

Mr Nick Hawthorne
Clerk to the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee
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OUR REF **AJMC/POW0039.0001/CC**
YOUR REF
8 January 2018

By email to Nick.Hawthorne@parliament.scot

Dear Mr Hawthorne

Pow of Inchaffray Drainage Commission (Scotland) Bill (“Pow Bill”)
Pow of Inchaffray Drainage Commission (“Commission”)
Pow of Inchaffray Drainage Commission (Scotland) Bill Committee (“Committee”)
Pow of Inchaffray (“Pow”)

I refer to the Committee meeting on 13 December 2017 where the Commission gave evidence (see pages 28 and 29 of the Official Report) regarding an additional right of review/ appeal for heritors that could be offered by way of an amendment. In your email of 13 December 2017 you requested further detail of this.

I set out below further information on this and as you will be aware this additional right of review/appeal can be triggered by any heritor provided the stated criteria (“review threshold”) is met and it is in addition to the right of review/appeal for 10 or more heritors that is explained in my letter dated 11 October 2017.

For a variety of reasons previously stated (primarily practical and relative cost grounds, and in regard to cost, the need to balance individuals’ interests against those of the whole body of heritors) the Commission did not feel it necessary to include a review/appeal procedure in respect of the setting of annual budget.

However, in recognition of concerns expressed, the Commission would propose to amend Clause 10 of the Pow Bill to include a review/appeal procedure on the following lines which provides a right of review/ appeal to both 10 or more heritors and/or any heritor where the “review threshold” is met –

1. The Commission will be required to issue a draft assessment notice to each heritor, calculated on the basis of a draft budget for that assessment year.
2. Each heritor will have 21 days to comment on the draft budget.
3. The Commissioners will then review any comments received and then notify all heritors that the draft budget is either confirmed (unchanged) or amended in the light of comments. If amended, each heritor is to be given an amended draft assessment notice.
4. The original budget, or the amended budget (as the case may be) will the apply unless within 14 days –
 - a. at least 10 heritors require the budget to be independently reviewed, or

- b. if the draft budget exceeds the ‘review threshold’, one or more heritors require it to be reviewed.
5. The “review threshold” is £60,000 index linked from the commencement of the first assessment year.
6. The review will be carried out by an expert to be appointed by the Chief Executive of the Association of Drainage Authorities or, failing which, by the Chairman of the Royal Institution of Chartered Surveyors in Scotland or any successor body. The expert will decide what the budget should be and the costs of the reference to the expert will be included in the final budget for that assessment year.

The Commission believe this proposal strikes a fair and practical balance between the rights of individuals to challenge a budget they believe to be excessive, and the interests of the heritors as a whole who will have to share the cost of any review/appeal procedure. The Commission also believe that a reference to an expert in this area will be quicker and more cost effective than an appeal to the courts (who would no doubt require expert evidence anyway). This procedure would of course be in addition to any right of appeal to the courts by way of judicial review if a heritor believed the proposed budget was in some way outwith the Commissioners’ powers under the Act.

In regard to increasing awareness of the Pow with Searchers, Perth & Kinross Council and the Registers of Scotland (page 30 of the Preliminary Stage Report (Committee meeting held 24 May 2017) I confirm the following:-

Property Enquiry Certificates

The Commissioners’ solicitors (McCash & Hunter) have written to Millar & Bryce (Searchers), County Property Searches, and Perth and Kinross Council, requesting them to confirm that they will insert a reference to the Pow Act (provided it receives Royal Assent) in Property Enquiry Certificates issued in respect of benefited properties. To date both County Property Searches and Miller & Bryce have confirmed that this is in order.

Registers of Scotland

The Commissioners’ solicitors (McCash & Hunter) have also written to the Registers concerning inclusion of the Pow in ScotLIS. The person those solicitors spoke to previously at the Registers confirmed that this is precisely the sort of information it was intended be included.

It is considered that the above matters will increase the awareness of the Pow and the Pow Act (provided it receives Royal Assent).

Yours sincerely



Alastair McKie
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