

Written submission from Commissioner Hugh Grierson to the Clerk of the Committee, dated 21 February 2018

As you know I will now be the point of contact between the Pow Commission and the Committee.

Following our meeting in Parliament on 24th January you raised several points in your E-mail to Alistair McKie and I would like to begin answering them.

Jo Guest, Jonny Willett and myself met with Innes Thomson the chief executive of ADA on 25th January. In that meeting and subsequently at a meeting of the Pow Commissioners on 5th February we concluded that it is not possible to use ADA to decide the limits of the lands benefited by the Pow. We concluded that the best method was to follow the limits set by the 1846 Act. I enclose Notes of the ADA meeting for the record.

We have also received copies of the '1851 map' and Savills have had time to look at it. We now propose referring to it as the '1850 Map' as that is the date used in its title. We are pleased to report that it shows the same information as previous maps but in greater clarity. We think it would be useful to the surveyors in transferring the boundaries of the 1846 Act into modern format. I attach a memo from Jonny Willett regarding the map.

As a result of these two factors we believe that the best way to determine the limits of benefited land is to instruct Savills to use all the information from the 1846 Act to determine the boundaries used in that Act and then transfer the information into modern format. If the Committee is in agreement then we can draw up a detailed methodology for Savills to follow and also a methodology for communicating with heritors and others who may be affected by the changes. We would not proceed until these methodologies satisfied the Committee.

In order to draw up the methodology we need to decide how to charge Dollerie. The 1846 survey plan shows a narrow section of land adjacent to the Pow at Dollerie as benefiting from the works. However, it was agreed by the Commission in 1846 that Mr Murray, the owner, that Dollerie would be exempted from any share of the expense of the works. This agreement is confirmed in the Report and Book of Reference 1847 in which the surveyor states—

“I have now not apportioned any part of the estimated expense of the works etc to Mr Murray of Dollerie as by the agreement entered into betwixt him and the committee of heritors for carrying the bill through Parliament, it was provided that he was not to be liable in any part of the expenses. I must also state that I have prepared the plans of works in terms of that agreement the effect of which is that the amount of the expense of the works have been very considerably increased above what is necessary for the purpose of the drainage or expedient for Mr Murray’s own interest. I may further add that I could have executed the works so as not only to improve the amenity of Dollerie as a residence, but also to give the estate all advantages of drainage that it will have by the plan now proposed”.

It has been explained to the Committee for the present bill, that deepening the Pow through the bed of sandstone at Dollerie has been and continues to be the key feature for improving the drainage of all the benefited land upstream of Dollerie. The works carried out at Dollerie following the 1846 Act and again in 1995 caused very substantial disruption to Dollerie and could not have been executed without the goodwill and cooperation of the Murrays at Dollerie which had been obtained by the exemption from sharing the cost agreed in 1846. The land at Dollerie has not been charged any assessment since 1846.

The Commissioners considered this at their recent meeting. The Commissioners agree that there is an area of land that is recorded as benefited but for which no assessment is paid. They believe that this arrangement has been to the benefit of all heritors in the past and would prefer to continue it in the new act. However they heard the Committee's concerns and realise that this may not be possible. The problem now for the Commissioners is that they find it hard to propose a deviation from the 1846 Act. The 1846 Agreement includes an agreement not to charge the benefited land at Dollerie. Counsel's opinion is that the Commissioners should leave the land at Dollerie out of account due to the agreement in 1846. If the Commission is not proposing to follow every part of the 1846 Act then it is using its own judgement to reallocate payments between heritors. If, however, the Committee had looked at the matter and decided that, in this instance, there was good reason to deviate from the 1846 Act then the Commissioners would follow this course. The Commissioners concluded by agreeing to ask the Committee for guidance as to how to charge the Dollerie benefited land. I enclose a copy of the minutes from the Commissioners' meeting to be made public.

The Commissioners also considered which index to use. They decided that RPI was the most widely used and understood index and therefore propose using RPI.

The Commissioners also considered the number of Commissioners and concluded that the Balgowan Section should have 3 Commissioners as they will be paying approximately a third of the assessments. They also concluded that a quorum of 5 would be appropriate for the increased number of Commissioners.

Enclosed for publication on Parliament's website:

1. Notes from Meeting with ADA.
2. Memo from Savills re 1850 Map.
3. Minutes from Commissioners' Meeting 5th February 2018.

