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**Pow of Inchaffray Drainage Commission (Scotland) Bill
Committee
Comataidh Bile Coimisean Drèanaidh Pholl Aifreann
(Alba)**

**Pow of Inchaffray Drainage
Commission (Scotland) Bill -
Consideration Stage Report**



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Pow of Inchaffray Drainage Commission (Scotland) Bill Committee

Remit: To consider matters relating to the Pow of Inchaffray Drainage Commission (Scotland) Bill. (As agreed by resolution of Parliament on 19 April 2017)



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Introduction

1. The Pow of Inchaffray Drainage Commission (Scotland) Bill ¹ (the Bill) was introduced in the Scottish Parliament on 17 March 2017. It is a Private Bill being promoted by the Pow of Inchaffray Commissioners (the promoters) under procedures set out in Rule 9A of the Parliament's Standing Orders ² and the Guidance on Private Bills ³.
2. The Bill is accompanied by Explanatory Notes ⁴, a Promoter's Memorandum ⁵ and a Promoter's Statement ⁶. Statements on legislative competence by the Presiding Officer and the promoters were also published ⁷. In addition, the promoters made several other documents available to aid understanding and scrutiny of the Bill. These included a copy of the Pow of Inchaffray Drainage Act 1846 ⁸ (which this Bill repeals in full) and copies of seven sectional land plans and one overall location plan, which show the Pow of Inchaffray, its various sections, and the land which benefits from its drainage and maintenance. ⁹
3. Every Private Bill is subject to a 60-day objection period beginning immediately after introduction. In this case, the objection period ran from 18 March 2017 to 16 May 2017 and three objections were lodged (by Gareth Bruce, Mr and Mrs Bijum (a joint objection), and Tom Davies). ¹⁰

Parliamentary procedure

4. The procedure for the consideration of a Private Bill is set out under Standing Orders Rule 9A¹¹. Rule 9A.7 states that the consideration will normally consist of the following three stages—
 - Preliminary Stage;
 - Consideration Stage; and
 - Final Stage.

Preliminary Stage

5. The Committee published its Preliminary Stage Report on the Bill on 3 November 2017.¹² Please see that report for full details of the background to, and content of, the Bill and the Committee's Preliminary Stage consideration (including the preliminary consideration of the three admissible objections).
6. The Committee did not reject any of the objections, and recommended that the Parliament agree to the general principles of the Bill and that the Bill should proceed as a Private Bill.
7. The Preliminary Stage debate in the Parliament took place on 16 November 2017. The Parliament agreed to the general principles of the Bill, and that the Bill should proceed as a Private Bill.¹³

Consideration Stage

8. Following the Parliament's agreement at Preliminary Stage, the Bill progressed to the next stage of the Private Bill process, Consideration Stage. The purpose of Consideration Stage is to consider the detail of the Bill. In this instance, the stage consists of two distinct phases. The first phase, which is summarised in this report, considered and disposed of the objections and considered further evidence submitted. This involved the Committee meeting in a quasi-judicial capacity to hear evidence on the objections; taking further evidence from the promoters; and subsequently disposing of the objections by deciding whether to reject or uphold all or part of each objection. The second phase, which will follow the publication of this report, will see the Committee meeting in a legislative capacity to consider and dispose of any amendments lodged to the Bill and to consider each section, schedule, and the Long Title of the Bill.
9. The Committee agreed its approach to Consideration Stage on 22 November 2017. Given that the three objections are all from residents within the Balgowan section of the Pow and that they all relate to the appropriateness and determination of the annual assessment charge, the Committee agreed to group all three objectors together. Also, given that the three objections, although similar, had some different contexts and concerns, the Committee agreed not to appoint a lead objector, but to invite all three objectors within the group to give oral evidence.
10. Of the three objectors, Tom Davies was the only objector who gave oral evidence. A written submission was made by a solicitor from Anderson Strathern (agents to the Commissioners), Alastair McKie, on behalf of the promoters.¹⁴ After the meeting, the Committee sought clarification on various points from Scottish Water and the promoters of the Bill, both of whom responded in January 2018.¹⁵
11. Following the meeting on 13 December 2017, additional written submissions were received from: Peter Symon (several submissions); Stephen Chouman and Tom Davies (signed by 61 residents of the Balgowan estate, representing 31 households); and two other Balgowan residents: Wing Commander G J Roberts, and Dr W T and Mrs F J Dove.
12. The Committee took evidence from the promoters on the new submissions on 24 January 2018. At this meeting it was confirmed that the land plans submitted when the Bill was introduced were not accurate (an issue raised by Peter Symon in submissions referred to above). The land plans, by defining what land is benefited, are fundamental to the application of the Bill and its implications for heritors. Following a further written submission from the promoters on 21 February 2018, the Committee met on 7 March 2018 to consider the promoter's intended way forward and agreed its response. On 2 May 2018, the Promoters sent the Committee an Explanatory Report, including new land plans and other information¹⁵ which the Committee considered on 9 May 2018. See below for details.
13. Following the disposal of the three objections, on 23 May 2018, the three members of the Committee were able to lodge amendments to the Bill, with a deadline set of 18 June 2018.

