



Notice is hereby given that a Meeting of the Regulatory and Consents Committee will be held on:

**Date:** Thursday, 26 April 2018  
**Time:** 9am  
**Meeting Room:** Council Chamber  
**Venue:** 15 Forth Street, Invercargill

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## **Regulatory and Consents Committee Agenda OPEN**

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### **MEMBERSHIP**

<b>Chairperson</b>	Gavin Macpherson Mayor Gary Tong
<b>Councillors</b>	Brian Dillon Paul Duffy Darren Frazer Julie Keast Neil Paterson

### **IN ATTENDANCE**

<b>Group Manager, Environmental Services</b>	Bruce Halligan
<b>Committee Advisor</b>	Alyson Hamilton

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**Full agendas are available on Council's Website**  
**[www.southlanddc.govt.nz](http://www.southlanddc.govt.nz)**

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**Note:** The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.



## **Terms of Reference – Regulatory and Consents Committee**

The Regulatory and Consents Committee is responsible for overseeing the statutory functions of the Council under the following legislation (but not limited to the following):

- Resource Management Act 1991
- Health Act 1956
- Food Act 2014
- Dog Control Act 1996
- Sale and Supply of Alcohol Act 2012
- Heritage New Zealand Act Pouhere Taonga Act 2014
- Building Act 2004
- Freedom Camping Act 2011
- Psychoactive Substances Act 2013
- Impounding Act 1955
- Southland Land Drainage Act 1935
- Southland Land Drainage Amendment Act 1938

The Regulatory and Consents Committee is delegated the authority to undertake the following functions in accordance with the Council's approved delegations register:

- (a) Maintain an oversight of the delivery of regulatory services;
- (b) Conduct statutory hearings on regulatory matters and undertake and make decisions on those hearings (excluding matters it is legally unable to make decisions on as legislated by the Resource Management Act 1991);
- (c) Appoint panels for regulatory hearings;
- (d) Hear appeals on officer's decisions to decline permission for an activity that would breach the Southland District Council Control of Alcohol Bylaw 2015;
- (e) Approve Council's list of hearings commissioners (from whom a commissioner can be selected) at regular intervals and the Chief Executive Officer be authorised to appoint individual Commissioners for a particular hearing;
- (f) Make decisions on applications required under the Southland District Council's Development and Financial Contribution Policy for remissions, postponements, reconsiderations and objections;
- (g) Approve Commissioners and list members under the Sale and Supply of Alcohol Act 2012;
- (h) Exercise the Council's powers, duties and discretions under the Sale of Liquor Act 1989 and the Sale and Supply of Alcohol Act 2012;
- (i) Hear objections to officer decisions under the Dog Control Act 1996.
- (j) Hear objections and decide on matters under the Southland Land Drainage Act 1935 and Southland Land Drainage Amendment Act 1938.

The Regulatory and Consents Committee shall be accountable to Council for the exercising of these powers.

The Regulatory and Consents Committee is responsible for considering and making recommendations to Council regarding:

- (a) Regulatory policies and bylaws for consultation;
  - (b) Regulatory delegations;
  - (c) Regulatory fees and charges (in accordance with the Revenue and Financial Policy)
  - (d) Assisting with the review and monitoring of the District Plan.
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**1 Apologies**

At the close of the agenda no apologies had been received.

**2 Leave of absence**

At the close of the agenda no requests for leave of absence had been received.

**3 Conflict of Interest**

Committee Members are reminded of the need to be vigilant to stand aside from decision-making when a conflict arises between their role as a member and any private or other external interest they might have.

**4 Public Forum**

Notification to speak is required by 5pm at least two days before the meeting. Further information is available on [www.southlanddc.govt.nz](http://www.southlanddc.govt.nz) or phoning 0800 732 732.

**5 Extraordinary/Urgent Items**

To consider, and if thought fit, to pass a resolution to permit the committee to consider any further items which do not appear on the Agenda of this meeting and/or the meeting to be held with the public excluded.

Such resolution is required to be made pursuant to Section 46A(7) of the Local Government Official Information and Meetings Act 1987, and the Chairperson must advise:

- (i) the reason why the item was not on the Agenda, and
- (ii) the reason why the discussion of this item cannot be delayed until a subsequent meeting.

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

"Where an item is not on the agenda for a meeting,-

- (a) that item may be discussed at that meeting if-
  - (i) that item is a minor matter relating to the general business of the local authority; and
  - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion."

**6 Confirmation of Minutes**

6.1 Meeting minutes of Regulatory and Consents Committee, 07 March 2018



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## Regulatory and Consents Committee

### OPEN MINUTES

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Minutes of a meeting of Regulatory and Consents Committee held in the Council Chambers, 15 Forth Street, Invercargill on Wednesday, 7 March 2018 at 1pm.

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#### PRESENT

<b>Chairperson</b>	Gavin Macpherson	
	Mayor Gary Tong	
<b>Councillors</b>	Brian Dillon	
	Paul Duffy	
	Darren Frazer	Left the meeting @ 1.30pm
	Julie Keast	

#### IN ATTENDANCE

Councillor Kremer, Group Manager Environmental Services, (Bruce Halligan), Team Leader, Building Solutions (Michael Marron), Team Leader, Resource Management (Marcus Roy), Communications Manager, (Louise Pagan) and Committee Advisor, (Alyson Hamilton).