NOTE OF MEETING
POW OF INCHAFFRAY DRAINAGE COMMISSION
AT EARN HOUSE, LAMBERKINE DRIVE, PERTH
ON 25th JANUARY 2018

Present

Innes Thomson (IT) Chief Executive Association of Drainage Authorities (ADA)
Hugh Grierson (HG) Pow of Inchaffray Drainage Commissioner

J B Guest (JG) Pow of Inchaffray Drainage Commissioner Jonny Willett (JW)
Savills

1. IT explained that ADA's origins date back to 1937, as an organisation representing internal drainage boards (IDB) and interested parties in England and Wales. There are currently 110 full IDB members along with a number of associate trade members. Full members comprise IDBs, local authorities and other statutory bodies with an interest in arterial water courses in England and Wales. In addition to IDB members, other full members include 40 English local authorities, all of England's Regional Flood & Coastal Committees (RFCCs), a water company, the Coal Authority and national agencies including the Environment Agency, Natural Resources Wales and Department for Infrastructure (NI).

As well as providing legal and technical support to members, ADA acts as the representative body on IDBs' behalf between the IDB and DEFRA. IDBs predominantly operate under the Land Drainage Act 1991 (which does not apply in Scotland).

ADA's IDB members range in size with a total industry turnover of around £70million per annum. The smallest Boards have annual incomes of around £10k and the largest in excess of £3.5million so the Pow of Inchaffray Drainage Commission would be among a group of the smaller scale Boards.

Membership of ADA reflects the area managed by each member. On the basis that the benefitted area for the Pow of Inchaffray Drainage Commission is approximately 2,000 acres, membership costs would be £542 plus VAT per annum.

2. **Provision of Experts**

There was discussion regarding the requirement for an independent expert to decide appeals raised by the heritors. IT advised that ADA would be able to provide an expert from a group of experienced professionals dealing with the management of arterial water courses. The cost of an expert including expenses is likely to be in the region of £1,000. This typically covering a visit over two days, travel, overnight accommodation costs and the preparation of a technical advice note covering the meeting(s).

3. Hearing in Parliament 24th January 2018

There was discussion of the issues raised at the parliamentary hearing on 24th January. IT emphasised the importance of community engagement and explained that the usual practice for IDBs is for there to be a website which shows detailed information relating to the administration of the IDB. ADA would be able to advise the Commission on setting up a simple website based on a template already used for English IDBs.

ADA is also currently preparing guidance on the principles of good governance guidance for Internal Drainage Boards and, if they choose to become members of ADA, the Pow of Inchafray Commissioners would stand to benefit from best-practice advice and other guidance on the successful future management of the Commission.

4. Land Plans

IT explained the approach taken by ADA in preparing land plans for new IDBs. He explained that ADA operates under the statutory and policy framework that applies in England.

IT explained that as part of the consideration of flood risk, it is common practice to look at an area in the "what if" state where there are no flood defences or assisted drainage, with regard to the general hydrology of the area and using available historic flood data.

When the circumstances of the Pow of Inchafray were further considered, IT considered it as normal that when establishing new drainage districts, appropriate studies are carried out to assess the extent of flood risk to determine the boundary of benefit. In this case where the Pow of Inchafray is a long established Commission with defined drainage district boundaries on existing plans, and with respect to the size of operation of the Commission, it would be unnecessary and financially unjustifiable to carry out new, detailed flood risk assessment work.

It appeared that there is difference of approach between the process set out in the ADA guidance note and the objectives of the Pow of Inchafray Drainage Commission which are the provision of drainage and the provision of outfalls for surface water and foul drainage as well as flood alleviation.

It was also noted that the Pow bill takes no account of works carried out to form and improve the Pow prior to 1846. The basis of the bill is to assess the benefit to heritors in terms of the provision of drainage and the provision of outfalls for surface water and foul drainage as well as flood alleviation by works carried out since 1846.

It was also noted that when taking into consideration the team of specialist advisers that would be required to carry out the work, the cost of preparing plans on the basis set out in the ADA note would be very substantial. In a situation such as the Pow of Inchafray the cost would be prohibitive for the modest means of the budget, which is funded solely by the heritors and would

be out of all proportion to any consequent adjustment of the assessments paid by individual heritors.

IT concluded that in his opinion, in order to identify benefitted land for the purposes of the bill there would be no better source of information than the plans and surveys carried out under the auspices of the 1846 Act and that it was entirely appropriate for the land plans for the new bill to be prepared on this basis. He was also of the opinion that given the statutory framework for the land plans under the 1846 Act, that it was not necessary to undertake a reassessment of the benefitted area using a team of specialist professionals.