14. Amendments lodged will first be assessed to see if, in the Committee's view, any adversely affect private interests and, if so, have sufficient merit that there is a possibility of their being agreed to after further scrutiny. If so, further proceedings on the amendments will be paused to allow for an objection period (to the specific amendments in question) and possible taking of further evidence. Once any objections to amendments have been considered, formal proceedings on the amendments will then take place as part of the Committee's consideration of each section, schedule, and the Long Title of the Bill.
15. Once Consideration Stage has been completed the Bill will proceed to Final Stage, which consists of the Parliament considering any further amendments lodged and then deciding whether to pass the Bill.

Meeting on 13 December 2017

16. At the meeting on 13 December ¹⁶, Tom Davies, an objector to parts of the Bill, and the promoters had the opportunity to give evidence and express their views, and to cross-examine each other. The promoters circulated and referred to a pack of papers ¹⁷ throughout the meeting. The Committee had not been notified in advance of the intention to use these papers. For full details of the evidence given and arguments made please see the Official Report of the meeting, along with the additional evidence from the promoters and the pack of papers referred to above. However, a brief summary of the views of each party is provided below.
17. Tom Davies' view was that the Bill was unfair, disproportionate and lacking an evidence base. He stated that he was not aware of the Pow and the obligations to make payments to the Commission when he bought his house. He also stated that he did not believe his property benefited directly from the Pow (a change in the position stated in his original objection) since he did not release anything directly into the Pow, and had no direct relationship with the Pow. He therefore thought his property should not be charged. He also argued that there should be a cap or veto on the annual budget for situations where the budget was substantially increased, noting that underlying this was his belief that the Bill confers power on a small group of landowners and does not achieve an appropriate balance of power between agricultural and residential heritors. The final point of objection raised at the meeting was that unpaid bills levied under the 1846 Act should not be pursued. However, in his written objection Mr Davies objects to the part of the Bill which relates to the collection of promotion costs of the Bill, rather than unpaid assessments. The promoters have already confirmed that unpaid bills levied under the 1846 Act will not be pursued.
18. The promoters responded by first asking Mr Davies to read an extract from his title deeds which stated the responsibility for the owner of his property to pay a share of the Commission's annual budget. The promoters also confirmed that the title deeds for all Manor Kingdom properties contain a requirement to pay a share of the upkeep of the Pow to the Commission for drainage purposes. The promoters then explained why they believe that the benefited area shown on the land plans is accurate, and therefore why all those owning land and/or property on that land should receive an annual assessment. The promoters stated that surface and foul water from properties in the Balgowan section flows into the Pow, and that, regardless of whether this happens directly or indirectly, the properties rely on the Pow to take the foul and surface water away, which demonstrates that the

properties are on benefited land. The promoters also stated that there is a privately owned waste water treatment works serving the Balgowan estate, and that, as a result, properties in the area are not charged for waste water drainage by the local authority.

19. For clarity, the Committee subsequently asked Scottish Water to comment on the waste water treatment works. Scottish Water wrote to the Committee on 8 January 2018¹⁸ and confirmed that the waste water treatment works at the Manor Kingdom Balgowan Estate is a private system which has not been vested in Scottish Water, and that it has no plans at the present time to vest the treatment works. It also confirmed that if the private owners wished to have the treatment works vested with Scottish Water then various assessments and processes would need to be undertaken which are likely to be of significant cost. These costs would need to be met by the private owners.
20. There was also a discussion about the extent to which the management of the Pow contributes towards flood alleviation, and whether this had been over-emphasised in some of the communications between the Commission and other heritors. Mr Davies' view was that there was no evidence that his property was at risk from flooding, or that appropriate management of the Pow helped to prevent possible flooding. Mr Davies also cited various instances where the Commission had highlighted flood alleviation as a benefit of the management of the Pow in communications with heritors. In response, the promoters stated that the Bill was clear that drainage was the primary function/benefit of the Pow and the work of the Commission, but that contributing to flood alleviation is an additional benefit of effective drainage. However, it was acknowledged by Alastair McKie at the meeting that the wording used in some of the correspondence with heritors regarding flooding could have been better chosen.
21. In relation to the issue of the setting of the annual budget, the promoters confirmed that they did not feel a cap was appropriate as it could prevent required urgent works in the future. The promoters were also concerned that any individual general right to appeal the annual budget would likely involve a costly process, and delay the timetable for accurately assessing any work required on the Pow, and therefore ultimately increasing costs for all heritors, rather than reducing them. However, as at Preliminary Stage, the promoters also confirmed their proposal that the Bill be amended to include a right for ten or more heritors to appeal the amount of, and methodology behind, the setting of the annual budget to an independent expert. Mr Davies stated that he believed that such a right of appeal should go further, and the promoters then stated that they had been reflecting on this issue, and made a further proposal that the Bill be amended to introduce a second right for individual heritors to appeal the amount of, and methodology behind, the draft annual budget to an independent expert in circumstances where the draft annual budget were to exceed three times an index-linked £20,000 baseline annual budget. The promoters subsequently wrote to the Committee to confirm that the index it proposes to use is the retail price index (RPI).
22. Following a significant volume of further written evidence, including evidence which showed the land plans to be inaccurate, the Committee agreed, on 24 January 2018, to defer further consideration of the objections until the land plan issue was remedied. The objections were subsequently considered and disposed of on 23 May 2018.

