



The Scottish Parliament  
Pàrlamaid na h-Alba

**POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL  
COMMITTEE**

**AGENDA**

**7th Meeting, 2018 (Session 5)**

**Wednesday 26 September 2018**

The Committee will meet at 12 noon in the Sir Alexander Fleming Room (CR3).

1. **Pow of Inchaffray Drainage Commission (Scotland) Bill:** The Committee will consider the merits of the two objections to amendment 9 lodged to the Bill.
2. **Pow of Inchaffray Drainage Commission (Scotland) Bill (in private):** The Committee will consider a draft second Consideration Stage report.

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The papers for this meeting are as follows—

**Agenda item 1**

Clerk's Cover Note

POI/S5/18/7/1

**Agenda item 2**

Draft Second Consideration Stage Report (Private Paper)

**Pow of Inchaffray Drainage Commission (Scotland) Bill Committee**

**7th Meeting, 2018 (Session 5), 26 September 2018**

**Consideration Stage – phase two**

**Evidence on objections to amendment 9**

**Background**

1. Preliminary Stage was completed in November 2017 and the Bill proceeded to Consideration Stage.
2. The purpose of Consideration Stage is to consider the detail of the Bill. In this instance, the Stage consists of two distinct phases. The first phase involved the consideration of further evidence submitted and the Committee meeting in a quasi-judicial capacity to consider and dispose of the objections to the Bill. The second phase involves the consideration of the amendments lodged to the Bill, and of objections lodged to the identified amendment (see below) and to consider each section, schedule, and the long title of the Bill.
3. Once Consideration Stage has been completed the Bill will proceed to Final Stage, which consists of the Parliament considering any further amendments lodged and then deciding whether to pass the Bill.

**Phase two - amendments and detailed consideration of the Bill**

4. Following the consideration and disposal of the three objections to the Bill<sup>1</sup>, members of the Committee could lodge amendments to the Bill, with a deadline of 18 June 2018. Fifteen amendments<sup>2</sup> were lodged in total, all by the Convener on behalf of the promoters.

*Screening of amendments*

5. Before proceedings on amendments could begin (consideration of amendments and agreement of each section of the Bill and the long title), the Committee conducted a two-stage screening process. Firstly, it considered whether any of the amendments lodged adversely affected private interests. The Committee determined that amendment 9, which relates to the new land plans submitted to Parliament in May 2018 (replacing those submitted when the Bill was introduced) adversely affected private interests. The Committee came to this view because the new land plans result in new heritors being identified and required to pay an annual assessment, and to at least one other annual assessment being increased compared to the assessment under the previous land plans.

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<sup>1</sup> See details in the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee's Consideration Stage Report. Available at: <https://digitalpublications.parliament.scot/Committees/Report/POI/2018/5/24/Pow-of-Inchaffray-Drainage-Commission--Scotland--Bill---Consideration-Stage-Report#Introduction>.

<sup>2</sup> Pow of Inchaffray Drainage Commission (Scotland) Bill. Amendments lodged at Consideration Stage. Available at: [http://www.parliament.scot/Pow%20of%20Inchaffray%20Drainage%20Commission%20\(Scotland\)%20Bill/Daily\\_List\\_15\\_June.pdf](http://www.parliament.scot/Pow%20of%20Inchaffray%20Drainage%20Commission%20(Scotland)%20Bill/Daily_List_15_June.pdf).

6. The Committee then considered whether amendment 9 had sufficient merit that there was a possibility of it being agreed to after further scrutiny, and agreed that it did.

7. Amendment 9 states—

*In section 27, page 9, line 23, leave out <with the Bill for this Act> and insert <in the Office of the Clerk of the Parliament on 3 May 2018>*

8. The effect of the amendment is to ensure that the land plans used for the Bill, which show the land which benefits from the Pow, are those which were submitted on 3 May 2018, and not those submitted when the Bill was introduced on 17 March 2017. The promoter's estimates of how this is likely to affect annual assessments can be viewed online<sup>3</sup>.

9. As the Committee decided that amendment 9 adversely affects private interests and has the sufficient merit described, the formal proceedings on amendments have been put on hold to allow for a notification and objection process.

10. The deadline for objections was Monday 20 August 2018.

#### *Objections to amendment 9*

11. Two admissible<sup>4</sup> objections were received to amendment 9. These can be seen online<sup>5</sup> and are reproduced at Annexe A for ease of reference.