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**1 Apologies**

There were apologies for absence from Councillor Patterson and an apology for an early departure from Councillor Frazer.

**Resolution**

Moved Chairperson Macpherson, seconded Cr Keast and **resolved:**

**That the Regulatory and Consents Committee accept the apologies.**

**2 Leave of absence**

There were no requests for leave of absence.

**3 Conflict of Interest**

There were no conflicts of interest declared.

**4 Public Forum**

There was no public forum.

**5 Extraordinary/Urgent Items**

There were no Extraordinary/Urgent items.

**6 Confirmation of Minutes**

**Resolution**

Moved Cr Frazer, seconded Cr Keast and **resolved:**

**That the minutes of Regulatory and Consents Committee meeting held on 16 November 2017 be confirmed as a true and correct.**

**Reports**

**7.1 Environmental Services Group Update report for 7 March 2018 Regulatory and Consents Committee meeting**

**Record No: R/18/2/3169**

Group Manager, Environmental Services (Bruce Halligan) was present for this item.

Mr Bruce Halligan introduced Julie Conradi a new member of the Environmental Services Group to the meeting and explained her role of Quality Assurance within Council.

**Resolution**

Moved Cr Dillon, seconded Mayor Tong **and resolved:**

**That the Regulatory and Consents Committee:**

- a) **Receives the report titled “Environmental Services Group Update report for 7 March 2018 Regulatory and Consents Committee meeting” dated 28 February 2018.**

Councillor Frazer left the meeting at 1.30pm.

**7.2 Dangerous, Affected and Insanitary Buildings Policy**

**Record No: R/18/2/3517**

Policy Analyst, (Robyn Rout) and Team Leader, Building Solutions (Michael Marron) were present for this item.

**Resolution**

Moved Cr Duffy, seconded Cr Keast **and resolved:**

**That the Regulatory and Consents Committee:**

- a) **Receives the report titled “Dangerous, Affected and Insanitary Buildings Policy” dated 28 February 2018.**
- b) **Determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.**
- c) **Determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the Act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.**
- d) **Notes the legislative changes to the Building Act 2004 that makes the parts of the current ‘Earthquake-Prone and Insanitary Buildings Policy’ that relate to earthquake-prone buildings, obsolete.**
- e) **Considers the draft Dangerous, Affected and Insanitary Buildings Policy 2018 and provides feedback.**
- f) **Recommends that the draft Dangerous, Affected and Insanitary Buildings Policy 2018 be adopted for consultation by Council.**

The meeting concluded at 1.45pm

CONFIRMED AS A TRUE AND CORRECT RECORD AT A  
MEETING OF THE REGULATORY AND CONSENTS  
COMMITTEE HELD ON WEDNESDAY, 7 MARCH 2018.

**DATE:**.....

**CHAIRPERSON:**.....



## Application under Southland Land Drainage Act 1935 - Mr Kevin Woolhouse

Record No: R/18/1/4

Author: Bruce Halligan, Group Manager Environmental Services

Approved by: Steve Ruru, Chief Executive

☒ Decision

☐ Recommendation

☐ Information

### Purpose

- 1 An application has been received from Mr Kevin Woolhouse, via Preston Russell Law, seeking that Council exercises its powers under the Southland Land Drainage Act 1935 to require his neighbour, Mr Logan Pullar, to undertake physical works on Mr Pullar's property in order to improve drainage on Mr Woolhouse's property.

### Executive Summary

- 2 Mr Woolhouse owns property at 102 Talbot Road, Te Anau. Mr Pullar owns the adjoining property to the west/south, with the parent property being 643 Kakapo Road.
- 3 Mr Woolhouse, via his solicitors Preston Russell Law, has alleged that Mr Pullar has undertaken physical actions and a lack of drainage maintenance which have led to regular extensive flooding of Mr Woolhouse's property as water is unable to drain away to the south-west. Mr Woolhouse considers that this is having an adverse effect on his farm productivity.
- 4 Mr Woolhouse had sought that the Council requires immediate remedial action from Mr Pullar to address this situation, in accordance with the Council's powers under Section 7 of the Southland Land Drainage Act 1935.
- 5 The Southland Land Drainage Act 1935 is a local Act which is more than 80 years old which has never been repealed.
- 6 The purpose of this Act is specified as "*An Act to make better provision for land drainage within the Counties of Southland and Wallace*". The empowering provisions of the Local Government Act and associated transitional provisions from the 1989 local government reorganisation mean that these powers under the Southland Land Drainage Act have transferred from the former Wallace County Council to the Southland District Council.
- 7 It is understood that this application follows several years of dialogue between the parties over drainage issues, which has also involved Environment Southland.
- 8 Hence, rather than requiring immediate action from Mr Pullar as requested by Mr Woolhouse, the Council responded to Mr Woolhouse to indicate that the intended course of action was to proceed to a hearing.
- 9 This course of action is to enable both parties to have an opportunity to present their respective perspectives on the matter. Mr Woolhouse eventually agreed to this course of action and has paid the required hearing deposit.