The Committee is disappointed that the promoters produced and circulated a pack of papers at the meeting on 13 December 2017 without giving prior notice to the Committee or to the objectors. These papers had been annotated and numbered, and were referred to throughout the proceedings by the promoters, and Alastair McKie in particular, including when questioning the objector. The Committee believes that the promoters should have given prior notice of its intention to use and refer to these papers, and should have circulated the papers to all concerned in advance of the meeting. This would have allowed everyone attending the meeting to read and digest the papers and be on an equal footing during the proceedings.

The lack of prior notice regarding the use of the papers re-emphasises the Committee's view that it is important for the Commission to reflect, and improve, on its communication with all heritors. The Commission should be sure to conduct itself fairly and reasonably, to respect all heritors, and to uphold the principles of transparency, accessibility and inclusiveness in all of its dealings. For an improvement to be made in the relationships between some agricultural heritors and residential heritors, all involved should ensure that communications, and the language used and approach taken in those communications, are fair, reasonable, and respectful.

The Committee's views on each of the objections is given below.

Objections

Objection 1 - Gareth Bruce

23. The first objection was made by Gareth Bruce. Mr Bruce listed various grounds for his objection and stated that his objection was to the whole Bill.
24. The Committee considered the following grounds for objection given by Mr Bruce, that—
 - his property does not drain into the Pow as it is too far away;
 - the values given in the Bill for land with and without the benefit of the Pow have been estimated as his property has never flooded;
 - the Bill should include compensation for homeowners for any drop in property value because of the Pow;
 - properties close to the Pow and at greater risk of flooding should pay more than properties further away;
 - maintenance should be paid for out of council tax payments;
 - the Bill should include a cap on charges;

- the Bill requires a mechanism to prevent incorrect classification of beneficiaries;
 - previous owners of his property have not been liable to pay the charge;
 - the Bill should compensate homeowners if flooding and damage does occur; and that
 - the Bill will lead to a return of a feudal system of land ownership which benefits wealthy landowners at the detriment of others.
25. Mr Bruce's property is within the benefited area, but is one of the properties that, for historical reasons, is not chargeable under the 1846 Act and Mr Bruce is therefore one of the new heritors who would be charged following the enactment of the Bill.
26. Mr Bruce did not attend the meeting on 13 December 2017. The promoters responded in writing to all the points raised by Mr Bruce in his objection before the meeting and referred to that submission during the meeting.

Having carefully considered all the evidence given at Preliminary and Consideration Stage, the Committee does not consider that any of the reasons for objecting to the Bill given by Mr Bruce should be upheld. The Committee is of the view that—

- Mr Bruce's property does benefit from the Pow as surface and foul water from the property drain into the Pow, directly and indirectly. The property therefore benefits from the cleaning and repair work carried out by the Commission;
- the process and calculations set out in the Bill for valuing the land and the benefits of the Pow seem reasonable, given that new surveys and estimates are likely to be costly and therefore increase assessments for all heritors;
- it would not be proportionate or reasonable for the Commission to compensate homeowners for any loss of land and/or property value as the Commission is not legally obliged to prevent such matters, and is fully funded by heritors and there is no other income that could provide such compensation;
- payments should be based on properties being on benefited land rather than property distance from the Pow;
- adding payments to Council Tax charges is not a viable option and, currently, the heritors do not pay waste water charges to the local authority;
- it would not be desirable to cap charges as this could prevent urgently required work from being undertaken;
- the Bill contains suitable safeguards in terms of the definition of land categories;
- the fact that previous owners of Mr Bruce's property were not required to pay the charge is unfortunate, but is not an acceptable reason for the Bill not correcting that position in fairness to all heritors;
- it would not be proportionate or reasonable for the Commission to compensate homeowners for instances of flooding as the Commission is not legally obliged to

prevent flooding, and is fully funded by heritors and there is no other income that could provide such compensation; and

- there is no reason to think that the Bill would lead to a return to feudal systems of land ownership, given this Bill is specific to the Pow of Inchaffray Drainage Commission only.

The Committee therefore rejects Mr Bruce's objection in full.

Objection 2 - Mr and Mrs Bijum

27. The second objection was lodged jointly by Russell and Susan Bijum and was also an objection to the whole Bill. The main grounds of their objection are that—

- the deeds to their property do not contain any liability to pay towards the upkeep of the Pow;
- their property is far from the Pow and at no risk from flooding;
- they are only now being expected to pay to make up for a shortfall in funds from liable properties that are not paying the charges; and
- the Bill's charges are based on the size of each relevant plot of land and as their property is small, but with a large garden, they will likely pay as much as, or more than, much larger properties.

28. As with the objection from Mr Bruce, it is clear to the Committee that Mr and Mrs Bijum's property is within the benefited area shown on the land plans and is one of the new properties that would be charged following the enactment of the Bill.

29. Neither Mr or Mrs Bijum attended the meeting on 13 December 2017. The promoters responded in writing to all the points raised by Mr and Mrs Bijum in their objection before the meeting.

