wound up in early 2003, the management of Birkhill Clay Mine was taken over by Falkirk Council.
- 2.3 The Mine is unique in Scotland in preserving and making original mine workings accessible to the public.

- 2.4 Although no longer a working mine, all aspects of Birkhill Clay Mine must adhere to The Management and Administration of Safety and Health at Mines Regulations 1993 (MASHAM). The cornerstone of MASHAM is *the need to ensure that all mines have an effective administrative and management structure staffed by individuals who are aware of their duties for the safe operation of a mine and who are competent to carry out those duties.*
- 2.5 In legal terms, Birkhill Clay Mine is a mine first and a heritage site second.
- 2.6 The Mine is open between Easter and 31 October annually.
- 2.7 It is not listed or scheduled with Historic Scotland or the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) and so is not required by the government to be protected. Over the past two years, RCAHMS have been undertaking survey work at the site.

3. SAFETY ISSUES

The most critical immediate issues facing the site are the deteriorating conditions above ground and the potential risks to staff and unauthorised visitors to the site.

3.1 Mine Buildings

- 3.1.1 The derelict buildings and structures are in a poor and dangerous state of repair and represent a serious risk for unauthorised visitors. There have been a number of incidents of unauthorised access to and scrap metal theft from the buildings. The buildings have been assessed by the Council's insurers Chartis, risk management consultants Gallagher Bassett and Falkirk Council Building Standards.
- 3.1.2 Chartis and Gallagher Bassett strongly recommend that plans are put in place to demolish the buildings and associated structures. Gallagher Bassett's review of the site concluded that the considerations of the Insurance Policy require that "the insured shall take all reasonable care to prevent injury [to staff, and authorised and unauthorised visitors], loss or damage and to maintain the premises, plant and all other business assets in good repair, and to comply with all Statutory obligations and regulations.....In our opinion the Council is not currently in a position to demonstrate that they are taking reasonable care". The Council must demonstrate that 'reasonable care' is being taken with the commissioning of detailed condition surveys and a plan of action implemented to make the site safe.
- 3.1.3 Building Standards inspected the site and have recommended remedial action to secure the property from entry which was undertaken in August 2010.
- 3.1.4 Given the recommendations above, we have decided that demolition is the most appropriate course of action in respect of the mine buildings.

4. OTHER ISSUES FOR CONSIDERATION

4.1 Access

- 4.1.1 The mine entrance is reached via a bridge across the former tramway linking the mine buildings and the mine itself; this bridge forms part of a public Right of Way through the site. An initial inspection has indicated that the abutments are in a poor condition and, as such, a detailed survey has been commissioned.

4.1.2 Beyond the bridge, the mine entrance is accessed via 137 steps; the handrail is in a poor state of repair following the winter weather. Development Services has assessed the stairs and concluded that the height and configuration of the handrail do not comply with current Building Regulations and constitute a potential fall hazard particularly for younger people visiting the site.

4.1.3 The bridge linking the mine and the station is in poor condition and requires to be assessed by a structural engineer and any remedial works costed.

4.2 **Underground**

4.2.2 An area of unstable fireclay has been identified, caused by the presence of a fault, water ingress and the increasing age of the mine. The Mine Manager has assessed that rock falls are likely in this location. Daily monitoring continues when the Mine is open and re-routing (and shortening) the underground tour ensures that visitor and staff safety is not compromised. However, this significantly reduces impact of the visitor experience. Weekly checks are in place when the mine is closed.

4.2.3 The area of instability requires an independent assessment from a mines engineer or engineering geologist to assess the scale of the problem and ascertain the methodology and cost of securing the unstable area.

4.3 **Staffing**

4.3.1 As mentioned in Section 2.4, MASHAM requires that the Mine has an effective administrative and management structure staffed by individuals who are aware of their duties for its safe operation and who are competent to carry out those duties. Birkhill Clay Mine is managed by a part-time Mine Manager. MASHAM requires that the Council is recognised as *Owner*, with an Owner's Representative identified; this is currently the Cultural Services Manager. Additional temporary seasonal staff work on the site from April-October: one part-time Depute Mine Manager and up to four part-time Mine Guides.