## Recommendation

### That the Regulatory and Consents Committee:

- a) **Receives the report titled “Application under Southland Land Drainage Act 1935 - Mr Kevin Woolhouse” dated 16 April 2018.**
- b) **Determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.**
- c) **Determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the Act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.**
- d) **Makes the decision it considers appropriate with respect to its powers under the Southland Land Drainage Act 1935, having heard all relevant information from the respective parties involved, and having received relevant technical advice from Environment Southland.**

## Background

- 10 Mr Kevin Woolhouse owns a rural property at 102 Talbot Road, east of Te Anau Township.
- 11 His adjacent neighbour to the west and south is Mr Logan Pullar. The parent address for Mr Pullar’s property is 643 Kakapo Road and the more southerly section being 700 Kakapo Road.
- 12 A locality plan illustrating the respective properties is attached as **Attachment A**.
- 13 Mr Woolhouse has applied, via his solicitor Preston Russell Law, for Council to exercise its statutory powers under the Southland Land Drainage Act 1935 to require Mr Pullar to undertake various physical works; in order to address what Mr Woolhouse considers to be adverse effects on his property due to impediment of drainage. The actions requested to be required are outlined specifically in the letter from Mr Woolhouse’s solicitor dated 6 December 2017 attached in **Attachment B**.
- 14 The Southland Land Drainage Act is a relatively aged local statute, dating from 1935. As referred to above, powers held by the former Wallace County Council in relation to this statute have transferred to the Southland District Council via the 1989 Local Government reorganisation transition arrangements.
- 15 This statute dates from the era when extensive land development work was being undertaken throughout Southland to bring land into agricultural production, with associated drainage works.
- 16 In more recent years, the Southland District Council has had only very sporadic involvement with the Southland Land Drainage Act 1935, and the author can recall no recent hearings under this Act.



- 17 Generally, where the Council has been more recently involved with the Southland Land Drainage Act, it has been via Community (former Area) Engineers, and this involvement has generally taken the form of seeking to facilitate local/on site agreements between parties.
- 18 Mr Woolhouse has supplied various pieces of correspondence to support his request for Council action. This correspondence, and Council's responses, are attached in **Attachment B** to this report.
- 19 As can be seen, Mr Woolhouse had initially sought that the Council takes immediate action to require Mr Pullar to undertake immediate physical work, although the extent of this was reasonably loosely defined. The author responded on behalf of the Council seeking further clarification of Mr Woolhouse's request and indicating that the Council would not immediately take the action that he requested, but rather would propose a hearing of the matter so that both parties could present their respective perspectives, as there are usually "two sides to the story".
- 20 As can be seen, the Council correspondence also suggested that an alternative to proceeding to a hearing on this matter could be for the parties to undertake external mediation to see whether they could reach a private agreement.
- 21 Mr Woolhouse responded, seeking progression of this matter to a hearing, and since paying the required hearing processing deposit.
- 22 Mr Woolhouse's correspondence refers to history on this matter, which also involved staff of Environment Southland.
- 23 To inform the consideration of Mr Woolhouse's request, the author made contact with Environment Southland, in order to gain a better understanding of the extent of Environment Southland's prior involvement.
- 24 Mr Gary Morgan, Senior Land Sustainability Officer at Environment Southland has indicated to the author that this matter has had a history of several years of Environment Southland involvement at both a staff and political level, with various suggestions made for possible resolution by Environment Southland representatives in the interests of seeking to broker an acceptable outcome to both parties. Mr Morgan has indicated that these attempts were not successful.
- 25 The Southland District Council holds no specific in-house expertise on rural land drainage issues, which is probably not uncommon for councils of this scale, as it is a relatively small area of demand, as indicated above. Interestingly, there is also a Land Drainage Act 1908 which applies at a national level, and was associated with former catchment boards. Most rural land drainage issues are dealt with by the Catchment Management Division of Environment Southland, although in discussions with Mr Morgan he has indicated that the Catchment Management Division staff also generally seek to direct parties towards agreed negotiated outcomes if possible.
- 26 It is understood that Mr Woolhouse was directed to the Southland District Council under the Southland Land Drainage Act 1935 after Environment Southland advised him that it had no statutory authority to require any action from either party.
- 27 The Council has sought advice from Mr Morgan as technical adviser to this process as to what, if any, proposed works may be appropriate and necessary to eliminate or mitigate the adverse drainage effects which are of concern to Mr Woolhouse.

