

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL

Written submission by Stephen Chouman and Tom Davies, signed by 61 residents of the Balgowan estate, who represent 31 households

The purpose of this submission is to draw together a number of shared concerns about the proposed new Bill and secondly to suggest some potential amendments the committee may wish to consider making to the Bill.

This submission has been co-authored by Stephen Chouman and Tom Davies and is supported by a number of residents of the Balgowan estate in both the new and old houses. The names and addresses of those supporting this submission have been supplied.

We wish to make three points of concern about the Bill and offer six potential amendments.

Points of Concern

1. Misleading information:

Throughout this process, from the start of the pre application 'consultation' undertaken by the Commissioners, up to the most recent committee meeting, the Commissioners have stated time and time again that it is 'vitally important that the Pow is maintained to prevent flooding in our his area'. This statement specifically relates to Balgowan. However, there is no evidence (historic or scientific) to support this position nor has there been any hydrological assessment of the catchment. Therefore, the statements made in relation to flooding have misled the Heritors living at Balgowan. It is a strong statement made without evidence on a highly emotive issue. This issue undermines the process of the assessment of the Bill and the objection period as Balgowan Heritors were told their houses would flood if the vitally important maintenance work to the Pow was not done. Yet, this is not supported by any scientific evidence or appropriate assessment. We understand that the Scottish Parliament will only pass Bills if they are supported by robust evidence supported by appropriate experts. This Bill appears to have neither.

2. The 1846 assessment:

The Commissioners have maintained that the assessment of 1846 is adequate to identify the benefitted lands which are relevant for this new Bill. We find this position lacking any credibility in relation to Balgowan. We do not know the methodology for the creation of 1846 map, we do not know how the areas were measured and it falls well below any current mapping standards. In the age of computer generated GIS mapping with satellite data for accuracy it is quite remarkable that a map drawn in 1846 is deemed acceptable to support modern legislation. The land at Balgowan has changed since the 1846 map was created, therefore, it simply doesn't accurately identify the benefitted lands. During the Committee meeting of the 13th of December the Commissioners asked why they should go to the expense of remapping the lands. It is clear a reassessment is needed to ascertain who does and does not

benefit from the Pow. Denying this vital process on the basis of cost is not satisfactory.

The land upon which the Balgowan estate was built was raised prior to the construction of the houses. There has been a submission by the Commission that there has also been changes to the flow of The Pow. Therefore, the land has changed and the assessment of 1846 specifically to Balgowan is now incorrect. How then can the new Bill utilise a defunct assessment?

3. The relationship of Balgowan estate to the Pow:

There is a complete lack of detail regarding the relationship between Balgowan estate and the Pow. This lack of understanding was demonstrated by the Commissioners at the Committee meeting of 13th of December. It is essential this detail is clarified so that the actual benefit can be identified. Who actually releases water into the Pow? How much water is released? What is the amount of surface water which flows into the Pow? There appears to be no assessment of this detail in respect of the value of the Pow to the estate nor the detail regarding what is released and by whom. That this detail is missing is deeply concerning. How then can the value of the Pow to the estate can be identified?

We submit that the impact of homes at Balgowan over the few hundred meters they front the Pow is minimal. Assuming our waste water is discharged into the Pow then it is either cleansed before doing so at the waste water treatment works, or it is surface run off which will have marginal environmental impact on The Pow. Contrast this to the water which is being discharged into the Pow from the remainder of the 13.7 miles which comes mainly from farmland containing silt and agricultural fertilizer. We submit this will have significant impact in comparison.

There is a concerning lack of detail and evidence to support the proposed Bill. It appears that the assessment of benefit is based on assumption, rather than evidence based facts. The 1846 assessment is the proposed measure of benefit. However we have deep reservations in using an assessment made 171 years ago, which we know very little about, to underpin the new Bill. And the inclusion of a misleading statement regarding the flood risk in the documentation to support the Bill is deeply worrying.

Adoption of the waste water plant within the Balgowan estate will happen when the plant is brought up to the standard required by Scottish Water. At this point residents will be liable for the waste water collection charge to be added to council tax bills. At this point of adoption, the technical collection of water and disposal will remain unchanged for residents. The collection and removal of waste water is currently done by the house builder and they therefore are responsible for any discharge in to the Pow. This will change at some point and be the responsibility of Scottish Water and therefore they should be responsible for any charges being levied to the homes served by the Pow, not the householders who will effectively pay twice for the collection and removal of the waste water generated.

Potential Amendments

1. The new Bill must include specific detail to ensure there is no conflict of interest between Heritors and those undertaking professional duties for the Commissioners. This must also include a requirement to tender any of the works required for maintenance or improvement works. It is essential to seek best value for money to ensure the annual cost of works on the Pow is as low as possible.
2. There must be absolute transparency of the proposed costs for the annual Pow charge. There must be an open book approach so it is clear to all the Heritors how the charges will be calculated.
3. There must be the ability to seek a review of the annual assessment. This must be a meaningful process which could actually result in amendments to the assessment if justified.
4. Significant increases of the annual charge must be controlled and restricted.
5. There must be a provision to engage with the community group at Balgowan estate. This should only take place if the group is formally constituted. This engagement could take the place of the requirement for three individual Commissioners from the estate but the group would have the power of at least 3 Commissioners. The estate constitutes over 70% of the Heritors and should have a significant and meaningful voice on the Commission.
6. If the Committee considers that Balgowan estate should be included in the benefitted lands, the manner in which the assessment of each property is assessed must be changed. Only the footprint of the buildings should be charged at a higher rate. The gardens should be charged at the same rate as the agricultural lands in the benefitted lands. That a garden, which presumably has the same benefit as a field should be charged at a different rate is a clear anomaly in the Bill. Obviously, if agricultural land is developed into buildings, the rate should change to account for the different value of the land as it would for a garden.

The Commissioners have made the point that the changes to the proposed Bill in the way of additional assessments or additional transparency will add cost or complexity to the process. This viewpoint is not acceptable. The Commissioners have gone to significant expense in the process of submitting the new Bill to Parliament. This cost however appears to have been incurred solely to justify their position. Whereas, we maintain investment should have been undertaken to make the Bill fair, transparent and factually based. Not funding a new assessment of the benefitted lands due to cost does appear odd given the significant cost associated with preparation, submission and argument for the proposed Bill to be passed unadulterated. If the Commissioners had approached this fairly and undertaken proper discussions with Heritors we may have a Bill which is fair to all Heritors. However, it appears that it has been drafted to benefit a small number of farmers rather than the majority of the Heritors who reside in Balgowan estate.