

REPORT TO GARIOCH AREA COMMITTEE – 8 MAY 2018

MEMBER PROMOTED ISSUE - ACCESS TO TUACH HILL, KINTORE

1 Recommendations

The Committee is recommended to consider the Member Promoted Issue attached as Appendix 1,

2 Background / Discussion

- 2.1 The Member Promoted Issue raised by Councillor Ford, as detailed in Appendix 1, seeks to ensure the public have access to Tuach Hill, Kintore.
- 2.2 Following notification in May 2017 of the presence of asbestos in an area of Tuach Hill frequented by walkers, a visit was made by Environmental Health staff. They confirmed the presence of fragments of asbestos cement and submitted a sample for analysis; subsequently confirmed as chrysotile. In general terms the level of risk from asbestos cement is low unless the sheets are subjected to breaking, crumbling, crushing etc, such as occurs following demolition. The level of risk increases where the public have access to affected areas.
- 2.3 The landowner was written to requiring that the affected area be fenced off, to carry out a survey and undertake remedial works. The fragments are believed to be the remains of roofing sheets from an old quarry building demolished approximately a year before receipt of the complaint.
- 2.4 The landowner did not take any steps to fence off the area until after a further letter was sent in September 2017. The owner erected gates and fencing, together with warning notices, around the bottom of the hill, thereby preventing public access to a far greater area than is necessary on public health grounds.
- 2.5 By way of background information, the land and surrounding area has Planning Permission (APP/2013/3830) for the construction of Residential Development comprising 600 Dwellinghouses, Neighbourhood Centre, Landscaping, Open Space and Associated Infrastructure. Planning conditions require an investigation and remediation prior to occupation of the development, subject to the investigation and remediation being to the satisfaction of Planning. Although discussions have taken place with the developer's consultant regarding the measures needed to be taken to purify these conditions please note that in terms of the planning approval these measures only require to be carried out before occupation of the particular phase of the development.
- 2.6 It became evident that the barriers erected by the landowner were preventing access to a core path and wider access to the hill. To deliberately prevent and deter the public from exercising their rights of responsible access is in contravention of Section 14 of the Land Reform (Scotland) Act 2003. Powers are available to the Council under the Act, including the power to serve a

written notice on a landowner requiring remedial action to be taken as is specified in the notice within a reasonable time. Failure to comply, entitles the Council to undertake the remedial action themselves and recharge the owner. An owner on whom notice has been served may apply to the sheriff to appeal against it.

- 2.7 Although the Planning condition requires the survey and remediation scheme to be completed prior to occupation of the development, Aberdeenshire Council is seeking the scheme to be undertaken now in order to ensure the public continue to have access to the hill.
- 2.8 There has been considerable correspondence with the landowner and the owner's representatives since September 2017 to remove the fencing and gates, and to either a) provide fencing around the affected area at the top of the hill, and to then carry out the asbestos survey and remediation works, or b) carry out the survey and remedial works and then remove the current fencing and gates.
- 2.9 A survey and remedial scheme was agreed with the landowner's consultants in November 2017 but was not progressed despite an indication from the owner's representatives that the scheme would be carried out by the end of November. Further meetings and discussion have taken place in recent months culminating with the re-submission and approval of the survey and remedial scheme on 13th April 2018; however, public access to the hill remains blocked. The current position is that consultants working on behalf of the landowner are awaiting the go ahead from the landowner to commence the approved survey and remedial works. The survey will entail contractors physically surveying the area, a number of shallow soil samples and a number of deeper trial pits.
- 2.10 The extent of asbestos has not yet been determined and until that is done the public require to be excluded from the affected area. However, there is no need for the whole area to be fenced off; only the affected area need be fenced off, approximately 1350 square metres. Appendix 2 illustrates the affected area, the core path and other access points to the hill.
- 2.11 Following completion of the survey and remedial works a validation report will be submitted by the consultants detailing the survey, the remedial works undertaken, results of soil analysis, and confirming that appropriate mitigation measures have been completed thereby rendering any restrictions to the site unnecessary; this would also purify planning condition 6 of APP/2013/3830.
- 2.12 Whilst discussions and correspondence will continue with the landowner and representatives, officers are exploring options available to the Council under environmental health and access legislation should the survey and remedial scheme not be undertaken voluntarily. Members may wish to consider discussing these options in private session.
- 2.13 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report. Their comments are incorporated within the report and they are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The report is submitted for committee consideration in accordance with the Scheme of Governance Part 2A – List of Committee Powers, F.1.1.d and in terms of Standing Orders, Appendix A – Member Promoted Issues, section 3. The Committee has power to undertake a formal scrutiny process in terms of Part 2A – List of Committee Powers, F.7.1.1.

4 Implications and Risk

- 4.1 An equality impact assessment is not required because the content of this report does not have a differential impact on any of the protected characteristics.
- 4.2 There are no staffing or financial implications arising directly from this report.
- 4.3 The following Risks have been identified as relevant to this matter on a Corporate Level:- ACORP006: [Reputational Management](#)

Stephen Archer

Director of Infrastructure Services

Report prepared by David Cooper, Environmental Health Manager

MEMBER PROMOTED ISSUE FORM

Scheme of Governance]

MEMBER PROMOTED ISSUE FORM

SUBMITTED BY MEMBER Cllr Martin Ford , WARD 12 .

FULL DESCRIPTION OF THE ISSUE TO BE PROMOTED:

Public Access to Tuach Hill, Kintore

IS THIS ISSUE CONNECTED OR RELATED TO ANY OTHER PROJECT CURRENTLY BEING PROGRESSED, PLEASE OUTLINE:

Tuach Hill is within a live planning application site.

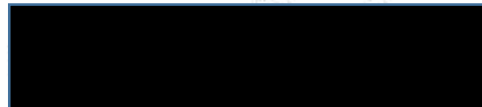
HAS THIS ISSUE ARISEN AS THE RESULT OF ANY REPRESENTATION BY CONSTITUENTS OR OTHER PARTIES, PLEASE IDENTIFY ANY INTERESTED PARTIES:

Tuach Hill has been closed off by the Landowner since last Autumn. A small area is contaminated with asbestos but a much larger area has been closed off. There have been multiple complaints from residents about the prevention of access.

HAS THIS ISSUE BEEN CONSIDERED IN THE PAST AND IF SO, WHEN AND BY WHOM (OFFICER OR COMMITTEE):

The issue has been considered by Environmental Health (Dave Cooper) in respect of the asbestos and Planning (Marsaili Aspinall) in respect of access.

SIGNED:



DATED:

12 April 2018

Figure 1 Tuach Hill Obstructions and Core Path

M Aspinall 17 January 2018



Red pins indicated obstructions (gates) to access to hill Purple line indicates Core Path 410.02 Yellow dots indicate where core path requires temporary closure