- 28 As Committee members are aware, there are very large parts of the Southland District which have been subject to drainage interventions to direct water away from where it may naturally run or pond.
- 29 Often such drains, be they above or below ground, traverse several properties and rely on the appropriate ongoing maintenance from all the landowners who benefit from them if they are to remain effective. Failure to adequately maintain a drain downstream can hence generate adverse drainage effects such as extensive localised ponding on other properties which are upstream.
- 30 Mr Woolhouse considers that Mr Pullar has damaged the drainage network and has impeded drainage flow, thereby generating adverse effects on Mr Woolhouse's property. He hence seeks that the actions as outlined in Section 3 of his letter to Council dated 6 December 2017 (**see Attachment B**) be directed to be undertaken by the Council at Mr Pullar's cost.
- 31 Since receiving the letter of 6 December 2017, I requested further detail of the physical extent of works sought, and this is also included in **Attachment B**.
- 32 On-site meetings between each of the parties and Mr Morgan and the author were undertaken on 16 January 2018, as they did not desire to meet collectively. These were aimed to provide an opportunity to view the areas addressed in Mr Woolhouse's correspondence, and also to discuss possible courses of action and ascertain whether there was any potential to collaboratively resolve the matter without it needing to proceed to a formal hearing. The summary of these meetings was as follows:
- Mr Woolhouse considers that the key source of the issue is that a common subsurface drain which Mr Pullar and himself collectively installed some years ago has been damaged/blocked by Mr Pullar's subsequent installation of an above-ground laneway on top of the drain with a width of approximately 6 metres, and works associated with that laneway formation. Mr Woolhouse considers that this is causing significant ponding on his property. He hence requests that the Council requires under Section 10 of the Southland Land Drainage Act that Mr Pullar excavates out and cleans out and repairs the section of this drain which is under the laneway, to restore drainage flow. As the common drain traverses under a common boundary fence which is a deer fence, this would also need to be dismantled and subsequently reinstated to enable this repair and reinstatement work to occur.
  - Mr Pullar considers that the drainage issues which both Mr Woolhouse and himself are experiencing on the lower parts of their properties in this area are not to do with damage to this common drain, and he refutes the suggestion that he has damaged this drain. Mr Pullar considers that the historical piping of previous large above ground drains on Mr Woolhouse's property have redirected extensive amounts of water into this area, too much for the relatively small subsurface drain (which is an approximately 100 mm Novacoil style drain ) to handle.
  - Mr Pullar considers that what is required to rectify the issue is a new open drain to convey water from this area to a larger existing open drain to the North. Mr Pullar made an offer to contribute towards half the cost of this new drain and to have it located on his property, as Mr Woolhouse had signalled his opposition to having open drains on his property due to environmental concerns. Both Mr Morgan and myself have made it clear that neither Southland District Council have any jurisdiction nor any specific issues with

Mr Woolhouse's previous piping of his previous open drainage network on his farm, and that this is not a matter we will be revisiting/taking any action on as part of this hearing process

- 33 The day after the site visit (17 January 2018) I made contact via e-mail with Mr Woolhouse's solicitor and put Mr Pullar's suggested solution to him; in order to seek to ascertain whether there potential for an agreed collaborative solution which could avoid the need for the matter to proceed to a hearing.
- 34 I was subsequently advised by Mr Woolhouse's solicitor that Mr Woolhouse did not want to progress this possibility and sought that the matter proceed to a hearing as soon as possible, and still seeks that the Council requires the work previously outlined in the letter of 6 December 2017 be undertaken by Mr Pullar.
- 35 Mr Morgan has advised me that he had previously suggested a new common drain similar to Mr Pullar's suggestion when Environment Southland was involved in this matter, but it was understood that agreement could not be reached on this at that time.
- 36 Mr Morgan has provided a technical report which is attached as **Attachment C** which outlines his views on the matter and technical recommendations. Mr Morgan will be present at the hearing should the Committee wish to ask further questions of him.

### **Issues**

- 37 The Southland Land Drainage Act implies that drainage networks should be appropriately maintained and that where this does not occur then the party which is not undertaking the required actions will be directed to do so.
- 38 Hence, two key issues in this instance are:
- who is causing the issue , if there is one?, and
  - what is the extent of the appropriate remedial work required, if any?
- 39 The onus would appear to be on Mr Woolhouse as the applicant under the Southland Land Drainage Act to demonstrate to the Regulatory and Consents Committee that the actions which he seeks to require to be undertaken are appropriate and necessary, and will be effective in rectifying the issue. The Council has not expended any specific ratepayer resources on specialist expert advice in relation to this matter. No doubt of assistance to the Committee's deliberations would be technical information such as the relative levels of the subsurface drain which Mr Woolhouse alleges has been damaged and the open drain on Mr Pullar's property; but it is considered that the onus is on Mr Woolhouse as applicant to provide this type of technical information to support his requested course of action. Mr Pullar, based on the site meetings, clearly has a different view of what is required to resolve the drainage issues in this locality.
- 40 Both the site visit and Mr Morgan's report are inconclusive in that regard. Hence, it is recommended that unless there is a compelling case presented at the hearing for a Council intervention under the Southland Land Drainage Act 1935, then the Committee does not make a ruling and it then becomes over to the two parties to seek to negotiate a separate outcome outside of the Southland Land Drainage Act process.

