OFFICIAL REPORT
AITHISG OIFIGEIL

Pow of Inchaffray Drainage Commission (Scotland) Bill Committee

Wednesday 27 September 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

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POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL COMMITTEE
4th Meeting 2017, Session 5

CONVENER

*Tom Arthur (Renfrewshire South) (SNP)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)
*Alison Harris (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Shirley Davidson (McCash & Hunter)
Hugh Grierson (Pow of Inchaffray Commission)
Jo Guest (Pow of Inchaffray Commission)
Alastair McKie (Anderson Strathern)

CLERK TO THE COMMITTEE

Nick Hawthorne

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

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Wednesday 27 September 2017

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Tom Arthur): Good morning and welcome to the fourth meeting in 2017 of the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee. The first item on our agenda is a decision on whether to take in private all future consideration of our draft preliminary stage report. Do we agree to do so?

Members *indicated agreement.*

Pow of Inchaffray Drainage Commission (Scotland) Bill: Preliminary Stage

10:01

The Convener: Today we are taking evidence from the promoters of the bill, the Pow of Inchaffray drainage commissioners, and their representatives. I welcome Jonathan Guest, who is a commissioner; Hugh Grierson, who is also a commissioner; Alastair McKie, who is a partner at Anderson Strathern; and Shirley Davidson, who is a solicitor at McCash & Hunter.

This is our second evidence session with the promoters. We are very grateful to have had a site visit to the pow since the first session. The committee accepts that the bill is required and thinks that it will improve on the Pow of Inchaffray Drainage Act 1846. However, the committee believes that the bill requires amendment in several areas in order to improve transparency and accessibility, and to introduce safeguards for the benefit of all concerned.

Should the bill reach consideration stage, amendments can be lodged only by members of the committee. However, the committee believes that the process will be most instructive and effective if amendments result from a collaborative and co-operative process including all who are involved. If the general process is one in which all parties can work together, we are likely to reach a more favourable outcome and achieve our shared goals.

On our visit to the pow, we covered a significant bit of territory along the course of the pow. I was struck—as, I am sure, were my committee colleagues—by how sparsely populated much of the pow is until the Balgowan estate. As the bill stands, it is proposed that one commissioner will be drawn from the Balgowan estate. Is that correct?

Alastair McKie (Anderson Strathern): That is correct.

The Convener: I understand that 73 per cent of the heritors live on the Balgowan estate, which means that 73 per cent of heritors are represented by one commissioner and the remaining 27 per cent are represented by six commissioners. Do you think that that is equitable or fair?

Alastair McKie: The matter has been considered in detail by the commissioners. The commissioners will produce an amendment that would allow up to two commissioners to represent the Balgowan section of benefited land. That would increase the number of commissioners from seven to eight, so it would consequently be

important to increase the quorum for meetings of the commission from three commissioners—as is set out in paragraph 4 of schedule 3—to four. That would ensure that 50 per cent of commissioners would be necessary to form a quorum—four out of the total of eight. We would be content with that.

The Convener: Do colleagues have any comments on that?

Alison Harris (Central Scotland) (Con): No.

The Convener: Another matter that has come up is the role of the heritors in dismissing a commissioner. Having had the opportunity to reflect further on the issue over the summer, what are your current views on whether the bill should include a mechanism to allow that?

Alastair McKie: Under the bill, there is no right for the heritors to dismiss commissioners directly. Paragraph 13(2)(c) of schedule 2 states:

> "The Commission may ... terminate a Commissioner's appointment if ... the Commissioner is ... unable to perform the functions of a Commissioner, or ... unsuitable to continue as a Commissioner."

That is the commissioners' right. It is felt that, in practice, if heritors were extremely dissatisfied with a commissioner and the other commissioners did not take prompt action, the heritors could convene a meeting under section 7(1)(b) and make a motion at that meeting to request that the commissioners use their powers to dismiss a commissioner under paragraph 13(2)(c) of schedule 2. We accept that such a motion would not be binding on the commission, but it would be very difficult to ignore.

That is the position under the bill as it stands, but we have considered the point in more detail. If members do not consider that the provision that I have outlined goes far enough, the commission would offer an amendment that would give a simple majority of heritors on a particular section of benefited land—whether it be the lower, middle, upper or Balgowan section—the right to dismiss a commissioner, but only in relation to their particular section. Under such an amendment, the heritors for the Balgowan section, which includes the Balgowan properties, could dismiss commissioners for the Balgowan section but not the commissioners for the lower, middle or upper sections.

The reason why a majority of heritors for all the sections should not be able to dismiss the commissioners for a particular section is that each commissioner represents an identified section of benefited land and is appointed by that section; therefore, if a commissioner does not fulfil his obligations properly, that section should be able to dismiss them. That is an amendment that the commissioners would be prepared to offer.

