

Submission to Pow of Inchaffray Drainage Commission Bill Committee

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Geographical boundaries of benefited land

1. The focus in my present, further interim submission to the committee is on the redrawing of the boundary of benefited land as proposed by the Promoter. The key finding is that the proposed geographical area differs substantially from that of the area set up under the Pow of Inchaffray Drainage Commission Act 1846 ("PIDA 1846"). The proposed drainage area is smaller than the PIDA 1846 area. The area lost is not offset by areas added. Changes to the area of benefited land mean changes in liability to assessment. A smaller area base for drainage rates means, other things being equal, a higher "rate per pound" for those liable to "drainage rates", for any given budget level of the Commission. There may be consequences for the ability of a reconstituted Commission to achieve the outcomes it sets itself. The reduction in area also shifts the burden of assessment onto residential and commercial heritors, who occupy less land, and away from agricultural heritors.

2. I apologise for the lateness of this submission. I have largely avoided presenting information on methods and sources. Please accept my assurance that all reasonable care has been taken in analysing a relatively large amount of information from publicly available sources.

3. The information presented in the sketch plan (Figure 1) and in the text below, should be regarded as interim in nature and is without prejudice to any further information that I may present to the committee. Responsibility for any errors or omissions in the plan shown on the accompanying Figure 1 and in the text below, is mine alone. The plan may be reproduced subject to attribution.

Sketch plan showing areas proposed to be added to, or excluded from, the benefited land subject to assessment by the Pow Commission

4. On sketch plan Figure 1, the Pow of Inchaffray and its tributaries are shown as solid lines. Symbols shown on the plan are mentioned in the text.

5. The red line is the boundary of the lands benefiting from the drainage operations of the Pow of Inchaffray Drainage Commission under PIDA 1846. All benefited land in terms of PIDA 1846 lies within the red line. Lands outside the red line are lands that derived no benefit from (that is, did not increase in value as a result of), the drainage works of the Commission authorised by PIDA 1846.

6. Benefited lands are those which were determined to have increased in value as a result of the drainage operations of the Commissioners, according to the second survey carried out after the drainage works. The total area of the benefited lands within the red line is approximately 1,930 acres.

7. Within the red line, areas shaded blue are those areas not included as benefited land on the Land Plans submitted by the Promoter. The total area of current benefited lands excluded from the Land Plans is approximately 378 acres, or around 20 per cent of the total current area of benefited land.

8. The largest area of land lies to the north of the Pow and is bounded roughly by Mains of Gorthy farm (marked MG on the plan) to the north, Newrow Lodge (Nr) to the east, Nethermains of Gorthy farm (NG) to the south, and Carsehead farm (C) to the west.

9. Further, relatively large, areas of excluded land, also all lying to the north of the Pow, are at Bachilton farm (Bt), Balgowan farm (Ba) [an area stretching south along the west bank of the Jessie Burn to its junction with the Pow at Balgowan Houses (BH)], and to the south of Abercairny House (A). There are smaller areas of excluded land at Drumphin farm (Dr), south of Woodend (Wo) at Ardbennie ditch, and near Powmill (P).

10. The vast majority of excluded benefited land is agricultural land lying to the edges of the PIDA 1846 benefited land area. It is generally slightly higher lying, and better drained, land, than the land which is proposed to be benefited land in terms of the Land Plans. However, on some small parts of the excluded agricultural land, residential development has taken place, some of it recent. Examples of recent residential development of former agricultural benefited land, now excluded on the Land Plans, are at Nethermains of Gorthy farm (marked by "4" on the plan). Another, less clear, case is at nearby East Carsehead, where a farm cottage (now partly converted to holiday letting use) probably already existed in 1846 but where the present location of the dwellinghouse appears to be within the area of PIDA 1846 agricultural benefited land (marked "3"). There has elsewhere been erection of agricultural buildings on the PIDA 1846 benefited land. Although farmhouses are liable to Council Tax, agricultural land and buildings are not liable to business rates, which is one of the principal reasons why local authorities are reluctant to provide flood prevention measures on agricultural land. These findings suggest that there may be issues of fairness arising in respect of liability to assessment.

11. Much of the excluded land is not shown due to the scale of the plan. Perusal of the Land Plans forming part of the Bill, indicates numerous cases of small and not-so-small discrepancies with the boundaries of the benefited area in terms of PIDA 1846 or with the individual numbered plots in the Books of Reference which detail the "before and after" values of each plot, in relation to the PIDA 1846 drainage works. It is not clear whether these divergences of the Land Plans from the PIDA

1846 Plans is intentional or whether the graphical representation in the Land Plans is schematic in nature. It is suggested that if the Land Plans are to form the basis of identifying land liable to assessment ("benefited land" effectively being "burdened land", in legal terms), the exactness of the graphical representation may need to be addressed.