## Factors to Consider

### Legal and Statutory Requirements

- 41 The Council's powers with respect to this matter are spelt out in the Southland Land Drainage Act, particularly Sections 5-8. Section 5 reads as follows:

**5 Powers of Council after receipt of application to cleanse or repair drain**

- (1) After an application under subsection (2) of the last preceding section has been made the Council may either—
- (a) resolve to treat the application as one made under subsection (3) of the last preceding section, whereupon the said application shall be deemed for all purposes to have been properly made under that subsection; or
  - (b) cause to be served upon the occupier, or, if there is no occupier, then the owner of any land shown on the plan accompanying the application (other than the land of the applicant) a notice in [form 2](#) in the Schedule requiring him to carry out and do the work applied for with or without modification.
- (2) If the occupier or the owner, as the case may be, of any land served with a notice under paragraph (b) of the last preceding subsection fails to carry out and complete to the satisfaction of the Council the work specified in the notice within the period fixed by the Council and mentioned in the notice (not being less than 14 days from the service thereof upon him) the Council may carry out or complete the carrying out of such work as the case may require, and the cost of the carrying out of any work by the Council under this subsection and all incidental expenses incurred in connection therewith shall constitute a debt forthwith due and payable to the Council by the occupier or owner served with such notice, and shall become and be a charge on the land with respect to which such person was served with the notice, and may be recovered as rates which have been validly demanded are recoverable under the Rating Act 1925:
- provided that any such occupier or owner may appeal to a Magistrate against such notice within 10 days after the service thereof, and such Magistrate shall have jurisdiction to determine whether such notice shall have effect, having regard to all the circumstances of the case, and pending the determination of such appeal the notice shall be suspended.

- 42 Section 7 of the Act gives Councils the powers to constitute a “Drainage Committee” to hear the application and outlines its powers, although this is done in reasonably generic terms.

- *(1) The Council may by resolution appoint from its members a Drainage Committee for the purposes of this Act.*

- 43 Interestingly also, Section 9 of the SLDA allows parties considered to be injuriously affected by any actions undertaken or directed by a council to seek compensation from that council.

- 44 As can be seen above, Section 5(2) of the Act specifies that if a party fails to undertake the works specified within a defined timeframe, then the Council or its contractor can enter the property and undertake the works. In practical terms, however, this could be considerably more difficult than this statute indicates if the relevant landowner was to oppose such access on other legal grounds, such as safety concerns under the Health and Safety at Work Act 2015.

- 45 The Southland Land Drainage Act does not contain any specific appeal provisions. However, there could be the potential for a party to seek a judicial review of Council processes to the High Court if they felt inclined to do so as a result of the outcome of a process. A judicial review process would normally focus on the reasonableness, or otherwise, of the decisionmaking process followed.

- 46 In November 2017, the Council formally delegated authority to the Regulatory and Consents Committee the right to hear and decide Southland Land Drainage Act 1935 matters.

### **Community Views**

- 47 There is no statutory requirement for the Council to seek community views in relation to this matter.
- 48 In referring this matter to a hearing, the Council has sought to ensure that both parties have the opportunity to express their views, rather than just relying on the perspective of one party to inform its decisionmaking.

### **Costs and Funding**

- 49 The applicant, Mr Woolhouse, has previously been advised that the actual and reasonable costs of this hearing are required to be covered by him as applicant, and he has opted to proceed on this basis.
- 50 If the Committee's decision was to require remedial work to be undertaken, then it would also need to direct who pays the costs of this remedial work and to be specific enough as to the extent of work required.

### **Policy Implications**

- 51 There is no specific Council policy of relevance to the Committee's consideration of this application.

### **Analysis**

#### **Options Considered**

- 52 The key options available to the Committee in this instance are to :
- Resolve not to require any remedial action, or
  - If it considers remedial action is required, resolve as to the extent of this and who has to undertake the work and by when (it is possible that the Committee may consider that both parties may be required to undertake some works to collectively address this situation, or just one party)

### **Analysis of Options**

#### **Option 1 – No action required**

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"><li>• If who is responsible for the issue is not clear, limits potential exposure of the Council and its ratepayers to what seems to be primarily a dispute between two parties to which there would appear to be potential solutions available.</li><li>• Would not preclude the parties from undertaking independent mediation outside of the Southland Land Drainage Act process, as has been previously suggested.</li></ul>	<ul style="list-style-type: none"><li>• May not resolve this ongoing issue in this locality</li></ul>

**Option 2 – Require remedial action**

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"><li>• If the appropriate remedial action is specified and then undertaken, should hopefully resolve an ongoing concern in this locality</li></ul>	<ul style="list-style-type: none"><li>• Could expose Council to legal challenge from one or more of the parties if they consider the Committee decision is not appropriate.</li></ul>

**Assessment of Significance**

- 53 This matter is not considered significant in terms of Section 76 of the Local Government Act 2002, as per Recommendation (b) above.

**Recommended Option**

- 54 The Recommended Option is Option 1 - no action taken by the Committee on this matter. The reason for this recommendation is that, based on the information held at the time of writing the report, there is no conclusive information to indicate that a Council intervention is required nor that Mr Woolhouse's requested actions will definitely be successful in resolving the issue. However, Recommendation (d) above has been left relatively open as there is the possibility that additional information will be presented at the hearing that will further inform the Committee's decisionmaking.