Having carefully considered all the evidence given at Preliminary and Consideration Stage, the Committee does not consider that any of the reasons for objecting to the Bill given by Mr and Mrs Bijum are valid. The Committee is of the view that—

- whilst the deeds to the property may not contain reference to the Pow, Mr and Mrs Bijum's property does benefit from the Pow as surface and foul water from their property drains into the Pow, directly and indirectly. The property therefore benefits from the cleaning and repair work carried out by the Commission;
- the Pow primarily performs a drainage, rather than a flood alleviation, function (and effective drainage can help to reduce the risk of flooding);
- if a property is on benefited land then its distance from the Pow should not affect assessments;

- it is unfortunate that some of those liable to pay the assessment under the 1846 Act have not paid, and the Committee notes that the Commission has decided that it would not be cost proportionate for it to pursue payment of those charges through the courts. However, the Committee does not believe this is the reason why new heritors will be assessed under the Bill (the reason being that the properties are on benefited land); and that
- the issue of smaller properties on large plots was considered in detail by the Committee. Whilst the Committee understands the concern about the potential unfairness of not taking property size into account, no appropriate and proportionate solution to this issue was identified. The Promoters did propose an alternative method for calculating assessments that took account of this issue (by calculating based on five times the footprint of a property, rather than on plot size) however this led to the majority of assessments going up rather than down, and many of those that did go down did not do so by a significant amount. The Committee therefore did not believe such a move would be justified.

The Committee therefore rejects Mr and Mrs Bijum's objection in full.

Objection 3 - Tom Davies

30. The third and final objection was lodged by Tom Davies and is an objection to two specific parts of the Bill as follows—
- Part 1, section 3 (Extent of the Pow and benefited land); and
 - Part 2, section 10 (Calculation of annual assessments).

Within his overall objection to section 10 of the Bill, Mr Davies notes a specific objection to sections 10(10) and 10(11) which deal with the recovery of promotion costs of the Bill under the 1846 Act.

31. Mr Davies' objection to section 3 of the Bill states that he has not seen any justification or evidence for the definition and extent of benefited land in the Bill and therefore he wishes a re-assessment of the land to clearly establish the land which benefits from the maintenance of the Pow.
32. Mr Davies' objection to section 10 of the Bill is on the basis that the Bill allows the Commissioners to determine the annual budget, and therefore the amount of individual payments, without any mechanism to allow heritors to veto increases or any cap to be placed on the annual budget.
33. Mr Davies' specific objection to sections 10(10) and 10(11) relate to the recovery of unpaid promotion costs under the 1846 Act. Mr Davies questions the recovery of costs under an Act which is being repealed by this Bill because it is unfit for purpose. He questions why, if the way the annual charge is calculated is being changed by the Bill, provision in the 1846 Act should still be enforced.

34. Mr Davies attended the Committee meeting on 13 December 2017 and gave evidence on his objection and answered questions from the promoters. He also cross-examined the promoters. The promoters also responded in writing to all the points raised by Mr Davies in his objection before the meeting.
35. The Committee notes that Mr Davies lives in a property that is on benefited land, and is currently already liable for charges, as recorded in the title deeds of his property, under the 1846 Act.

Having carefully considered all the evidence given at Preliminary and Consideration Stage, the Committee does not consider that two of the three reasons for objecting to the Bill given by Mr Davies are valid. The Committee is of the view that—

- the benefited land identified by the Commission in the Bill and the land plans relating to the Balgowan area seems to be as accurate and appropriate as possible. The Committee is not persuaded that there is justification for a re-assessment of the benefited land which would lead to higher charges for all heritors;
- Mr Davies' property benefits from the Pow as surface and foul water from his property drain into the Pow, directly and indirectly. The property therefore benefits from the cleaning and repair work carried out by the Commission; and that
- it is appropriate for the Commission to spread the costs of the promotion of the Bill amongst all heritors, given that it has no other source of funds other than payments made by heritors. The Committee is content that this be done over a three year period as outlined in the Bill.

However, the Committee is minded to uphold the part of Mr Davies objection relating to a right to appeal the setting of the annual budget. As documented in its Preliminary Stage Report (and supported by the Scottish Government in the Preliminary Stage debate), and as was further discussed at Consideration Stage, the Committee strongly believes that the Bill should contain rights of appeal for heritors to an independent third party in relation to the setting of the annual budget. The Committee therefore recommends that the promoters arrange for appropriate amendments to the Bill in this regard to be drafted (see below).

The Committee therefore upholds the part of Tom Davies' objection relating to a right to appeal the setting of the annual budget, and rejects all other parts of his objection.

Evidence on land plans and other issues

36. As stated above, following the meeting on 13 December 2017, the Committee received several further submissions on a variety of issues, including suggested amendments to the Bill. Many of these issues have been considered previously by the Committee at its various evidence-taking sessions and were commented on in its Preliminary Stage report. However, as the submissions raised several new

issues, including serious concerns regarding the accuracy of the land plans submitted by the promoters when the Bill was introduced, the Committee invited the promoters to give oral evidence to it on 24 January 2018.