12. The Committee took evidence on the objections from the objectors and the promoters of the Bill on 12 September 2018.<sup>6</sup>

13. Following the meeting, the Committee received supplementary written submissions from Mr and Mrs Watkins and from the promoters of the Bill. These can be seen online<sup>7</sup> and at Annexe B.

14. The Committee has also received a letter from the Minister for Energy, Connectivity and the Islands<sup>8</sup>, with some observations on the amendments.

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<sup>3</sup> Pow of Inchaffray Drainage Commission. Schedule of Heritors – residential and commercial – based on plot size (19 June 2018). Available at: [http://www.scottish.parliament.uk/S5PrivateBillsProposals/Schedule\\_of\\_Heritors\\_\(Plot\\_Area\)\\_19062018.pdf](http://www.scottish.parliament.uk/S5PrivateBillsProposals/Schedule_of_Heritors_(Plot_Area)_19062018.pdf).

<sup>4</sup> For details of the criteria for the admissibility of objections to amendments see the Guidance on Private Bills (May 2017), available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/79081.aspx>.

<sup>5</sup> Pow of Inchaffray Drainage Commission (Scotland) Bill. Objections lodged at Consideration Stage to amendment 9, available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/104909.aspx>.

<sup>6</sup> Pow of Inchaffray Drainage Commission (Scotland) Bill Committee. Official Report, 12 September 2018. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11664>.

<sup>7</sup> Pow of Inchaffray Drainage Commission (Scotland) Bill Committee. Written submissions. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/104907.aspx>.

<sup>8</sup> Letter from the Minister for Energy, Connectivity and the Islands, to the Convener of the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee (11 September 2018).

The Convener replied to the letter to thank the Minister and note that the letter has been sent to the promoters for consideration.<sup>9</sup>

15. The Committee will reach a decision on the merits of each objection at its meeting on 26 September 2018. Each objection may be accepted (in whole or in part) or rejected. The Committee has agreed to publish a second Consideration Stage report to explain its decisions.

### **Remaining provisional Consideration Stage timetable**

26 September          Consideration of the merits of the two objections lodged to amendment 9

   Consideration of a second Consideration Stage report.

*The Parliament is in recess from 6-21 October*

24 October              Consideration of any amendments and consideration of the sections, schedules and Long Title of the Bill.

### **Clerk**

### **Pow of Inchaffray Drainage Commission (Scotland) Bill**

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Available at:

[http://www.scottish.parliament.uk/S5PrivateBillsProposals/Letter\\_from\\_Minister\\_20180911\(1\).pdf](http://www.scottish.parliament.uk/S5PrivateBillsProposals/Letter_from_Minister_20180911(1).pdf).

<sup>9</sup> Letter from the Convener of the Pow of Inchaffray Drainage Commission (Scotland) Bill Committee to the Minister for Energy, Connectivity and the Islands (13 September 2018).

Available at:

[http://www.scottish.parliament.uk/S5PrivateBillsProposals/20180913\\_Letter\\_from\\_the\\_Convener\\_to\\_Paul\\_Wheelhouse.pdf](http://www.scottish.parliament.uk/S5PrivateBillsProposals/20180913_Letter_from_the_Convener_to_Paul_Wheelhouse.pdf).

## Annexe A

**OBJECTIONS LODGED TO AMENDMENT 9 PROPOSED TO THE POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL AT CONSIDERATION STAGE**

**OBJECTION 1- MR AND MRS K WATKINS**

Re: Objections to Amendment 9: Pow of Inchaffray Drainage Commission (Scotland) Bill

We are the owners of the property known as Inchaffray Abbey [address supplied] (“our property”) which is affected by the proposed Amendment 9 to the Bill. Although our property is known as Inchaffray Abbey, we do not own the actual Abbey site which may have caused some confusion with respect to land area assessment. Our land surrounds the Abbey site and the majority of it together with the Abbey ruins have been designated a Scheduled Monument.

By a letter dated 7th June we were informed by the solicitors for the Promoters that the effect of Amendment 9 to the Bill would be to increase our annual payment for maintenance of the Pow drainage from £276 plus VAT to £1,379 plus VAT (or £1654.80). This was the first time the Promoters had clearly set out the scale of increase affecting our property and came as a complete shock to us.

We wish to make the following objections:

**1. The Area of our property has been incorrectly calculated.** The Abbey site occupies 0.5 Acre. The area owned by us should therefore be reduced to 2.31 Acres (2.81- 0.5).

