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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 - Second
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)



[http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/
104441.aspx](http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/104441.aspx)



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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 Note that the original plans submitted with the Bill on introduction were replaced on 3 May 2018 with a set of revised plans (see the Committee's first Consideration Stage report ¹⁰ for details).
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 to the Bill were lodged (by Gareth Bruce, Mr and Mrs Bijum (a joint objection), and Tom Davies). ¹¹

Parliamentary procedure

4. The procedure for the consideration of a Private Bill is set out under Standing Orders Rule 9A¹². 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 2017.¹³ 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 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.¹⁴

Consideration Stage: phase 1 (objections to the Bill)

7. 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 was summarised in the Committee's first Consideration Stage report ¹⁰, considered and disposed of the objections to the Bill and considered further evidence submitted. The Committee rejected the objections to the Bill by Tom Davies and Mr and Mrs Bijum in full. It also rejected two parts of Tom Davies' objection, but upheld a part which related to an appeals process for the amount of the Commission's annual budget.
8. The second phase, part of which is summarised in this report, involves 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.

Consideration Stage: phase 2 (amendments)

9. Following the disposal of the three objections to the Bill, 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. Fifteen amendments ¹⁵ were lodged in total, all by the Convener of the Committee, Tom Arthur MSP, on behalf of the promoters.
10. The Minister for Energy, Connectivity and the Islands, Paul Wheelhouse MSP, wrote ¹⁶ to the Convener of the Committee with some observational points on the amendments. The Minister noted that the points were being offered to be helpful, rather than intended to provide any comment on the Bill more generally. The Minister also noted that the Scottish Government welcomed the amendments relating to establishing an appeals process. The Convener replied to the letter ¹⁷, noting that the Minister's letter had been brought to the attention of the promoters.

Screening of amendments

11. On 20 June 2018, the amendments were assessed by the Committee to see whether any adversely affected private interests and, if so, had sufficient merit that there was a possibility of their being agreed to after further scrutiny. The Committee agreed that one amendment, amendment 9, which relates to the new land plans, passed both of these tests. Further proceedings on the amendments were therefore paused to allow for an objection period to amendment 9 and for the taking of further evidence.
12. The Committee agreed that the objection period should run for 60 days, giving a deadline for objections to amendment 9 of 20 August 2018. The Committee also agreed that the Commission should notify all heritors accordingly.

Objections to amendment 9 (new land plans)