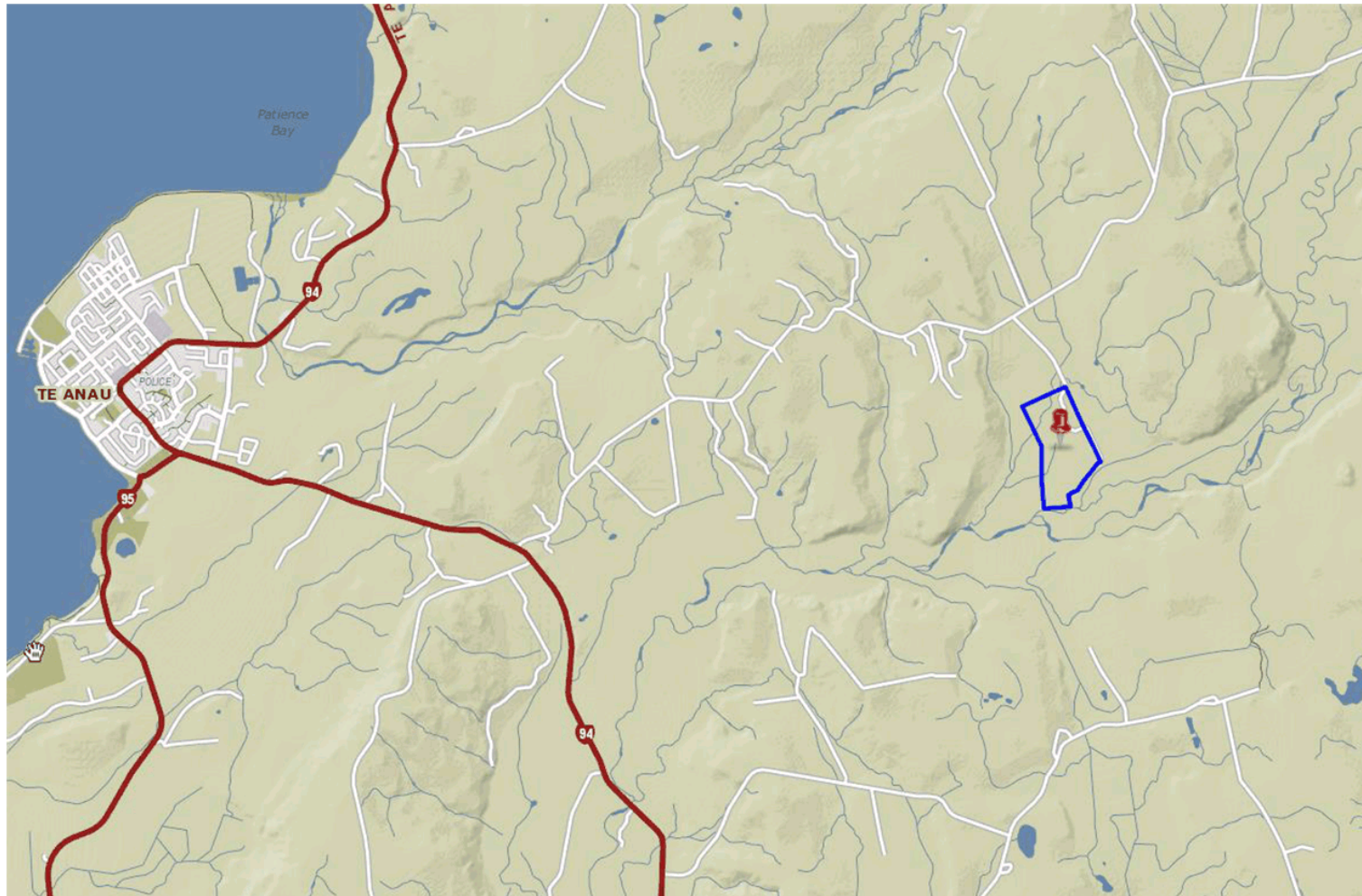
**Next Steps**

- 55 Following the hearing of this matter, both parties will be formally advised in writing of the Regulatory and Consents Committee's decision with respect to this matter, within 15 working days.

**Attachments**

- A Property Information - Kevin Woolhouse [↓](#)  
B Various Correspondence [↓](#)  
C Technical Report from Gary Morgan, Environment Southland [↓](#)

# Attachment A









# Attachment B



6 December 2017

Group Manager Environment  
Services  
15 Forth Street  
**INVERCARGILL 9840**

**FOR:** Bruce Halligan

Refer Riki Donnelly  
Alice Anderson

**DRAINAGE DISPUTE - KEVIN WOOLHOUSE**  
**OUR REFERENCE: 160905-1**

1. We refer to your letter dated 22 September 2017.
2. Having considered his available options, our client has decided he would like to proceed with a Council Hearing of this matter.
3. Please find **enclosed** a plan which clearly illustrates the physical extent of the work our client is seeking to be undertaken. As per our previous correspondence dated 27 July 2017 our client is of the view that the following actions required to fix the drain blockage is as follows:
  - 3.1 The pipe will need to be uncovered by an excavator and the intentionally damaged section repaired;
  - 3.2 As the pipes have been blocked for such a long time the water pressure from further up the hill has caused the pipes to silt, and cause further blockages, so the pipes will therefore need to be pressured washed.
  - 3.3 The fence has been partially buried by gravel which will need to be repaired. Further the paddock has been underwater for so long it has turned into a duck pond and will need to have the pasture repaired.
4. Our client has made his best attempts to illustrate his proposed required actions on the plan that we have enclosed.
5. Our client would like to pay the deposit fee required by the Council in order for the hearing to proceed. Could you please advise where our client is to pay this money to.