The Convener: Another area that I wish to clear up is the potential discrepancy between section 8 and paragraph 13(2) of schedule 2, with respect to a commissioner's being able to continue in post when they are no longer a heritor. Are you willing to consider an amendment to the effect that a commissioner who ceases to be a heritor can no longer continue to be a commissioner?

Alastair McKie: You have read my mind slightly. Yes—we are happy to consider that. The word "may" is used in paragraph 13(2), but the commissioners are content for a commissioner to be dismissed when he ceases to be a heritor.

The Convener: Our final point is an issue that was raised in one of the objections. A small residential property that is on a plot of land of significant size might incur greater liability, because of the acreage qualification, than a larger property on a smaller plot would. Has any consideration been given to an amendment that would allow the bill to take better account of the position of heritors with small houses that are built on relatively large plots?

Alastair McKie: That question will be answered by Jo Guest. However, to assist his answer, my colleague will now circulate to the committee some helpful papers that include a representation of the size of the buildings relative to the land or garden area, and some of the schedules. We have removed the names from the schedules to anonymise them, but they will be helpful when explaining what the commissioners' position is on the issue that the convener has raised.

Jo Guest (Pow of Inchaffray Commission): I will explain the papers that members have just been handed. The plans show the whole length of the pow and the side ditches, and the coloured plots show the individual assessments of the benefited land for the full length of the pow and the side ditches. Maps 9 and 10 show all the residential properties, except one. There is one outlying property, which is at Inchaffray abbey, but all the rest are on those plans.

We have also circulated a schedule of all the residential and commercial properties. We previously circulated a heavily redacted version of the schedule, with most of the columns missing. This is the full schedule; the only things that are missing are the names of the heritors. The plans and schedules were prepared right at the beginning, but I received advice that we should provide simplified redacted versions to the committee. However, the situation is very difficult to explain without members seeing the whole thing.

The right-hand column of that schedule shows the amount of the new assessment for each property, net of VAT, based on a budget of

£20,000. There is another schedule of all the agricultural properties; the one that I am explaining is just the residential and commercial properties. Most of them are fairly small sums; only seven are more than £200. You will see that the assessment for property 57, which says "Additional on the Ross", is £339. That is a commercial property—the lime store at Balgowan—where there are large sheds and an open yard. There is a very small residential building there, but the property is basically a large commercial property.

Property 75, Inchaffray abbey, is not on the same plan; it is the purple plot on sheet 4. It is a large detached country house situated next to the ruined abbey. The others are 87, 89, 90, 92 and 106. Number 92 is on sheet 9, and the other properties are on sheet 10. Basically, they are the larger properties on the western side of the developed area.

10:15

To put the issue in context, there are not many of those properties, and they are all substantial houses and valuable properties. To find a formula for adjusting the valuation for those properties because they sit on large plots would be complicated. Given their very small number in the context of the whole situation, I think that that would be an unnecessary complication. However, if the committee feels strongly about the matter, we could come up with a formula. I do not think that it is a very big problem, given the scale of the schedule of properties. We are talking about only a handful, and all are large properties on large sites.

The Convener: Thank you for providing the plans. I appreciate the willingness to consider a bespoke formula for the admittedly small number of homes that are affected. In all this, our concern is to consider every individual who is affected—the issue might be small in the grand scheme of things for the commission and the charging scheme, but it could be significant for the individual home owner. We always have to take cognisance of people who are asset rich but income poor.

Jo Guest: If you feel that the issue has to be addressed, what springs to mind is to say that the footprint of the house be regarded as residential land, with any extra being regarded as amenity land because, in effect, the amenity land has a nil value. In the values that are set out in schedule 4 to the bill, amenity land has a value of £500 an acre, and we have assumed that £500 is the base value, so that works out as nothing—it is neutral. In the valuation, we take the current value of the land less the unimproved value, and we have assumed that the unimproved value is £500 an acre. Therefore, by putting a value of £500 on amenity land, that means that amenity land has no assessment, if you see what I mean.

The Convener: To realise that approach in the bill, would you be willing to consider lodging an amendment?

Jo Guest: It would not be overly complicated to say that the assessed value of a residential plot is a multiplier of the footprint of the building on it, with any surplus being treated as amenity land. It would not be overly difficult to devise that.

Mary Fee (West Scotland) (Lab): Is the formula that you use in the bill to calculate the charges the formula that has always been used? When the housing developments were built, did you have an open conversation with the owners to explain to them how the cost is calculated?

Jo Guest: Do you mean for the present assessments?

Mary Fee: Yes.