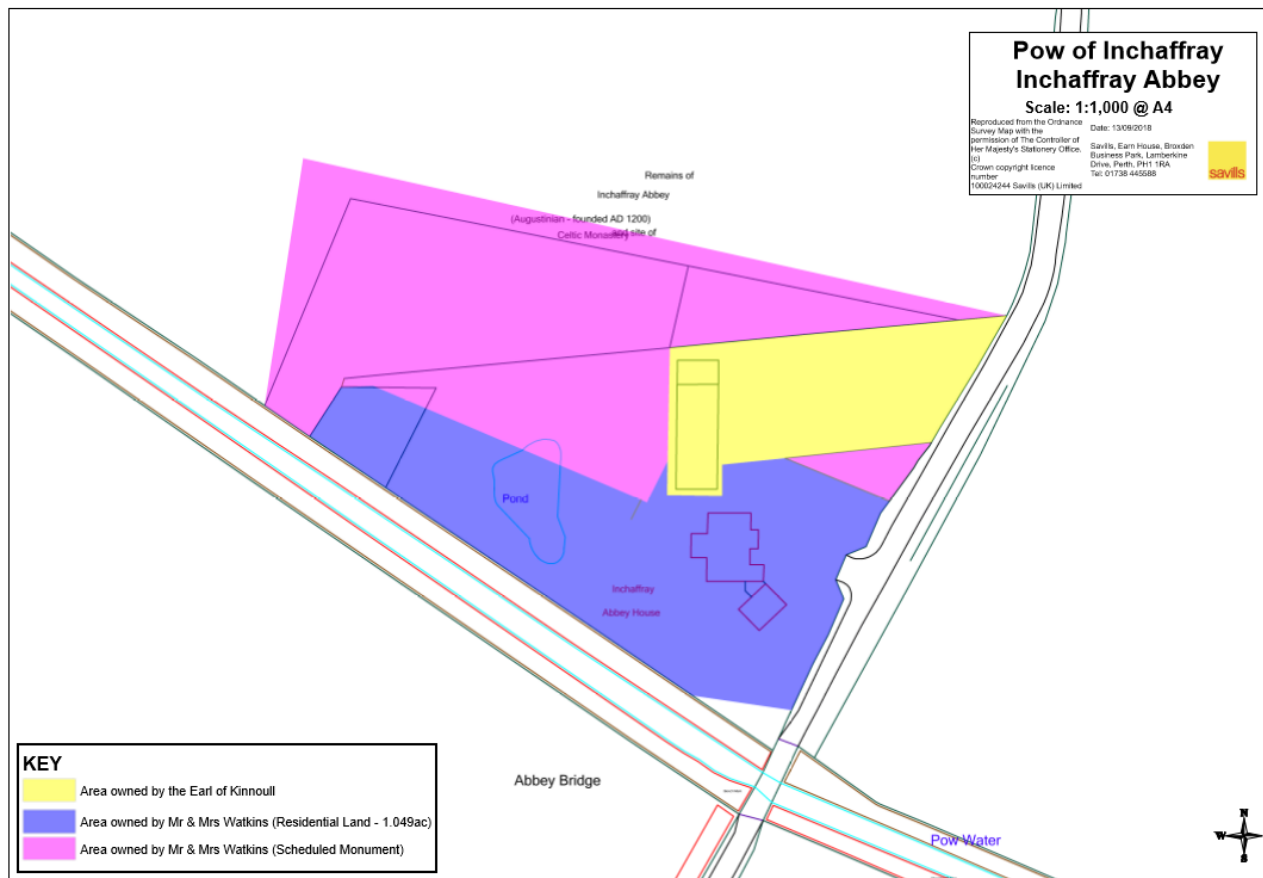
13. Two admissible objections were received to amendment 9. ¹⁸ On 12 September 2018 the Committee took evidence on the two objections, separately, from the objectors and the promoters of the Bill. The proceedings mirrored those which took place with the objections to the Bill at phase one of Consideration Stage, and involved the objectors and promoters making their respective cases and cross-examining each other. The Committee managed and observed proceedings, interjecting when it considered necessary.
14. The promoters referred to a pack of documents during the meeting, and sent a copy of this to the Committee in advance of the meeting. The Committee published these documents on its webpage. ¹⁹ The promoters also referred to the 1851 estimated increase of value of lands drained by the Pow, which was already available on the Committee's webpage. ²⁰ At the meeting, further documents were referred to, and circulated, by the objectors which the Committee subsequently published on its

website (see Annexe B). Following the meeting, Mr and Mrs Watkins²¹, Ian Macgregor²², and the promoters^{23 24} all submitted supplementary written submissions.

Objection 1: Mr and Mrs K Watkins

15. Objection 1 was made by Mr and Mrs K Watkins, who own the property known as Inchaffray Abbey. The assessment for the property when the Bill was introduced was £276.05 a year. However, the updated schedule of assessments submitted along with the new land plans referred to in amendment 9, calculated the new annual assessment for their plot at £1,379.69. The increase was due to two factors: the new assessment being based on the plot size of the property (the Commission previously discounted plot size but the promoters stated that there was no justification for continuing to do that); and the entirety of the plot being assessed at the rate for residential land.
16. The objection argues that the new assessment fails to take account of a) the fact that some of the plot (the site of the ruins of Inchaffray Abbey) is not owned by the Watkins, and b) that it is not appropriate to classify all of the land they do own at the residential rate, as a proportion of it is of scheduled monument status due to the presence of underground archaeological remains. The objection concludes that the new assessment would therefore be a considerable, unfair and incorrect financial burden.
17. The objection contains five specific reasons for objection:
 - the area of their property has been incorrectly assessed;
 - most of the land has been incorrectly classified;
 - the amendment seems to penalise residential heritors with large gardens;
 - the assumed value for residential land is overstated; and
 - the Bill does not contain a dispute resolution process to deal with issues such as mis-categorisation of land.
18. At the meeting on 12 September 2018, the promoters stated that they accepted the first two points (listed above). They confirmed that part of the plot (the site of the remains of Inchaffray Abbey) was owned by the Earl of Kinnoul, and that part of the land which is owned by the Watkins should be classified at the amenity rate (equivalent to £0) rather than at the residential rate (£300,000 per acre) due to the scheduled monument status. The attached plan shows the extent of the site in question and shows the area owned by the Earl of Kinnoul in yellow; the area owned by the Watkins and assessed at the residential rate in blue; and the area owned by the Watkins and assessed at the amenity rate in pink.

Plan showing the boundary and classification of the Inchaffray Abbey site



Source: Produced by Savills on behalf of the Pow of Inchaffray Commission.