RWD-160905-1-60-V1

- 2 -

- 6 Additionally, if possible, could you please provide a timeframe in which the process undertaken by the Council will begin.
- 7 If we need to provide any further documentation please do not hesitate to contact the writer.

Yours faithfully

**PRESTON RUSSELL LAW**



**Riki Donnelly / Alice Anderson**

Partner / Solicitor

E: [riki.donnelly@prlaw.co.nz](mailto:riki.donnelly@prlaw.co.nz)

E: [alice.anderson@prlaw.co.nz](mailto:alice.anderson@prlaw.co.nz)

RWD-160905-1-60-V1







20 September 2017

Group Manager Environmental Services  
15 Forth Street  
**INVERCARGILL 9840**

**By email:** bruce.halligan@southlanddc.govt.nz

Refer Riki Donnelly  
Alice Anderson

**DRAINAGE DISPUTE: KEVIN WOOLHOUSE  
OUR REFERENCE: 160905/1**

1. We refer to your correspondence dated 12 September 2017. We address the issues raised in your letter below.

**Status of Drain in Dispute**

2. The drain in dispute is not a modified watercourse. The drain in dispute is a farm drain that was inserted to replace a previous farm drain that was in the wrong place. Therefore, section 363 of the Resource Management Act 1991 is irrelevant.

**Incomplete Application**

3. The application we made, as stated in our letter, was made under section 3(a) of the Southland Land Drainage Act 1935 (the SLDA) requesting order the following works be done or executed:
  - (a) Cleanse and remove obstructions from and repair or otherwise maintain in a due state of efficiency any drain or outfall for water.
4. As the application has been made under section 3(a), the legislation states that section 4(2) applies, and accordingly the application must:
  - 4.1. Describe to the Council generally the nature of the work required; and
  - 4.2. Provide a sketch plan showing the course of the drain and the lands through which the same runs.

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**Senior Associates:** Anna Elder, Rebecca McLeod, Mike Mitchell  
**Associate:** Alex Boock

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5. In our earlier correspondence we described the nature of the work required in paragraph 18, being:
  18. Mr Woolhouse believes the actions required to fix the drain blockage is as follows:
    - 18.1. The pipe will need to be uncovered by an excavator and the intentionally damaged section repaired.
    - 18.2. As the pipes have been blocked for such a long time the water pressure from further up the hill has caused the pipes to silt, and caused further blockages, so the pipes will therefore need to be pressure washed.
    - 18.3. The fence has been partially buried by gravel which will need to be repaired. Further, the paddock has been under water for so long it has turned into a duck pond and will need to have the pasture repaired (the paddock was a young grass paddock before it was flooded).
6. Further, though we did not provide a sketch plan, we did provide a map which shows both the land in question, and the course of which the drains run. The map provides a more accurate account of the requested information than a sketch plan would.
7. Therefore, we are of the view that Form 1 was not required to be filled out.

#### **Application of section 5 SDLA**

8. Following our understanding, the next step comes under section 5 of the SDLA which states:
  - (1) After an application under subsection (2) of the last preceding section has been made the Council may either—
    - (a) resolve to treat the application as one made under subsection (3) of the last preceding section, whereupon the said application shall be deemed for all purposes to have been properly made under that subsection; or
    - (b) cause to be served upon the occupier, or, if there is no occupier, then the owner of any land shown on the plan accompanying the application (other than the land of the applicant) a notice in form 2 in the Schedule requiring him to carry out and do the work applied for with or without modification.
9. It appears that the Council is given an option as to their next step following a request made under section 4 as to how it treats the application. Can you please advise why the Council has chosen the first option provided, instead of acting immediately and serving notice.

#### **Supporting evidence**

10. Garry Morgan of Environment Southland has already been involved in this dispute and spoken with both parties.

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11. Based on our instructions, Mr Morgan advised Mr Woolhouse that he has installed his new drain correctly and in accordance with the requirements of him. Mr Morgan has visited Mr Pullar on two occasions (once with the local representative Ross Coburn). They told Mr Pullar that he needs to rectify the issue, as Mr Woolhouse had acted in accordance with his requirements when installing the drain, and there was no legal basis for him to block the drains.
12. Mr Woolhouse recalls that Mr Morgan told him that he approached the Council himself to inform them of the issue and ask that they act on the matter. Mr Morgan told Mr Woolhouse that the Council told him that they would rather that farmers sort these disputes out themselves.
13. As outlined in our correspondence, Mr Woolhouse has already tried to resolve this matter with Mr Pullar, but to no avail. Further, Environment Southland have also tried to resolve the matter, but again, to no avail.