Land plans

37. An individual, Peter Symon, made several submissions questioning the accuracy of the land plans originally submitted with the Bill, including sketches of his versions of the plans. The submissions and sketches submitted by Peter Symon suggested that the land plans were not accurate.
38. Ahead of the meeting on 24 January 2018, the promoters sent the Committee an Opinion of Counsel (by Robert Sutherland, Advocate) ¹⁹ that the Commission had sought on 16 January 2018, relating to the land plans issue. The Opinion states—
- ” I am asked to provide advice as to how the 1846 Act defines land in respect of which assessments are made in order that the Commissioners can provide detailed instructions to their surveyors for drawing up replacement plans to identify the benefited land for the purposes of the Bill.
- and goes on to conclude—
- ” When surveyors are drawing up replacement plans to identify the benefited land for the purposes of the Bill they should refer to the 1848 plan (rather than the 1846 plan), the Book of Reference (1847) and the Estimate of Increased Value (1851).
39. Copies of the 1848 plan ²⁰, the Book of Reference 1847 ²¹ and the Estimate of Increased Value 1851 ²² are available online and links to them were provided on the Committee's webpage ahead of the meeting. During the meeting the promoters referred to these documents (circulating hard copies) and the Opinion of Counsel. At the meeting the Promoters also circulated photographs of the regrading scheme undertaken at the Dollerie part of the Pow in 1995.
40. At the meeting, the promoters confirmed that Peter Symon was broadly correct, and that the land plans submitted to, and published by, the Parliament were not accurate. Commissioner Jonathan Guest confirmed that he was not aware of the documents Mr Symon had used to redraw the land plans (the 1848 map, 1847 Book of Reference, and 1851 Estimate of Increased Value) and had therefore used the 1846 map as the basis for the land plans. The promoters confirmed their intention to commission Savills to re-draw the land plans, based on the documents used by Peter Symon. The promoters confirmed that this process would likely result in new heritors being identified, and some existing assessments being altered (due to either more, or less, land being confirmed within the benefited area).
41. One specific issue the Committee pursued concerned land at Dollerie, owned in 1846 by Anthony Murray, identified by Peter Symon as never having been assessed despite the value of the land being shown to have increased in the 1851 Estimate of Increased Value. Mr Symon stated—

” Mr Murray was a "recalcitrant owner". His consent for the drainage project was subject to an agreement concluded with the Commissioners before PIDA [Pow of Inchaffray Drainage Act] 1846 was obtained. Although the drainage was deemed to have increased the value of his lands, forming part of the total 1,930 acres of benefited land, rendering them liable to assessment, the Commissioners and Mr Murray agreed the lands would not be assessed. The Dollerie lands continue to be exempted from assessment to this day.

42. The promoters told the Committee that, whilst the Dollerie lands were shown in the relevant documentation to have benefited from the Pow, they did not consider that the land does benefit significantly from the Pow, and noted that the land could easily have benefited to the same extent at a much smaller cost. Jonathan Guest also noted that extensive work was undertaken at 1995 on the Dollerie land, which benefited those upstream of that part of the Pow, but not the Dollerie land itself, and that the work was only able to be carried out thanks to the goodwill of the land owner. The promoters believed it was appropriate for the agreement that the Dollerie land should not be assessed, arrived at in the middle of the 19th century, to be continued under the new Bill. Following questioning by the Committee, Alastair McKie noted that the promoters would reflect further on this issue and write to the Committee to clarify its position.

43. Later in the meeting, responding to questions from the Committee about whether a new independent assessment of the land would be more appropriate, Jonathan Guest stated that he was meeting with the Association of Drainage Authorities (ADA) on 25 January 2018, and that he had had preliminary discussions with them which, he thought, indicated that a reassessment was something the ADA could do for the Commission, and that, in Mr Guest's view, costs may not be as prohibitive as previously thought. Alastair McKie also stated that the promoters were aware that Mr Symon has identified a further plan, thought to be from 1851, but had not been able to see it due to it being in poor condition at the National Records of Scotland. Mr McKie told the Committee—

” Following today's meeting, the promoters will make urgent contact with the National Records of Scotland to obtain a copy of the 1851 plan ... The promoters need to make a serious effort to make sure, once we have looked at the 1851 plan, that there is nothing out there that could contradict it.

Source: Pow of Inchaffray Drainage Commission (Scotland) Bill Committee 24 January 2018 [Draft], Alastair McKie, contrib. 58²³

44. After the meeting the Committee sought clarity from the promoters on its intended way forward. The promoters subsequently sent a written submission to the Committee, on 21 February 2018, which included a note of a meeting with the ADA; a memo from Savills relating to the 1851 plan (which is actually from 1850); and the Minutes of a Commissioners' Meeting held on 5 February 2018. The submission and all attachments can be accessed at Annexe B.

45. The submission confirmed that, following a further meeting with the ADA, the Commissioners had concluded that, as a re-assessment would be prohibitively expensive and is not deemed necessary, the best way forward would be for Savills to re-draw the land plans based on all the available information. The memorandum from Savills confirmed that the 1850 plan had been accessed and would be used in the preparation of the new plans.

46. The submission also addressed the issue of the land at Dollerie, following previous evidence and discussion. It confirms that the land at Dollerie has never been charged due to an agreement in 1846 with the then land owner and asked the Committee's guidance on whether to charge the Dollerie lands.
47. The Committee met on 7 March 2018 and considered the promoter's submission. The Committee noted the promoter's intention to commission Savills to redraw the land plans, and agreed to invite the promoters to submit an explanatory report, as set out in Committee Paper POI/S5/18/2/1, alongside the new plans. The Committee agreed that the issue of whether the Dollerie lands should continue to be exempted was a matter for the promoters to decide (and, as noted below, the Commission subsequently decided that the Dollerie lands should no longer be exempted).
48. On 2 May 2018, the Promoters sent the Committee an Explanatory Reportⁱ ²⁴, including —
- new land plans for the seven sections of the Pow ²⁵ ;
 - an overall land plan comparing the old and new benefited land of the Pow ²⁶ ; and
 - two new schedules of heritors (agricultural, residential and commercial): one using the calculation method used in the Bill of plot size ²⁷, and the other using an alternative potential method based on a calculation of five times the footprint of a property, proposed by the Promoters ²⁸ .
- Commissioner Hugh Grierson also sent the Committee a letter on 3 May 2018 with some additional explanation ²⁹ .
49. As requested by the Committee, the Explanatory Report—
- outlines the methodology and documents used by the Commission in preparing the new plans;
 - sets out the outcome and consequences of the process;
 - explains the impact on current and new heritors;
 - sets out how heritors, old and new, will be informed about, and consulted on, the implications of the new plans; and
 - includes a list of all the agricultural, residential and commercial heritors as per the new plans, and gives an indication of how the new plans would affect individual assessments.
50. The report shows that, as a result of the new land plans, the overall acreage of the benefited land has increased from 1,951 acres to 2,047 acres, an increase of 96 acres. As a result, there are now a total of 102 properties liable for assessments: 79