IT reiterated ADA's willingness to act as an independent expert and provide a professional opinion if the need were to ever arise.

Memo from Jonathan Willett, Surveyor, Savills, to the Committee re the 1850 Map, dated 9 February 2018

A copy of the Plan of the Lands Benefitted by the Drainage of Pow of Inchaffray 1850 was supplied by the National Records of Scotland on 9th February 2018.

Following an initial inspection I am satisfied that this is a fair and final copy of the 1848 plan showing the land benefitted by the works carried out under the 1846 Act. This is confirmed by the five docketts on the plan.

Further to this, the makeup of the plan is final in its presentation. In contrast to the 1848 plan, which had faded guidelines and markings showing the Limit of Deposit, the 1850 plan has clear and bold boundaries.

On this understanding, I believe using this plan as a template for the creation of the plan of benefitted land for the Pow of Inchaffray Drainage Commission (Scotland) Bill is the best course of action. The improved boundaries will reduce the area requiring subjectivity to an acceptable amount.

If acceptable to the Committee, Savills wish to prepare an updated plan based on the 1850 plan. The 1848 plan, the Book of Reference and the Valuation Schedules would also be used as a reference tool to ensure we plot the boundaries accurately and fairly.

POW OF INCHAFFRAY DRAINAGE COMMISSION

MINUTES of MEETING of the COMMISSIONERS held within the Offices of MCCASH & HUNTER LLPs, 25 South Methven Street, Perth, on Monday 5 February 2018 at 10.00 am

PRESENT:-

Commissioners:- Hugh Grierson (HG)
Bill Drummond-Moray (BDM)
Jonathan Guest (JG)
John McKenzie (JMK)
James England (JE)

In attendance: Shirley Davidson (SD) and Stephen Cranston (SC) of McCash & Hunter
Jonny Willett (JW) of Savills plc

1. **Chairman**

Hugh Grierson was appointed Chairman.

2. **Parliamentary Committee meeting 24 January 2018**

HG reported on the Committee meeting held on 24 January. The matters arising as set out in the Clerk's e-mail of same date require to be addressed. The priority is to obtain the 1851 plan held by the National Library referred to by Peter Symon and which is at present "unfit for production". SD to contact National Library.

3. **Inclusion of Dollerie land as benefited land and subject to assessment**

It was noted that the land at Dollerie in accordance with agreement reached following the 1846 Act has not been included as benefited land. The commissioners agreed however that if the Committee's position was that the exemption of the land at Dollerie should not be continued under the bill that they would accept this decision.

4. **Additional Balgowan Commissioner**

It was agreed that there should be 3 Commissioners for the Balgowan Section and that the proposed quorum for Commissioners' meetings should be 5.

5. **Sewage treatment works at Balgowan**

It was noted that the Committee appeared to have accepted that if Scottish Water took over the private sewage works at the Balgowan Estate, there would be no reduction in the assessments levied on householders.

6. **Indexation of amount above which an individual heritor could refer a proposed annual budget for review (£60,000)**

It was agreed that the preferred Index would be the Retail Prices Index as the longest established and best understood Index, and to date has given a higher rate than the Consumer Prices Index (which leaves the cost of homes such as mortgage payments and Council Tax out of the basket of goods the cost of which is measured; RPI takes account of these costs).

7. **Services out to tender**

It was noted that the Committee had indicated that it would consider that putting services out to tender would be good practice for the future.

8. Association of Drainage Authorities (ADA)

JG and JW advised that they and HG had met with Innes Thomson, the chief executive of ADA, on 25 January. The Parliamentary Committee had requested clarification of the Commission's intentions with regard to the definition of benefited land in the Bill i.e. whether the option of carrying out a fresh assessment of land benefited by the Pow was a realistic proposition, as an alternative to using the plan(s) prepared under the 1846 Act which had been the stated intention of the Commission until the alternative was proffered on 24 January. A draft note of the meeting had been prepared by them and forwarded to Mr Thomson who had made some comments. The draft note was considered and it was agreed to finalise this with Mr Thomson before forwarding it to the Clerk for production to the Committee. It was agreed that the alternative to using the 1846 plans, Books of Reference and Schedules was not feasible.

9. Legal costs

HG referred to the e-mail from Alistair McKie of Anderson Strathern which had been circulated previously. It was agreed to proceed on the basis set out.

10. Assessments

SC was instructed to send out assessments to all heritors including those agricultural heritors who were in credit for the current year.

11. Thanks to the Chairman.