Jo Guest: The history is that the first new house that was assessed was the one at Inchaffray, which is number 75 in the schedule of properties. When that was being built, I spoke to the person who was building it and we agreed that the charge should be linked to the water charges through council tax, although we are providing drainage and not water. In that discussion, we came up with the figure of £150 for the property, and that is what it still pays. When the Manor Kingdom development came along, I discussed the assessment with the developer and I referred to that other property, and we just applied that.

Mary Fee: So no independent assessment of how the charges should be levied has ever been done.

Jo Guest: No. The assessment was based on the example of the house at Inchaffray abbey.

Mary Fee: Did all the commissioners agree to the way in which that was done? Was it discussed with all the commissioners?

Hugh Grierson (Pow of Inchaffray Commission): I am sure that we were all aware of it and happy with it.

Mary Fee: Saying that you are sure that you were all aware of it is not the same as saying that it was discussed with the commissioners. I need to understand whether one individual made the decision on how the charges would be levied or whether a decision was made collectively by the group of commissioners.

Jo Guest: As the surveyor for the commissioners, I conducted the negotiation. I would then have reported back to the commission and it would have said that it agreed with that.

Mary Fee: Okay. That is helpful. Thank you.

Alison Harris: Good morning. For the record, will you outline the promoters' current position on whether there should be an appeal mechanism for disputes both about individual bills and about proposed amendments to the land categories? It would be helpful to the committee if you could explain the reasoning behind your current position.

Alastair McKie: On an appeal mechanism, I suppose that, theoretically, heritors' ground for objection would be either that the annual budget that is set includes matters that the commissioners have no power to include, or that the estimates are too high—that is why they would wish to oppose. That being so, we consider that a right to object is, in practice, unnecessary because of the new measures that the proposed legislation will bring in. The bill is different from the 1846 act because, under that act, the right of appeal or objection was to do with the increase in the value of a property as a result of improvements to the pow. That is not really what the new way in which the bill works does—the process for setting the annual assessments and making the calculations is very mechanical, and the moving parts are in the bill; judgment is not being exercised. The bill sets out what the commissioners can include in the budget, so including anything that they cannot do would be ultra vires and challengeable by way of judicial review. The budget will be set by the commissioners, including two representatives from Balgowan, as we now know. The commission's view is that, in practice, the commissioners are unlikely to overestimate the budget, as they will be most affected by it.

The budget includes an estimate of the expenditure for the coming assessment year, and we have specifically provided for anticipated surplus or shortfalls to be taken into account. Therefore, if the budget in one year is an overestimate, the surplus will reduce the next year's budget.

We are very clear that the matter has vexed the committee and the commissioners have considered it very carefully to see whether they could include an additional measure or protection in the bill. It is not thought that such an amendment could include a formal right of objection as such, because we would need to ensure that whatever third-party mechanism could be given to heritors in relation to annual assessments was fairly straightforward and cost proportionate, bearing in mind that any expenses that the commissioners incur would have the effect of increasing the annual assessment.

However, although the commissioners are reluctant to provide an objection procedure that would involve reference to a third party such as the courts, they would be prepared to offer an amendment for a procedure for the committee's consideration. What we have in mind is that the commissioners would notify the draft budget, including individual assessments, to all heritors. That would let them know exactly how much they would be expected to have to pay for the annual charge. The heritors would then have 21 days within which to comment on that and the commissioners would then be bound to have regard to those comments when finalising the budget, although they would not be bound to follow them.

The amendment would give heritors the right to have their say to the commissioners before the budget is finally set, so our proposed approach would go a bit further, but it would not be a formal right of appeal, because we think that that would be disproportionate in the circumstances and would hike up costs—

The Convener: Just to clarify, are you saying that your suggested amendment would enable heritors to raise an objection but the commissioners could disregard it?

Alastair McKie: The commissioners would have to take the objection into account.

The Convener: Can you define what that means, please?

Alastair McKie: The commissioners would have to have regard to the objection but they would not be bound by it. I suppose that it is analogous to people—

The Convener: So how would commissioners demonstrate that they had had regard to an objection?

Alastair McKie: They would have to meet and consider an objection carefully and they would have to offer reasons why they were choosing to disregard the will of the heritors who were making the particular objection. The commissioners would have to have a good reason for disregarding the objection.

Jo Guest: The point is that there is a budget of £20,000. If one vexatious heritor raises an objection, the objection process could cost thousands of pounds and would be paid for by all the other heritors.

Alastair McKie: That is one of my points but the other—

The Convener: The committee raises the issue because the existing act has been in place for over a century and a half and we have to give consideration to not just any potential vexatious heritor but future commissioners. Ultimately, the proposed amendment does not seem to address the concerns that the committee has raised.

Has consideration been given to any other potential amendments? Perhaps you can discuss and unpack a bit more how you came to the decision to offer this amendment.