ⁱ Note that the Explanatory Report first received on 2 May 2018 was updated by the Commissioners on 17 May 2018 to correct a minor factual error and to provide some further clarity.

residential properties (compared to 75 under the old plans), two commercial properties (no change), and 21 agricultural properties (compared to 29 under the old plans). The total number of heritors has increased by five.

51. In terms of residential assessments, there is one previously identified residential property that is no longer included and five new residential properties liable for assessment, three of which are owned by new heritors.
52. There are two new agricultural assessments/heritors (and one additional assessment which has changed ownership, leading to a third new heritor). The new assessments both relate to the previously discussed land at Dollerie, which the Commission has decided to now include in the assessments. The Committee asked the Commission for some further explanation as to how and why this decision had been reached.
53. Commissioner Hugh Grierson replied on 14 May 2018³⁰ and stated that the Commission's original reasons for maintaining the agreement to exclude the Dollerie land in assessments had weakened, noting that—
 - the land now has three owners rather than one, making the agreement harder to maintainⁱⁱ;
 - some of the land benefits more than previously thought; and that,
 - once the 1846 Act is repealed (which the Bill provides for), the agreement recorded in the 1846 Book of Reference would no longer be binding.

He also noted that there would be an opportunity for the owners to comment during forthcoming consultation and (possible) objection processes.

54. The reason for there being fewer agricultural assessments than previously indicated to the Committee is that the Commissioners have decided to amalgamate holdings that are owned by the same owner for the purpose of calculating assessments. So, for example, a single owner/heritor who previously paid three assessments for different holdings will now pay one single assessment covering all holdings owned.
55. The report also confirms that the assessments for all existing residential heritors decrease as a result of the new plans - with the sole exception of one residential property, Inchaffray Abbey, which sees a substantial increase from £276.05 to £1,378.69 (based on plot size calculation). The report explains that—

” This is due to the calculation being based on the plot size, which for Inchaffray Abbey is very large (2.81ac). The original assessment discounted this plot size but when following the methodology detailed above there was found to be minimal justification for this action.
56. However, using the alternative potential method of calculation suggested during scrutiny of the Bill by the Commission, of five times the footprint of the building, there would be a reduction in the assessment for Inchaffray Abbey from £276 to £162. However, as previously noted by the Committee, using such a calculation

ii The Commission later confirmed to the Clerk that two of these account for the two new agricultural assessments and the third is already a heritor and therefore already receives an assessment.

method would result in a majority of assessments increasing and only a minority decreasing.

57. The report also confirms that residential assessments now total £7,614 shared between 79 heritors, rather than the previous assessment of £7,166 shared between 75 heritors (an average increase of £0.84 per property), and that agricultural assessments now total £12,082 shared between 21 heritors, rather than the previous assessment of £12,087 shared between 19 heritors (an average decrease of £61 per heritor).
58. The report sets out how the Commissioners intend to notify and consult those affected. It states that the Commission plans to—
- write to all heritors inviting them to a public meeting to update them on the progress of the Bill including in particular the revising of the land plan resulting in the inclusion of new heritors;
 - notify the owner of the property which is proposed to be removed from inclusion as a benefited property; and
 - write to each of the new heritors explaining the background to the Bill and the reason for the proposal that they now be included as heritors.
59. The Committee met on 9 May 2018 and considered the Explanatory Report, new land plans, and other information submitted by the Promoters. The only issue raised by the Committee, as noted above, related to the decision to exempt the Dollerie land and the Committee asked the Commission for further information on this (see above for details).

It is regrettable that the land plans submitted by the promoters when the Bill was introduced were not accurate, and that more care was not taken, and more effort not made, by the promoters, before the Bill was introduced to ensure that the plans were as robust and informed as possible. This is particularly regrettable given that it was only due to the diligence of a private individual, Mr Peter Symon, that the errors were brought to light, using information which was in the public domain, but which the Commission was somehow unaware of. The inaccuracy of the land plans, and the need to redraw new plans, undermined the Committee's confidence in the expertise and credibility of the Commission, not to mention the confidence the heritors should have in the Commission. However, the Committee was impressed with how thoroughly and helpfully the Commission responded to this situation. As with other parts of this process, the Committee hopes that the Commission has learnt from this experience and will ensure a high standard of research and verification is applied to such matters in the future.