4.3.2 The mining industry effectively no longer exists in the UK, and the skills required to run a facility like Birkhill, and also to provide back-up inspection, are in decline. Accredited training programmes are no longer available in Scotland. When the service recruited for a replacement casual Depute Mine Manager in 2007, there were no applicants with specific mine experience.

4.3.3 Within the Council, only the Mine Manager has the specialist knowledge and competence required to run the Mine; the lack of this specialist knowledge elsewhere in the organisation has the potential to impact on both the current and future operation of the Mine, particularly if the current Mine Manager retires.

4.3.4 Risk assessment of the Mine is undertaken by the Mine Manager within MASHAM guidelines and, as such, is seen from the perspective of the mining industry rather than a visitor attraction. It is clear, however, that the limited expertise within the Council and the decline in expertise available to operate the Mine which will occur in the near future may render the level of risk unacceptable.

5. CURRENT SITUATION

- 5.1 **Mine Buildings:** the decision to demolish is based on a number of specialist reports commissioned in respect of the mine buildings which recommend specific actions. Temporary fencing and warning signage have been erected around the buildings and a vehicle barrier relocated pending a decision on a more permanent solution. As such, the Mine will remain closed to allow time for the demolition of the buildings to be undertaken safely.
- 5.2 **Access, Underground and Staffing:** further reports on other aspects of access and underground safety remain to be commissioned, together with a review of staffing arrangements.

6. IMPLICATIONS

- 6.1 Policy
None

- 6.2 Legal

- 6.2.1 As noted above, the principal safety concern is the poor condition of the buildings on the site. The survey conducted by the Council's claim handlers and insurers describes the buildings as being:-
"in a poor and dangerous state of repair and easily accessible to the general public".
The erection of temporary fencing assists in mitigating the risks arising from the state of the building but does not remove them. In addition, it should be noted that the building is inspected by Council employees which gives rise to a further risk.
- 6.2.2 The Council has a duty of care to persons entering onto its premises arising from the Occupier's Liability (Scotland) Act 1960. The duty is to do what is reasonable in the circumstances in respect of dangers which are due to the state of the premises such as to see that a person entering the premises will not suffer danger. In light of the findings of the Insurer's survey, there is a clear risk that the Council would be liable in damages if someone was injured in the premises. The risk heightened in relation to any child entering the premises and suffering injury. As is noted at section 3 of the Report, the survey further indicates that the Council may be in breach of its obligations under the insurance contract if the recommendations of the survey are not implemented. This is significant as it may give rise to a situation where the insurers would decline to indemnify the Council in respect of any damages arising from an injury on the premises.
- 6.2.3 In addition to liability arising from the Council's ownership of the site, the insurer's survey properly identifies that the Council has duties under the Health and Safety at Work etc Act 1974. These duties are owed not only to our employees but also to non employees. Failure to take action in the face of the information revealed in the insurer's survey may expose the Council to prosecution under the 1974 Act in the event of an injury taking place on the premises. This could expose the Council to a substantial fine in the event of a conviction.
- 6.2.4 The advice from the Council's legal advisers is that in the face of the clear recommendations from the insurer's survey, to do other than properly implement the recommendations in the survey would expose the Council to an unacceptable degree of legal risk.

6.3 Financial

Resources have been identified within Community Services' revenue budget to fund the demolition costs of the building which are estimated to be around £150,000. There will be a loss of ticket income of up to £9,000 if the Mine does not open for the forthcoming season; this will be offset by a reduction in staff costs of £24,000. There are capital and revenue implications in respect of the works required on site some of which remain to be costed.

6.4 Personnel

The permanent part-time staff member will continue to undertake inspection and other duties relating to the site. Temporary seasonal staff (one part-time Depute Mine Manager and up to four part-time Mine Guides) will not be appointed at this time.

7. CONCLUSION

7.1 It is recommended that the Council:

- 7.1.1 Notes the decision not to open Birkhill Clay Mine on 1 April 2011 due to the significant risks to staff, authorised and unauthorised visitors;**
- 7.1.2 Agrees for the demolition of the derelict mine buildings to be funded from Community Services' revenue budget;**
- 7.1.3 Agrees to take a further report when complete information is available with recommendations regarding the site's future at a later date.**

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Director of Community Services
Date: 21 February 2011

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LIST OF BACKGROUND PAPERS

Nil