Alastair McKie: There are a spectrum of ways in which the bill could be amended—an amendment could give a formal right of appeal to the courts or a right to formal arbitration, for example. To pick up on Jo Guest's point, that approach was considered to be disproportionate given the sums that we are dealing with, because the cost of any process would be wrapped up in the overall assessment, which would increase the cost for everyone. With a £20,000 budget, one appeal process that costs £5,000—because we would have to involve lawyers and so on—would increase everyone's overall payment by 25 per cent, just because of one person's appeal; so we have to be quite careful about it.

I fully understand the ideological principle behind the committee's questions, but we felt that what we could offer is an amendment that would give heritors the right to put their comments in writing; and the commissioners would then have to look at those comments, take them into account and consider them carefully. If the heritors made a good point, they might well persuade the commissioners that the budget that they had set was too high. If the commissioners simply disregarded or dismissed the comments without taking them into account, there would be the judicial review mechanism, because the commissioners would have failed to take into account important material information before making a decision. If the commissioners flippantly disregarded comments by heritors, the amendment would expose the commissioners to a potential claim for judicial review, so it strengthens and focuses the judicial review point.

The Convener: Do you think that judicial review is a realistic course of action for a heritor living in Balgowan estate, for example?

Alastair McKie: It can be an expensive process, I grant you; it is not readily available.

The Convener: The expense would dwarf the expenses that the commission would incur from having its own review process—is it fair to say that?

Alastair McKie: That is a fair point, yes.

Alison Harris: I hear and accept what you are saying and I understand where you are coming from. However, I also understand where we are coming from. If someone wishes to complain and puts in their objection to the commissioners, they would have to have valid reasons and so on. However, if no resolution could be achieved, is there no way that the matter could be put to a third party—another surveyor or somebody else—without having to go down the court route?

If a landlord with a rental property increases the rent, for example, and makes it too high—more than inflation—the tenant does not have to go back to the landlord; they have the right to put the matter to a third party who may be slightly more independent.

10:30

Jo Guest: Would an independent expert be a viable option?

Alison Harris: That is what I am getting at.

Alastair McKie: Could I confer with my colleagues on that? I understand your point.

Shirley Davidson (McCash & Hunter): My initial reaction is that it is not a landlord-tenant relationship.

Alison Harris: I appreciate that.

Shirley Davidson: The commissioners have an equal interest and they also have some expertise in what they are talking about.

Alison Harris: I fully appreciate that too, as do landlords and tenants. I was just making a comparison that sprang to mind.

Shirley Davidson: It is not really a direct analogy, because in this case their interests converge.

Alison Harris: Let us disregard that comparison, then, and go back to where we were originally. As I understand it from what you have said, if I am a heritor and I wish to complain, I have to go back to the same commissioners who made the original decisions. There may be a requirement for them to give me reasons, but if their reasons are similar to their first reasoning, my complaint is basically dismissed. That is why I was trying to give a comparison, as a way of asking whether there is a way forward from here.

Shirley Davidson: The heritor has an elected representative sitting on the commission.

Alison Harris: I still come back to where I stand. They would still be going back to the same commissioners to say that they were not happy.

Alastair McKie: Could we have a wee conference about that? I think that it is a valid question.

Alison Harris: Please do.

Alastair McKie: Thank you for indulging us and allowing us to discuss that for a few moments. We agree that we are certainly prepared to consider some form of referral to an independent expert, probably a surveyor. That would be similar to what

we have in sections 11 and 12 of the bill, on the revaluation process. The issue for the commission is not just the cost but the speed with which that decision could be reached, because if a decision is not reached it holds up the whole annual assessment and we cannot move on. We have a right of representation, which has a 21-day turnaround period, and I think that we need to have an equally fast turnaround for referral to an independent surveyor.

The Convener: I appreciate the argument that the commissioners themselves have a clear interest, and the committee does not doubt the dedication and diligence with which the existing commissioners carry out their duty. However, as the promoters of the bill, you are asking for the bill to become an act that conveys significant powers, and that is why we are prosecuting this line of questioning. I welcome the fact that you would consider an amendment, and I appreciate that that might be an idea that you are just presenting to the committee now, so I would be grateful if you could write to the committee setting out in more detail what those proposals would entail, if possible within the next two weeks.

Alastair McKie: Of course. The other point that was raised, and to which there is a lengthy answer, is about sections 11 and 12, on the mechanisms for the 10-year revaluation and the movement between land categories, because that is another area in which heritors might have an issue.

While the process under the bill might appear slightly less beneficial than the one under the 1846 act, it is controlled through the use of an independent surveyor. It is a very similar situation to our answer to your earlier question. Under sections 11 and 12, the surveyor, like the 1846 valuator, acts independently from the commission. The surveyor must be a member of the Royal Institution of Chartered Surveyors professional body rather than simply, as under the 1846 act, a skilful and impartial person. In practice, similar to the 1846 act, the heritors can make representations directly to the surveyor in that regard.