12. Plot acreages were identical before and after the PIDA 1846 works. A number of plots that had been expected to have increased in value, according to the first Plan and Book of Reference carried out for the Commission, were adjudged not to have increased in value and so were omitted from the finally adjusted, settled list of plots that had increased in value. An example of a plot that had been expected to increase in value before the PIDA 1846 works were carried out, but which was adjudged not to have increased in value and was not included in the list of plots that together came to a total of approximately 1,930 acres, is a plot just south of Abercairny House, marked "5" on the sketch plan.

13. Commercial benefited land near Williamston farm (Wm) is marked "1", being the gas pipeline pumping station, and is unaffected by the proposed Land Plans. It is not known whether the outdoor nursery at Auchlone (marked "2), near Abercairny House, occupies land within the benefited area.

Dollerie

14. A small area shaded yellow, amounting to approximately 22 acres in total, or approximately 1 per cent of the total area of benefited land, are lands that were owned in 1846 by Anthony Murray, Esq., Dollerie estate (marked "Do" on Figure 1). These lands have never been liable to assessment, despite their value in 1851 having increased by £8.4.9 due to the draining carried out in 1847-48. That is equivalent to 1.2 per cent of the total increase in value of land of £670.3.8.

15. Mr Murray was a "recalcitrant owner". His consent for the drainage project was subject to an agreement concluded with the Commissioners before PIDA 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.

16. The Dollerie lands have been the subject of several major, grant aided, improvement works by the Commissioners, to deepen the bed of the channel at Tuckethill Bridge ("T"), in order to improve land drainage and avoid dangers of flooding in upstream sections of the Pow and its tributaries. On the face of it, the value of Dollerie lands may also benefit from such drainage works. The Promoter seeks nevertheless to exclude the lands at Dollerie from the benefited land. The reasons for and the consequences of such an exclusion would perhaps be worthy of consideration, because it would restrict the extent of lands liable to assessment.

Areas proposed to be added to the benefited land area by section 3 of the Bill and Land Plans

17. Areas shaded pink on the sketch plan in Figure 1, are those lands which do not currently within red line boundary of the PIDA 1846 benefited land, but which have been shown on the Land Plans as being proposed to be included within the benefited land according to the Bill. The area of such land is more difficult to calculate, as most of the plots of land were not surveyed as part of the 1846 Act valuation procedure.

18. Approximately 83 acres of land was evaluated as part of the PIDA 1846 procedure but not included in the PIDA 1846 benefited land, whereas it has been included on the Land Plans submitted with the Bill. Included among such land is a field lying to the west of Balgowan Houses, between Redhills (Re) and Ross (Ro). To that must be added other areas of land that was not evaluated for PIDA 1846, but which has been proposed to be included, for no stated reason (e.g. an area extending to approximately 45 to 50 acres on either side of Cowgask Pow, west of the gas pumping station ("1").

19. Some of the land proposed to be added to the benefited land appears to have long been considered, in practice, to have formed part of the PIDA 1846 benefited land area. It is possible that such land has legally become part of the benefited land as it is currently constituted, for example, where it is subject to agreement (express or implied), acquiescence or prescription. The point is that, regardless of changes to the area of benefited land over the years, including the effects of drainage schemes, there has been no change to the aggregate base for assessment by the Commission, other than very minor changes. In other words, lands added to the PIDA 1846 benefited land hitherto have not been liable to assessment.

20. Visual inspection of the plan of areas proposed to be added to the benefited land suggests a total of less than 200 acres, probably in the range 150 to 180 acres. Taking 200 acres as an upper limit, the net change to the benefited area is therefore, very roughly, 1,930 acres less (378 + 22 = 400) plus 200 = a net loss of 200 acres, giving a new benefited land area of approximately 1,730 acres. Roughly twice as much land has been excluded from the benefited land area as has been added to it.

Conclusion

21. The committee should seek clarification of the basis for, and the consequences of, the changes in the geographical area of benefited land sought by the Promoter.

22. Modern drainage law has moved to exclusive reliance on the second of the two traditional principles underpinning liability to drainage rates, i.e. avoidance of danger (from flooding), whereas the Commission is working with outdated principles of benefits from drainage. There would appear to be nothing in common law or in the

statutory constitution of the Commission that would give the Commission the right to refuse to accept water draining from adjacent lands, in its natural line and in reasonable quantities, into the Pow or its tributaries, which it is obliged to accept. Improvement works undertaken by the Commission have had flood damage avoidance objectives as much as land drainage objectives. The challenge is therefore how to fit the Commission's roles in both land drainage and flood risk management into the language of "benefits to land".