**2. Most of the land has been wrongly categorised.**

a) A copy of the original planning permission granted by Perth and Kinross Council dated 2-9-1986 stipulated “*the house site shall be restricted to 0.1 hectare (i.e. 0.247 Acre) and “no agricultural or Industrial development will be permitted on the site or in the immediate vicinity of the Abbey”* [Appendix supplied and available at this link:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/104907.aspx>]

The reason given was:

*“In the interests of amenity and in order to protect the setting of Inchaffray Abbey which is a category B listed building of Architectural or Historic Interest and is a Scheduled Monument of national importance.”*

b) Historic Environment Scotland have designated the Abbey site and surrounding land as a Scheduled Monument (see Appendix 1 scheduled area outlined in red). It is protected by the Ancient Monuments and Archaeological Areas Act 1979 and hence the prospect of any of our land being developed, residentially or otherwise, is

remote. The categorisation of the land as residential rather than amenity bears no relationship to fact.

Despite the Scheduling of our property and the clear reference in the planning permission to the residential aspect being restricted to 0.247 acres, the remainder being limited for amenity reasons, the Commissioners have incorrectly categorised the property as wholly residential. The correct categorisation would be 0.247 acres residential with 2.063 as amenity land.

**3. Our private interests will be affected** as the increased financial burden is considerable. We are, unlike the farming operations along the route, unable to reclaim VAT so the actual cost to us would be £1654.80 per annum.

**4. Amendment 9 to the Bill would seem to penalise heritors with large gardens** but not anyone with agricultural land. We note that none of the agricultural lands have had such a massive increase in their annual costs for drainage and that the farm land's practical benefit for profit far outweighs that of a garden.

**5. Assumed value for residential land is overstated.**

6. The Bill does not seem to provide for a resolution of disputes by an impartial tribunal, this is brought into sharp relief by the mis-categorisation of land referred to above.

## **OBJECTION 2 - MR I AND MRS K MACGREGOR**

1. We, Mr I & Mrs K Macgregor, residing at 'Centre Cottage, Nethermains of Gorthy, [exact address supplied], hereby object to amendment 9 of the 'Pow of Inchaffray Drainage Commission (Scotland)' Bill being promoted by The Pow of Inchaffray Drainage Commission (Scotland).

2. Our interests would be adversely affected by the amendment to the Bill because it would impose an additional financial burden onto our household.

3. Our grounds of objection are as follows.

1. We do not believe that our property at Nethermains of Gorthy is situated on "benefited land." Our property is dated circa 1852 (information obtained from the National records of Scotland who stated that there were no accurate records of construction dates from that period) and although not on the map dated 1846 it does appear on the map dated 1856 (Quote from 'POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL COMMITTEE 2nd Meeting 2017, Session 5' at page 3/4, 10:15, para 2 states:-

*"In 1846, there were no buildings on the benefited area."*

If our house was indeed built in or around 1846, after the survey for the map of that time, then it must surely have been built on land which was suitable and not named as benefited.

2. Our property was an addition to the original farm layout shown on the map dated 1846 and lies approximately 10 metres to the south of the original farm buildings. All these buildings are built on an elevated piece of land with a noticeable drop into the agricultural land surrounding the property to the immediate south of the boundary. There has been a further two houses built on this elevated land around 1900 and 1930.
3. The original farm buildings are now a residential home known as 'The Steading' and are owned by Mr and Mrs J Tait. Mr Tait who is a retired Civil Engineer has conducted a detailed survey of the land from Pow Water to the boundaries of the properties at Nethermaines of Gorthy. Mr and Mrs Tait will be submitting a letter of concern with the findings of their survey and we ask that you refer to their findings to substantiate our objection.
4. After receiving a letter from McCash & Hunter dated 07 June 2018 we were informed that our home had been added to a list of properties. This list shows properties which are 'allegedly' located within the land area which benefits from the drainage provided by the Pow of Inchaffray ("benefited land"). This letter also invited interested parties to attend the public meeting to be held on 25 June 2018. At this meeting we asked the question "What is the formal definition of "benefited land"? No verbal or documented definition was given and the question has somehow been omitted from the formal minutes which were taken at the meeting. We therefore would like to ask again "What is the definition of "benefited land"? And why after some 170 years have our properties been proposed to be added to this area?
5. During the public meeting held on 25 June 2018, it was consistently emphasised that this bill was in relation to a 'drainage scheme' and did not cover flood prevention; however, the quote at page 19/20, 11:00, para 3 from the 'POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL COMMITTEE 4th Meeting 2017, Session 5' shown below, clearly mentions that this is also flood alleviation.