In practice, we think that the valuation issues are not particularly complicated because they relate to the category of land that is being looked at and whether it is going to be amenity, agricultural, commercial or residential. If there were a right to appeal to the courts beyond the surveyor, the court, when faced with a valuation question, would refer the matter to the surveyor, so we are really going the shortest route to that. The promoters believe that the use of the independent surveyor is a cost-effective system for all involved, having regard to the relatively low level of assessments. However, I appreciate your point about people having rights.

Alison Harris: Property factors are currently regulated under the Property Factors (Scotland) Act 2011. The Law Society suggested in its written submission that consideration should be given to whether the commission should be regulated under the 2011 act. What would be your view on that proposal?

Shirley Davidson: I can answer that. The commissioners do not consider that they fall within the definition of a property factor. Section 2(1)(a) of the 2011 act defines a property factor as someone

"who, in the course of that person's business, manages the common parts of land owned by two or more other persons".

However, the pow does not fall within the definition of a common part.

Mary Fee: I want to explore in more detail the issue of future statutory charges and the beaver barrier that we discussed the last time you were here. The commissioners have a licence from the Scottish Environment Protection Agency for dredging the pow and its tributaries. There are also regulations that could result in additional statutory charges, including construction design, health and safety and wildlife legislation. You have already given us some indication of those charges. Are you able to give us any more detail about what the future statutory charges might look like?

Alastair McKie: Could I come in there? I think that we have a further quote on the cost of the beaver barrier, which my colleague Mr Blair will circulate. It is relevant to this discussion because we have had the matter formally costed per barrier.

Jo Guest: At the moment, as you say, the only statutory charges paid are the SEPA licence, which was a one-off payment of £700, and a payment of £35, which is in connection with the Data Protection Act 1998. It is very difficult to predict what other charges might appear. The main one, as you mentioned, relates to the issue of beavers. Beavers were released illegally in the Alyth area about 10 years ago. From there, they have spread throughout Tayside and have caused significant problems in arterial watercourses such as the Pow of Inchaffray.

First, I went to see Roseanna Cunningham at the end of 2016. She put me in touch with Scottish Natural Heritage's beaver consultant, who is Róisín Campbell-Palmer. I met her and went round the whole pow with her. Her proposal was that the pow should become a trial beaver exclusion area, because she recognised that beavers are incompatible with what we are trying to do there. She spoke about having a barrier at

the lower end of the pow and one at the upper end, between which the beavers would be managed. I had a subsequent meeting with the people from SNH. It has a dedicated officer who deals with beavers, and also a land manager who deals with the land rights that it needs for that. They asked that I get a quotation for forming the beaver barriers.

I have discussed the issue with Ian Ralston, who is the contractor who does most of the drainage work and groundworks in the area. He and his father have worked on the pow over the past 30 years and he is very experienced and capable. He produced the quotation that committee members have before them, which is £21,000 per barrier. Each barrier is a heavy-duty gate that would go across the pow, and there would be side fences that would go out a distance of 150 metres on either side, to stop the beavers coming up and walking round the barrier. Therefore, the potential total cost is more than £40,000. The SNH land agent suggested that there would need to be legal agreements with all the people on whose land the barriers would sit, which, of course, would cost more. There are potentially five people involved, so if we were to have five agents and five solicitors, we can see that the cost would rack up further. From my last conversation with him, the land agent now thinks that more informal letters of agreement would suffice, which would be a lot cheaper.

The initial indication from SNH is that Government funding for the barrier work would be £10,000, which would leave a shortfall of over £30,000. I hope that the Government will increase the grant funding, because, at the end of the day, the beaver problem is one that has come to the pow. If beavers have been released illegally, and they have now been given protected status, there is nothing that we can do about that; we just have to deal with the problem.

Mary Fee: I take it that you are in communication with SNH at the moment, to try to negotiate.

Jo Guest: I have sent SNH a copy of the quotation. The next step is to see whether we can persuade it to give more grant funding. It just reports back to the Scottish Government, which will decide.

Mary Fee: Is there a formula for providing the grant funding?

Jo Guest: I do not know where the figure of £10,000 came from or how it was calculated. It had probably just been plucked from the sky before SNH had seen the costs. I do not think that it thought that the work would cost anything like the quotation figure.

Mary Fee: When do you anticipate that you will have more information on funding for the beaver barriers?

Jo Guest: I do not know. I need to go back and ask SNH, which will have to report back to the Scottish Government.

Mary Fee: Obviously, it has a significant impact—

Jo Guest: Oh, huge—yes.