19. It was noted at the meeting that using this plan as the basis for the the assessments would result in the Watkins' annual assessment being calculated at £440.78, rather than the previously calculated figure of £1,378.69. The Watkins noted that this would still be an increase of £164.73 on their previous assessment of £276.05. There was also a dispute between the Watkins and the promoters about the exact boundaries of the areas shown on the attached plan and the promoters stated that they would check with Historic Environment Scotland after the meeting in a bid to definitively establish the boundaries of the abbey site and the land owned by the Watkins of scheduled monument status.
20. The Watkins did not agree with the areas of classification shown on the plan, and believed that more of their land should be classified as amenity land (i.e.that more of the land shown in blue on the plan should be shown in pink). Their reason for this was because, although they did use some of the garden land shown in blue (for outbuildings, gardening etc.), they would not be able to develop that land more substantially, as the historic monument status prevents them being able to undertake any works which could damage the archaeological integrity of the site.
21. The promoters did not accept this and stated they considered it to be fair and reasonable to assess the property as set out in the plan, given that the area shown in blue contains their house and garden (and that the area shown in pink is significant, still owned by the Watkins, and being assessed at £0). The promoters stated that, under the methodology used in the Bill for all residential properties, land occupied by houses and gardens is routinely classified as "residential".

22. Following the meeting, the Watkins and the promoters both submitted further written submissions.
23. The Watkins' submission noted that they had met with Historic Environment Scotland and had it confirmed that part of the land shown in blue on the plan contained underground archaeological remains that should remain undisturbed and that damaging them would be a criminal offence. The submission restates that, for this reason, that part of their land should also be assessed at the amenity rate (equivalent to £0) and not at the residential rate (£300,000 per acre).
24. The promoters' submission confirmed that they had received digital data from Historic Environment Scotland which confirmed the definitive boundary of the scheduled monument (this had previously proved difficult to plot accurately due to the lack of definition shown on the downloadable plans provided). As a result of this the promoters were able to update the Schedule of Heritors. The new schedule states that the residential area of Mr and Mrs Watkins' property has increased from 0.855 acres to 1.049 acres, which has increased their assessment to £538.11. The promoters have informed the Watkins of this development.
25. The Committee considered the merits of the objection at its meeting on 26 September 2018. The Committee noted that the promoters have accepted that when they produced the new land plans, and updated the schedule of assessments at that point, the basis of the assessment was not correct. This was because the assessment failed to take account of the fact that some of the plot was not owned by the Watkins, and that too much of the plot had been assessed as residential land, given that a significant proportion of it is of scheduled monument status, due to the presence of the ruins of Inchaffray Abbey. The promoters recalculated the assessment for the Watkins' plot accordingly, which has led to their estimated assessment increasing from the £276.05 to £538.11. This is an increase of £262.06, however, it is significantly lower than the figure of £1,378.69 that was calculated at the time the new land plans were submitted.

It is clear from evidence received by the Committee after the new land plans, and an updated schedule of heritors, were submitted, that the original assessment for the Watkins of £1,378.69 was not correct as there had not been an accurate understanding of the ownership and appropriate classification of their land. This is due to the fact that part of the plot is owned by the Earl of Kinnoul, not the Watkins, and the presence of underground archaeological remains within their property boundary. The Committee is not, however, persuaded by the Watkins' arguments that a greater proportion of their land should be classified as amenity land due to the presence of archaeological remains beneath the ground. It seemed clear to the Committee that the land in question was in use by the Watkins as part of their garden and that it is reasonable for this to be assessed at the residential rate. However, this is ultimately a matter for the Commission. The Committee therefore upholds the parts of the Watkins' objection that stated their property had been incorrectly identified, classified and assessed and notes that the promoters have responded to these points and redressed the situation appropriately.

The Committee rejects the part of the Watkins objection which stated that the amendment seems to penalise residential heritors with large gardens. The Committee

debated this issue at length earlier in the process and was not persuaded that a changed approach to take account of large gardens would be fairer to all heritors. The Committee is also of the view that the amendment makes no change to the Bill in this regard in any case. The Committee also rejects the part of the Watkins objection which states that the assumed value for residential land is overstated. The amendment makes no change to the assumed value of residential land. Finally, the Committee rejects the part of the objection which states that the Bill does not contain a dispute resolution process to deal with issues such as mis-categorisation of land. The amendment makes no change to the Bill in this regard and objections must be limited to the contents and affect of the amendment.