The Committee notes that new plans have now been submitted and published on the Parliament's website, replacing the plans submitted when the Bill was introduced. As the new plans identify new properties for assessment, new heritors, and changes the assessments for existing heritors, it is important that those affected have an opportunity to object. The Committee suggests how this could be best handled in the section below on expected amendments to the Bill.

The Committee notes the Commission's intention to notify all heritors ahead of the likely formal Parliamentary objection process. As explained below, it is expected that an amendment to the Bill will be forthcoming which will allow the Committee to formally consider the effect of the changes to the land plans on private interests, and to pause Consideration Stage to allow for a formal notification and objection period. Under the Parliament's Standing Orders, notifying those affected about the relevant amendment(s), including how to object (if resulting from an amendment lodged on behalf of the promoter) is the responsibility of the promoter but the Committee may specify the manner in which that notification is done, and will also set a timescale for any objection period.

Other issues

60. On 24 January 2018 the Committee also took evidence from the promoters on a variety of issues raised in evidence submitted since the meeting of 13 December 2017.

Rights of appeal

61. As stated above (in paragraph 21), the promoters have proposed that the Bill be amended to provide two rights of appeal for heritors. The Scottish Government wrote to the Committee on 5 March 2018³¹ to confirm its continued support for appropriate and proportionate appeal and dispute resolution mechanisms to be included in the Bill.

The Committee sets out its views on the rights of appeal issue in the section below about expected amendments.

Cleaning and repair contract and tendering

62. At the meeting on 13 December 2017, Tom Davies, one of the objectors to the Bill, stated that the Commission should undergo a transparent tendering process for the cleaning and repair contract for the Pow. The Commissioners had confirmed that the same company has been used to undertake the work for over thirty years, and that no alternative quotes have been sought. The promoters stated that tendering for the contract would delay the process and risk losing the continuity, relationship and expertise which have been established over decades with the present contractor.
63. This issue was pursued again at the meeting on 24 January 2018. The promoters repeated their previously stated position, however, following questioning from the Committee, Jonathan Guest accepted that it would be good practice for the Commission to get a number of quotes for the cleaning and repair contract.

The Committee believes it would be good practice for the Commission to seek a number of quotes for the cleaning and repair contract, either on annual basis, or at least once every three years.

Number of Balgowan Commissioners

64. Currently the Bill allows for one Commissioner for the Balgowan section of the Pow out of a total of seven (the other three sections, upper, middle and lower, are all to have two commissioners). During Preliminary Stage scrutiny, evidence called for the number of Balgowan commissioners to be increased, and the promoters confirmed that it would support an amendment to the Bill to increase the number of Balgowan commissioners to two, out of a total of eight.
65. Recent written submissions from Balgowan estate residents called for the Bill to be amended to allow three commissioners from the Balgowan section, out of a total of nine, which, they felt, would more fairly represent the proportion of the overall budget paid by the Balgowan section. When questioned on this, the promoters told the Committee that it considered this to be unnecessary and that it may be a struggle to find three commissioners from the Balgowan section.
66. However, in its submission to the Committee of 21 February 2018, the promoters confirmed that they are agreeable to the Bill being amended to allow for three Commissioners for the Balgowan section, giving nine Commissioners in total, requiring a quorum of five for meetings.

The Committee welcomes the promoters being agreeable to the Bill being amended to allow for three Commissioners from the Balgowan section, giving nine in total and a required quorum of five for meetings.

Waste Water Treatment Works

67. Scottish Water confirmed in writing that the waste water treatment works at the Balgowan estate were privately owned and that it has no plans to adopt them (which it noted would likely be a costly process to get them to the required standard). The promoters confirmed it was their understanding that the waste water treatment works at the Balgowan estate are owned by Avant Homes (as is all the amenity land within the estate), which is the new name for Manor Kingdom.
68. Written submissions from some Balgowan residents, including the submission signed by 61 residents representing 31 households, set out concerns that, in future, Scottish Water could adopt the works, and that householders would then be required to pay Scottish Water charges, in addition to the Pow assessment. Many do not consider this to be fair, believing it to be double charging. In response, the promoters stated that they did not consider such a future situation, were it to occur, to be unfair or unreasonable as it would involve paying Scottish Water for its maintenance and management of the works, and the Commission for the upkeep of the Pow, into which the water would be released. Jonathan Guest also noted that

currently the works are being managed without charge, and compared this to some other residential heritors who have septic tanks and have to pay the Pow assessment along with charges associated with the upkeep and emptying of the tank.

The Committee notes the evidence submitted on the issue of potential future adoption of the waste water treatment works, currently privately owned, by Scottish Water. The Committee makes no further comment on this issue.

Expected amendments to the Bill

The Committee's Preliminary Stage report outlined a number of areas which had been discussed with the promoters with a view to possible amendments being brought forward. Discussions and evidence at Consideration Stage have helped to clarify these matters and the Committee notes that the promoter has indicated agreement for amendments to the Bill to be drafted to—

- allow three commissioners for the Balgowan Section;
- allow a total of nine commissioners;
- change the quorum required for Commission meetings to five;
- ensure that a mechanism is put in place to allow a majority of heritors in a particular section to dismiss a commissioner for that section;
- clarify that a commissioner must cease to hold office if they cease to be a heritor;
- require publication of the land plans; and
- require publication of the register of heritors.