Mary Fee: It has an impact on our discussions, apart from anything else, because, if £10,000 is all that SNH is prepared to give you, and you go ahead and put up the beaver barriers, you will need to raise £30,000, which will be a massive cost for the heritors. Have you considered how you will do that?

10:45

Jo Guest: I suspect that that would be phased over a couple of years to make it palatable. We would not enjoy paying for it, either.

Hugh Grierson: It would inevitably affect our ability to start cleaning the pow again. The maintenance that we would like to do on the pow would be delayed until we could pay for those barriers over a few years. That is the most likely way forward.

Mary Fee: What impact would any delay to maintenance have on the pow? We have seen at first hand what the pow does.

Hugh Grierson: The bottom of the pow is beginning to silt up and the sides that are not stable are beginning to slip in. The more that that happens, the less water can escape from the valley and the higher the chance of flooding in the valley.

Jo Guest: I suspect that the reality is that it will take some time to sort out the discussions with SNH, which in turn will have to discuss the issue with the Scottish Government. If, next year, we can get back to cleaning the pow, that will probably be the priority. We want to catch up on the maintenance and then we can deal with the beaver issue. If £30,000 has to be raised, that will probably have to be spread over a couple of years.

Mary Fee: The potential cost implication for the heritors is pretty substantial.

Jo Guest: Yes, we know.

Mary Fee: Obviously, the committee would appreciate any further information that you can give us on your discussions with the Scottish Government.

Alastair McKie: The intention is to write formally to SNH after the meeting to ask for an update on progress and what it is doing on grant funding. Clearly it is a big issue for the commission.

Mary Fee: My next question is on debt recovery. When you came to the committee on 24 May, you gave us information on historical debt and your approach to collecting—or not collecting—it. For the record, will you confirm your understanding of the relevant provisions in the bill and the likely approach to debt recovery in practice? How will you determine what that will be?

Shirley Davidson: The commissioners met at a formal meeting on 15 August, when the matter was considered. The commissioners recognised that the householders who have been making payments may feel aggrieved, but it was agreed and minuted that the historical unpaids will be written off. That was felt to be a pragmatic approach in all the circumstances, which include the fact that the individual amounts in question are relatively small and it is possible that it would not be economical to incur the potential costs that would be involved in pursuing those sums.

Mary Fee: I understand that you have taken that approach in this case but, in future, a different set of commissioners might take a different approach. You need consistency in the way in which you manage the moneys that are collected.

Shirley Davidson: Are you talking about historical unpaids or new assessments under the bill?

Mary Fee: You need to future proof your approach. You need to have an understanding of how the commissioners will pursue any future debt. I understand the decision that you have made on how to handle historical debt, but what will happen in future if people do not pay?

Shirley Davidson: In future, if people do not pay, I believe that the commissioners would take court action for recovery.

Mary Fee: Do you just believe that, or do you believe it to be a fact?

Shirley Davidson: I believe it to be a fact.

Mary Fee: Okay—thank you.

Alison Harris: One of the policy issues that we covered in our previous evidence session was the need for good information for prospective purchasers about the financial obligations associated with the pow. You have stated support for a requirement for the land plans and amendments to them to be made publicly available, and we look forward to the bill being amended in that regard should it pass through the consideration stage. Likewise, would you support an amendment to the bill so that the register of heritors is publicly searchable if that could be done in a way that is compatible with data protection legislation?

Shirley Davidson: Yes.

Alison Harris: Good—that is enough.

Shirley Davidson: I can give you some thinking on that. We looked at data protection. The commissioners are willing to make the register of heritors publicly available. You will recall that on its website the Parliament redacted certain details that the commissioners had provided, presumably because it had concerns about data protection issues.

The commission is already registered as a data controller with the Scottish Information Commissioner. The Data Protection Act 1998 requires that personal data will be processed "fairly and lawfully" and will not be processed unless at least one of the conditions in schedule 2 to the 1998 act is met. One of those conditions is:

> "The processing is necessary for compliance with any legal obligation to which the data controller is subject".

If the new act requires the publication of the register of heritors, we assume that that condition will be met.

Mary Fee: How will you ensure that prospective purchasers are aware of their obligations regarding the pow?

Shirley Davidson: In the commission's view, there are satisfactory methods by which future purchasers will have the matter flagged up to them. In rural and semi-rural areas, it is recognised that it is not unusual for properties not to be connected to the public sewage system. In the case of the benefited properties here, the question of whether the property is connected to—or lies ex adverso to—the public drainage system is covered in the home report, the survey report, the standard missive and the property inquiry certificate. That question will—or certainly should—always produce the answer no. That alone, I would submit, puts the solicitor acting for the purchaser on notice that that solicitor should make the appropriate inquiries and advise their client accordingly.