Objection 2: Mr I and Mrs K Macgregor

26. Objection 2 was made by Mr I and Mrs K Macgregor. Mr and Mrs Macgregor live at Centre Cottage at Nethermain of Gorthy, one of five residential properties added to the schedule of assessments by the new land plans.
27. The basis of the objection is that the Macgregors are of the view that the property is not on benefited land and does not drain directly into the Pow. The objection references a survey conducted by Mr John Tait and a submission to the Committee by Mr John and Mrs Joyce Tait. That submission (see Annexe B) states that the residential properties at Nethermain of Gorthy, which have been added to the schedule of assessments, are higher above the Pow than the limit of the benefited land on the other side and are not benefited by the Pow.
28. Mr Ian Macgregor gave evidence on the objection. Whilst acknowledging that his property drains into a burn which flows into the Pow, Mr Macgregor did not accept that his property benefited from the maintenance of the Pow by the Commission. His view was that the burn in question was a natural watercourse and is not maintained by the Pow Commission.
29. In response, the promoters referenced the methodology used to determine the extent of the benefited land, including a supporting Opinion of Counsel ²⁵ and the resulting maps, which show that Mr Macgregor's property is located on benefited land (and has been marked as such since 1846) and that the plot of land the house is on has been improved by the Pow Commission works. The promoters also stated that the Pow Commission was responsible for maintaining the burn which the property drains into and had undertaken works on the burn in the past. The promoters therefore believed that the property should be assessed as per the terms of the Bill.
30. Following the meeting, on 24 September 2018, Mr Macgregor made a supplementary written submission to the Committee (see Annexe B). In the submission he: drew attention to errors he believed were in the 1847 Book of reference (not in relation to his own plot) which he stated cast doubt on the rest of the document; questioned the accuracy of the surveying of his plot on the 1846 plan; and referenced a map from 1783 which he stated showed the Downie Burn as a straight line with no additional ditch on the east side. The promoters responded to this, on 25 September 2018 (see Annexe B). They stated that they did not accept

any relevance in the points raised by Mr Macgregor, and reconfirmed their view that the property is on benefited land, and that the burn the property drains into then drains into the Pow.

31. The Committee considered the merits of the objections at its meeting on 26 September 2018.

The Committee notes the promoter's evidence which showed that the Macgregors' property is on a plot that has been included in the benefited area since 1846 and that the burn which drains their property has been improved by the Commission on previous occasions.

The Committee was not persuaded by the Macgregors view that the property in question does not benefit from the Pow and is not on benefited land. The Committee therefore rejects the objection in full.

Next steps

32. The Committee will complete Consideration Stage by debating and disposing of the amendments to the Bill. The Bill will then proceed to Final Stage, which consists of the Parliament considering any further amendments lodged and then deciding whether to pass the Bill.

Annex A - Minutes and Official Report of Meetings

- [5th Meeting, 2018 \(Session 5\), Wednesday 20 June 2018 - Minutes](#)
- [5th Meeting, 2018 \(Session 5\), Wednesday 20 June 2018 - Official Report](#)
- [6th Meeting, 2018 \(Session 5\), Wednesday 12 September 2018 - Minutes](#)
- [6th Meeting, 2018 \(Session 5\), Wednesday 12 September 2018 - Official Report](#)
- [7th Meeting, 2018 \(Session 5\), Wednesday 26 September 2018 - Minutes](#)
- [7th Meeting, 2018 \(Session 5\), Wednesday 26 September 2018 - Official Report \[available by 6pm on Tuesday 2 October at this link\]](#)

Annexe B - Written evidence

- [Mr John and Mrs Joyce Tait \(including the following six appendices\)](#)
- [Appendix 1](#)
- [Appendix 2](#)
- [Appendix 3](#)
- [Appendix 4](#)
- [Appendix 5 \(map\)](#)
- [Appendix 5 \(photo\)](#)
- [Appendix 6 \(sheets 1 and 2\)](#)
- [Appendix 6 \(sheet 3\)](#)
- [Documents used by the promoters at the Committee meeting on 12 September 2018](#)
- [Documents by Mr and Mrs Watkins at the Committee meeting on 12 September 2018](#)
- [Documents used by Mr Macgregor at the Committee meeting on 12 September 2018](#)
- [Supplementary written evidence from Mr and Mrs K Watkins following the Committee meeting on 12 September 2018](#)
- [Supplementary written evidence from the promoters following the Committee meeting on 12 September 2018](#)
- [Supplementary written submission by Ian Macgregor, 24 September 2018](#)
- [Supplementary written submission from the promoters, 25 September 2018](#)

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