*"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."*



6. We can find no justification as to why our property should be considered to be part of this drainage scheme when it drains directly into the Downie Burn, a natural watercourse, and not the Pow. The water course we refer to as the Downie Burn has been named as such on maps dating back to before 1863, however the Pow of Inchaffray Drainage Commission refer to this watercourse as the Carsehead Mile.
7. We ask why maps dating back 170 years are being used to define the boundaries of “benefited land” and to their accuracy and why a survey has not been commissioned to see which properties indeed do benefit. These old maps show field boundaries, water courses, buildings and a very limited number of contours and therefore do not show that our property is built on an elevated piece of land, some 17 feet above the lower level of the Pow (this figure was obtained during Mr Tait’s survey). We therefore formally request that Mr Tait’s survey be taken into account to determine whether or not our property lies within the area referred to as “benefited land”.

## **Annexe B**

### **Written submission from Mr and Mrs K Watkins, following the Pow of Inchaffray Drainage Commission Scotland (Bill) Committee meeting on 12 September 2018**

We [want] to clarify a point which we feel the Promotors did not take on board as they were talking amongst themselves whilst Ken was speaking.

The unscheduled land to the west of our house has significant archaeological evidence underground (we refer in particular to Area 1 of the investigative report by Gordon Ewart Proc Soc Antiquaries Scot 126(1996) 469 to 516 which we had omitted to copy for everyone, but can be accessed on line.) On 7th Sept 2018 we visited Historic Environment Scotland and discussed this with a Senior Designations Officer, Mr Rory Macdonald. The archaeological artefacts that are in the unscheduled area he felt should remain undisturbed, as they were part of the Monastery outbuildings, and reminded us that damage to the Archaeology was a criminal offence.

The above evidence reinforces our argument that the land should not be classified as part of an “unserviced development site at an assumed value of 300,000.00 per acre” but classified as Amenity land; we are not sure this came across clearly at the time?

Due diligence seems to have been lacking on many aspects of the proposed Bill. If any of the Commissioners had approached us, all this time and effort spent on the redrafting plans together with the Residential, Commercial and Agricultural inaccuracies on the spreadsheets, may have been avoided.

**Written submission by Hugh Grierson, Commissioner, on behalf of the promoters of the Pow of Inchaffray Drainage Commission (Scotland) Bill, 18 September 2018**

Following Mr and Mrs Watkins suggestion that the boundary of scheduled monument was not shown accurately on our plans, Mr Willet has discussed the boundary with Historic Environment Scotland (HES) who have now provided digital data. We are now able to present a definitive boundary of the scheduled monument. It had previously proved difficult to plot accurately due to the lack of definition shown on the downloadable plans provided by HES.

I attach the updated plan [see below] and also the updated Schedule of Heritors [available here:

[http://www.scottish.parliament.uk/S5PrivateBillsProposals/Redacted\\_Schedule\\_of\\_Heritors\\_Valuation\\_130918\\_\(plot\\_value\).xlsx](http://www.scottish.parliament.uk/S5PrivateBillsProposals/Redacted_Schedule_of_Heritors_Valuation_130918_(plot_value).xlsx)].

As a matter of courtesy, Mr Willet met with Mr and Mrs Watkins to advise them of this change as the area of residential land has been expanded which has resulted in an increase in their assessment.

To summarise: The residential area of Mr and Mrs Watkins' property has been increased from 0.855ac to 1.049ac. This has increased their assessment to £538.11.

We would also like to respond to Mr Watkin's letter to committee. Whilst it is regrettable that Mr and Mrs Watkins do not consider that the point they were making has been given the priority they considered it should have by the Promoter, it was never the less carefully considered and the promoter thanks them for their clarification.

The area within the Watkins' garden ground subject to scheduling under Ancient Monuments and Archaeological Act 1979 has particular and significant protection. The letter from Historic Scotland dated 14 February 2000 submitted by Mr and Mrs Watkins at the Committee Meeting held on 12 September 2018 grants Ancient Monument consent for certain works. This letter demonstrates that works can be carried out provided that they do not result in detriment to the historic, archaeological or architectural integrity of the monument.

The Promoter has sought to take a reasonable approach to Mr and Mrs Watkins property by recognising that the monument does present a significant constraint to development and has thus excluded it as garden ground for the purpose of the assessment. This is shown on the latest plan that has been submitted. The Promoter is content for the area of Mr and Mrs Watkins garden that is subject to the scheduling to be considered as amenity land and thus a nil assessment. The commissioners invited interaction with all heritors and actively engaged in discussion when possible. Mr and Mrs Watkins were present at the public meeting on the 25th June at Gask Village Hall at which point they were invited to meet with Savills to discuss the redrafting of the plans further. Regrettably, this invitation was not taken up by Mr and Mrs Watkins.