The land certificates for all the houses in the Balgowan housing development set out in full the deed of conditions, which makes reference to a requirement to pay a share of the annual drainage levy to the Pow of Inchaffray Drainage Commission.

Property inquiry certificates are produced in the general course of a sale and purchase transaction. I have spoken to the local private searcher, which

most solicitors in Perthshire use, and to Millar & Bryce, which I think is the largest searcher covering Scotland. They have confirmed that in principle they would be more than happy to make specific reference to what will be the pow act if we provide the land plan, the addresses and the postcode or whatever of the properties and the land in question. That would assist.

It is absolutely the normal practice for solicitors to ascertain what the drainage position is. If they fail to do so or fail to adequately advise their clients of the position, clients can use a complaints procedure that is free to them, the availability of which must be brought to clients' attention according to Law Society rules.

Mary Fee: Given that each section of the pow has commissioners who represent it, would it be unreasonable to ask the commissioners to speak to owners who are moving in to explain the situation to them? I fully understand what you are saying, but buying a house involves a lot of things and not everyone checks every bit of fine print. A solicitor could miss something. Would it be unreasonable for the commissioners for each area to have almost an obligation to explain to purchasers that they are required to pay a share of the levy?

Jo Guest: Is there not something in the bill to say that a heritor remains responsible for the assessment until he gives formal notice to the incomer? He is going to be incentivised to tell the people, otherwise he will continue to be legally liable to pay the bill.

Shirley Davidson: That is right. That is another good point.

Hugh Grierson: We can provide information to those who seek it. The really hard part is getting out to the people who come in but do not know to come and speak to us. We can provide information to those who contact us; it is the responsibility for getting in touch that is the hard bit.

Mary Fee: To be fair, we are not talking about a town-sized housing development. The number of houses along the pow is fairly small, and commissioners represent different areas on the pow. For example, if another 10 houses were built on the Balgowan estate, the commissioners who live in that area would know that those 10 houses were being built and that 10 people were going to move in.

Jo Guest: That is fair enough.

Mary Fee: Or am I wrong?

Shirley Davidson: If they were new houses, that would not be much of a problem, because we would be notified if there was new development. However, I do not know how commissioners could keep tabs on the sale and purchase of flats.

Mary Fee: I return to the point that we are not talking about massive numbers of houses. We are talking about a fairly small number of houses, even if we include the existing housing stock moving to new owners.

Jo Guest: There is a Balgowan estate residents association, is there not?

Shirley Davidson: Yes.

Jo Guest: That might be a means by which the commissioners could be informed. We met the chairman.

Mary Fee: I suggest that you go away and think about that. You can then get back to us with some suggestions about how to make the communication a bit clearer.

Shirley Davidson: It is quite clear at the moment. I am not sure whether somebody would have to keep an eye on "For Sale" notices going up or removal vans coming round.

Mary Fee: Given the fairly small number of houses that are involved, I do not think that it is too onerous a responsibility to ask community councils or community groups to share their knowledge.

Jo Guest: It is likely that the Balgowan commissioners will be on the residents association and will know what is going on.

Mary Fee: Yes.

The Convener: Would the commissioners like to comment more generally on the actions that they will undertake to communicate with heritors in order to keep them informed of the work that the commission is doing? That was discussed at a previous evidence session, when reference was made to the potential for a website. I would be grateful if the commissioners or their representatives updated the committee on what action they will take to ensure that heritors are fully informed of all the work that the commission is undertaking.

Jo Guest: The website would be the logical place to provide information. It would contain information about the land plans, the list of heritors, the assessments and the minutes of meetings—they would all be on there. Communicating with heritors in that way would be much more efficient for us than sending out letters.

Alastair McKie: Establishing the website is a firm intention of the commissioners. If the bill proceeds and the committee were to amend it so that it required the full publication of the register of heritors, and if that register could be linked to the website, that would be an extremely good way of

raising the public profile of what the bill is about—what aims and ambitions it will achieve and what the charges will be. That would be of benefit.

The Convener: Can we look forward to a Pow of Inchaffray Drainage Commission Facebook page or Twitter account?

Alastair McKie: Possibly.

The Convener: There are no further questions from members.

Alastair McKie: I have a few short additional comments to make, if that is possible.

The Convener: Certainly.

Alastair McKie: They will not take long.

The commissioners have additional comments to make with regard to today's questions and the points that have been made generally in objection to the bill. The function of the pow is to drain an area of approximately 1,930 acres of land. That drainage function directly benefits agricultural, commercial and residential land in the benefited area through flood alleviation, surface drainage and foul drainage.

11:00

It is important to observe that the commissioners act on a voluntary, not-for-profit basis, and their proposed function under the bill will be to repair, maintain, renew and improve the pow for the benefit of all affected proprietors across its four sections. The commissioners have made approaches to Perth and Kinross Council, Scottish Water and SEPA, none of which is prepared to take over responsibility for the pow.