In terms of rights to appeal, the Committee wants heritors to have better rights than currently exist in the Bill at present to appeal the amount of the budget and to question the rationale for particular proposed items of expenditure to an independent expert, but recognises the practical difficulties in striking the right balance (in view of arguments about cost and delay from frequent appeals). The Committee notes that two new appeal rights have been proposed by the promoters as follows—

- the introduction of a right for ten or more heritors to appeal the amount of, and methodology behind, the draft annual budget, to an independent expert; and
- the introduction of a right for individual heritors to appeal the amount of, and methodology behind, the draft annual budget to an independent expert, were the draft annual budget to exceed £60,000, index linked to RPI from the first assessment year.

During Preliminary and Consideration stages, a proposal by the promoters to change the way residential heritors' annual assessments are calculated was put forward. This was in response to the Committee's questions regarding situations where a heritor may have a small house on a large plot of land. The proposal put forward was that the calculation used in the Bill be amended so the amount of chargeable residential land was limited to five times the footprint of a house. However, according to the information given to the Committee^{32 33}, making this change would mean that a majority of residential heritors would face increased annual assessments compared to the level of charges under the Bill. The Committee therefore, on balance, does not support changing the way residential assessments are calculated by using a ratio of five times the footprint of a property.

Finally, in relation to the issue of the land plans being incorrect and new plans having been submitted, the Committee recommends that an amendment is lodged to the Bill amending the definition of the land plans to refer to the new plans. The Committee will then be able, as part of phase two of Consideration Stage, to consider whether such an amendment would adversely affect any private interests. If the Committee determines that it would, and if the Committee thinks the amendment has sufficient merit that there is a possibility of it being agreed to, then the Committee will be able to pause proceedings to allow for notification and for objections to be made to the amendment.

Annex A - Minutes and Official Report of Meetings

- [6th Meeting, 2017 \(Session 5\), Wednesday 22 November 2017 - Minutes](#)
- [6th Meeting, 2017 \(Session 5\), Wednesday 22 November 2017 - Official Report](#)
- [7th Meeting, 2017 \(Session 5\), Wednesday 13 December 2017 - Minutes](#)
- [7th Meeting, 2017 \(Session 5\), Wednesday 13 December 2017 - Official Report](#)
- [1st Meeting, 2018 \(Session 5\), Wednesday 24 January 2018 - Minutes](#)
- [1st Meeting, 2018 \(Session 5\), Wednesday 24 January 2018 - Official Report](#)
- [2nd Meeting, 2018 \(Session 5\), Wednesday 7 March 2018 - Minutes](#)
- [2nd Meeting, 2018 \(Session 5\), Wednesday 7 March 2018 - Official Report](#)
- [3rd Meeting, 2018 \(Session 5\), Wednesday 9 May 2018 - Minutes](#)
- [3rd Meeting, 2018 \(Session 5\), Wednesday 9 May 2018 - Official Report](#)
- [4th Meeting, 2018 \(Session 5\), Wednesday 23 May 2018 - Minutes](#)
- [4th Meeting, 2018 \(Session 5\), Wednesday 23 May 2018 - Official Report \[available by 6pm on Tuesday 29 May 2018 at this link\]](#)

Annexe B - Written evidence

- [Stephen Chouman \(supported by James P Craig and David Clark\)](#)
- [Michael Robb](#)
- [Anderson Strathern on behalf of the Promoters](#)
- [Interim submission by Peter Symon regarding the land plans](#)
- [Sketch provided by Peter Symon](#)
- [Papers circulated and referred to by the promoters at the meeting on 13 December 2017](#)
- [Scottish Water](#)
- [Updated submission by Peter Symon regarding the land plans \(8 January 2018\)](#)
- [Further accompanying sketches provided by Peter Symon \(8 January 2018\)](#)
- [Further submission by Anderson Strathern on behalf of the promoters \(8 January 2018\)](#)
- [Wing Commander G J Roberts](#)
- [Dr W T & Mrs F J Dove](#)
- [Stephen Chouman and Tom Davies, signed by 61 residents of the Balgowan Estate, who represent 31 households](#)
- [Further supplementary submission by Peter Symon \(17 January 2018\)](#)
- [Opinion of Counsel provided to the Committee by the Promoters of the Bill on 22 January 2018](#)
- [Pow of Inchaffray 1848 plan](#)
- [Pow of Inchaffray Book of Reference 1847](#)
- [Pow of Inchaffray Estimate of Increase Value 1851](#)
- [Further submission by Peter Symon in response to the Opinion of Counsel, 23 January 2018](#)
- [Written submission from Commissioner Hugh Grierson, on behalf of the promoters, on 21 February 2018](#)
- [Explanatory Report from Savills, on behalf of the Pow of Inchaffray Commissioners, received on 17 May 2018 \(367KB pdf\)*](#)

* please note that this updates the previous published version of the report received on 2 May 2018. Areas of change have been highlighted in yellow for ease of reference. The previous version of the report can be found in Committee Paper [POI/S5/18/3/1](#).

- [Appendix A: new land plans](#)
- [Appendix B: Pow benefited land, original vs new](#)
- [Appendix C: new schedule of heritors \(plot size\)](#)
- [Appendix D: new schedule of heritors \(five times building footprint\)](#)
- [Letter from Hugh Grierson, Pow Commissioner, to the Clerk, dated 3 May 2018](#)
- [Submission from Commissioner Hugh Grierson, relating to the Dollerie lands, dated 14 May 2018](#)

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