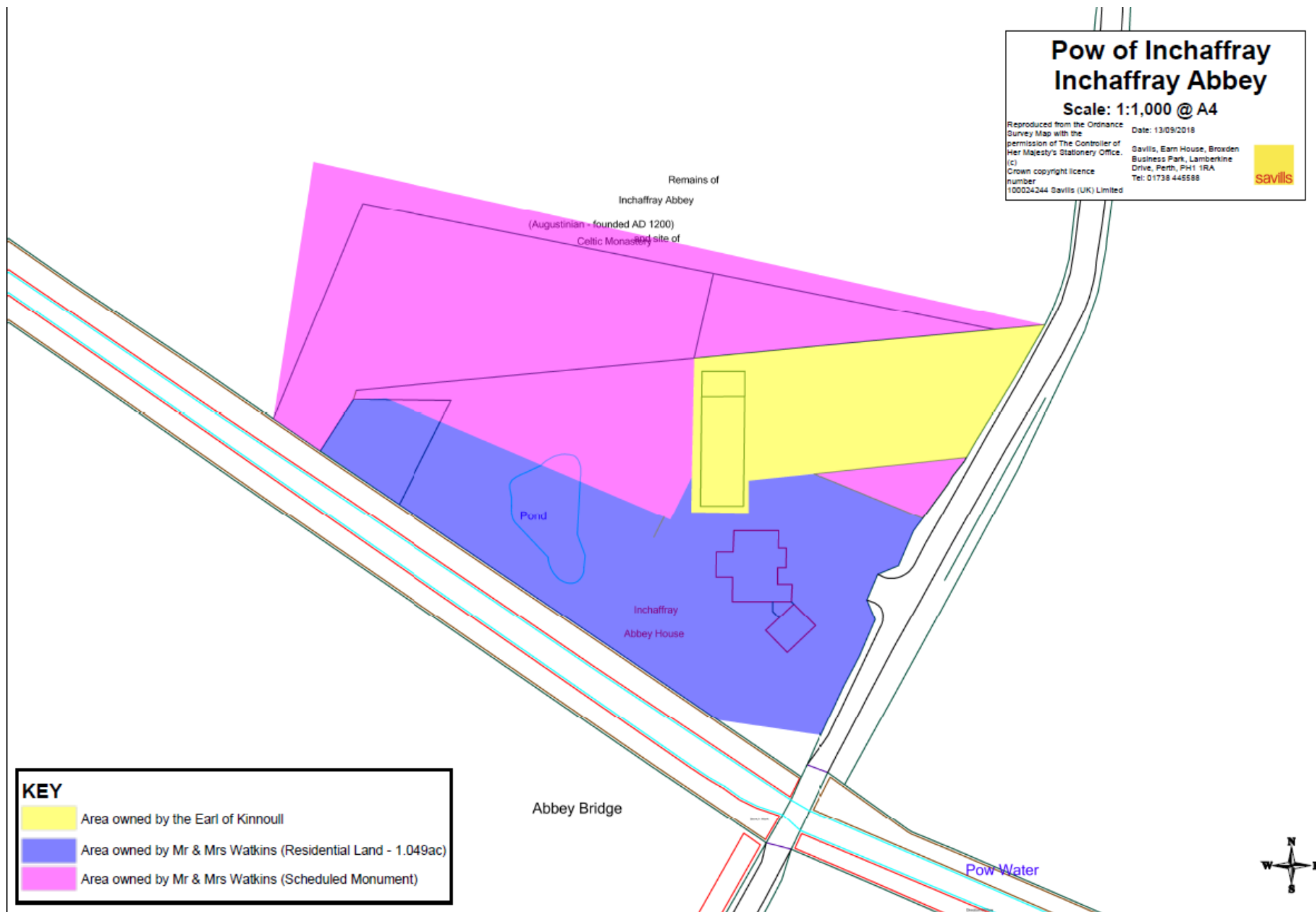
# Pow of Inchaffray Inchaffray Abbey

Scale: 1:1,000 @ A4

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## KEY

- Area owned by the Earl of Kinnoull
- Area owned by Mr & Mrs Watkins (Residential Land - 1.049ac)
- Area owned by Mr & Mrs Watkins (Scheduled Monument)