The arrangements under the 1846 act require updating to take account of changing circumstances, including the construction of residential properties on part of the benefited land at Balgowan. The bill, which has been the subject of significant public consultation, will update a number of arrangements, particularly for the calculation of the annual assessment that is payable by all heritors.

The bill has raised a number of issues, particularly with regard to residential properties. Residents have concerns about the benefit that they consider that they receive from the pow and about the arrangements for and the level of annual assessments. All residential properties benefit directly from the pow, which enables them to have surface water drainage and foul drainage, and which enables some to have flood alleviation. Permission would not have been granted for the residential properties without the opportunity for drainage of surface water and foul water, which ultimately goes into the pow. In addition to the individual septic tanks that drain into the pow, I believe that the committee saw during its site visit the waste water treatment plant for the new development at Balgowan, which drains into the pow.

As we have indicated in evidence, the commissioners do not consider that the annual assessment should be subject to a cap or limit. Although no capital expenditure is foreseen other than that for the provision of two beaver gates, the imposition of a cap would in practice place an unworkable and unacceptable limitation on the work of the commissioners in their repair, maintenance, renewal and improvement of the pow. Such a cap would mean that the bill was not future proofed, in circumstances where it must be.

On anticipated costs, we heard in evidence today that the beaver gates will cost about £42,000 to install, including the costs of any informal or formal arrangement with the landowners. The provision of the beaver gates is a concern for the committee and for the commission. It is an item of extraordinary expenditure that, although it is necessary to protect the pow, is not of the commissioners' making; it is a consequence of policies and legislation that require the reintroduction and protection of beavers, and an exclusion area for beavers, which I think is the first in Scotland. It is considered important that SNH considers making sufficient grants available to pay for those works, and we will write to SNH shortly after this meeting to follow up on its deliberations about grant funding and its meeting with the Scottish Government.

I now wish to concentrate on the amendments to the bill that the commissioners are prepared to offer for the committee's consideration to address its concerns. I believe that the proposed amendments would provide heritors—particularly the Balgowan heritors—with additional statutory protections.

The first amendment would allow for up to two commissioners to represent the Balgowan section of the benefited land. As the number of commissioners would increase from seven to eight, we would need to increase the quorum at meetings of the commission from three to four, to ensure that 50 per cent of the commissioners—four of the eight—formed a quorum.

The commissioners are minded to offer an amendment to allow a simple majority of the heritors of a particular section to dismiss a commissioner, but in relation only to their particular section.

The commissioners are prepared to offer an amendment to allow objectors to the annual assessment a formal right to comment on it—the 21-day period that we talked about. That would be

backed by our reference to an independent surveyor, which we discussed.

We will also offer an amendment to make it clear that, when heritors cease to be heritors, or when commissioners cease to be heritors, they cannot be commissioners.

Further, we will offer for the committee's consideration an amendment that would require the full register of heritors to be publicly available. That would match nicely with the website, when that comes forward, and would enable the requirements of the Data Protection Act 1998 to be met.

The commissioners have carefully considered the position on historical debt and have agreed that the historical unpaid assessments should be written off. That was considered to be a pragmatic approach, as the individual assessments are relatively small, and it is possible that it would not be cost effective to recover those assessments in any event.

The purpose of the bill is to update the arrangements in the 1846 act by establishing fair, straightforward and future-proofed procedures that will allow the maintenance, repair, renewal and improvement of the pow for generations to come.

The Convener: I thank the witnesses for attending. We will suspend briefly to allow them to leave.

11:05

Meeting suspended.

11:06

On resuming—

The Convener: The next agenda item is for the committee to give preliminary consideration to the three admissible objections that were lodged.

We will consider each of the three objections in turn and come to a view on whether the committee believes that each objection clearly demonstrates that the objector's interests are adversely affected by the bill. If we do not believe that to be the case, the objection will be rejected. Any objections that are not rejected will be considered in full at consideration stage, should the bill reach that stage. All objectors will be informed of the outcome of the process after the meeting.

First, we will consider the objection from Gareth Bruce. Are we content to let it progress to consideration stage?

Members *indicated agreement.*

The Convener: Next, we will consider the objection from Mr and Mrs Bijum. Are we content to let it progress to consideration stage?

Members *indicated agreement.*

The Convener: Finally, we will consider the objection from Tom Davies. Are we content to let it progress to consideration stage?

Members *indicated agreement.*

The Convener: As the next item is in private, the public business of the committee is concluded. The committee's next meeting will be on Wednesday 25 October at 11 am and will be in private to consider our draft preliminary stage report.

11:07

Meeting continued in private until 11:37.

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