#### **Request**

14. As in paragraph 9 of this letter we request that the Council advise why it has chosen the first option provided in section 5 of the SLDA, instead of acting immediately and serving notice.
15. We request that the Council exercise its powers under section 5(1)(b) of the SLDA and serve notice on Mr Pullar requiring him to carry out and do the work required in order to unblock the drain.
16. A hearing of this matter would only cause further delay and costs for our client.

Yours faithfully

**PRESTON RUSSELL LAW**



**Riki Donnelly / Alice Anderson**

Partner / Solicitor

E: riki.donnelly@prlaw.co.nz

E: alice.anderson@prlaw.co.nz

AMA-160905-1-35-V1



When replying please quote: 400/30/57/1

12 September 2017

Preston Russell Law  
PO Box 355  
Invercargill 9840

Attention: Riki Donnelly - [riki.donnelly@prlaw.co.nz](mailto:riki.donnelly@prlaw.co.nz)

Dear Sir

### Drainage Dispute - Woolhouse

I am writing further to your recent correspondence in relation to the above matter.

Firstly I apologise for the delayed response, but we needed to take some legal advice in relation to process under the Southland Land Drainage Act (SLDA), which has now been received.

I now accordingly advise as follows with respect to this matter.

The Council requires additional information before it is in a position to progress this matter.

Please supply the following additional information:

1. Your letter indicates that the drain in dispute is not a modified watercourse. If that is in fact the case, Section 363 of Resource Management Act 1991 (RMA) is not relevant. That section provides that where a conflict arises between a special act specified in Schedule 9 RMA the provisions of the RMA prevail. The SLDA is one of the specified Acts. This is important because if we are dealing with a modified watercourse, the Regional Water Plans would apply and Environment Southland would need to be involved, not the Southland District Council.
2. Section 4 of SLDA authorises a landowner to apply to the Council to (inter alia) have existing drains repaired and cleansed. The section specifies that the application to the Council is to be on Form 1 of the Schedule to the Act - see attached screen shot on page 2. Your letter does not contain all of the information that the statutory form requires. This omission is important, not only because the Council needs to know what the applicant seeks/requires and the extent of it, but also because part of the process will require the other affected landowner to be served with the proposal. The information given must be sufficient to fairly inform the other affected landowner what the applicant is seeking.



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t/17/9/21840

Preston Russell Law


2

400/30/57/1

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## Southland Land Drainage Act 1935

Search within this Act  [SEARCH](#)

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### Form 1

#### Application to make drain or improvements to drain

Under the Southland Land Drainage Act 1935

Pursuant to the above-named Act the undersigned *[name, address, occupation]*, being the owner (occupier) of the lands described in Schedule 1, and being desirous of draining the same, and deeming it necessary that the works described in Schedule 2 should be made on, through, or between the lands described in Schedule 3 whereof the persons whose names and addresses appear in such Schedule 3 are the owners and occupiers, hereby applies to the *[name]* County Council to exercise its powers under the said Act and to carry out such works, and is willing to pay the sum of *£[amount]* as compensation. A sketch plan of the locality is attached hereto.

**Schedule 1**  
*[Describe lands of applicant.]*

**Schedule 2**  
Nature of drain or improvements to drain:  
Length, width, and depth of drain or particulars of other works:  
Estimated cost of the work:

**Schedule 3**  
*[Describe the other lands by section and block numbers, and set out names and addresses of occupiers and owners opposite the description of each property.]*

**Lands Owners and occupiers**

Date:

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New Zealand Government  PARLIAMENTARY COUNSEL OFFICE  
TE TARI TOHUTOHU  
PARIRANGA

3. You request a hearing of this matter. The Council's Schedule of Fees and Charges sets hearing charges before Council's Regulatory and Consents Committee at \$620.00 GST inclusive per hour with a one hour minimum charge - see below. If you wish to proceed with the organisation of a hearing, a \$620.00 deposit is requested (it is anticipated that the hearing of this matter should take no more than one hour). Please note that Section 8 of the 1938 Amendment Act provides the ability for Council to recover costs.

Hearings Charge - Decision maker(s) and administrative staff time	Per hour	\$620.00
There is a one hour minimum charge then a pro rata cost in 15 minute segments of \$155.00 plus disbursements		

4. On receipt of all required information specified above, the Council will formally advise the other landowner involved in writing that an application has been made and gives the details of that application. The Council will also advise both your client and the other party that Council staff will be inspecting the location of the issue at a future date and time, and invite both parties to be present.
5. The Council will set a time and date for a hearing using Form 3 of the SLDA and send a copy of the staff report on the matter to both parties.
6. The Council will then be likely to use its general power of delegation to refer the matter to the Regulatory and Consents Committee. A formal hearing date would then be confirmed in due course.

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3

400/30/57/1

**Please note** that while your correspondence indicates that your client has a clear opinion as to who is at fault in this instance, the Council needs to consider the matter objectively having regard to both sides of the issue. Hence, a decision supporting your client is NOT guaranteed and if deciding to proceed your client should be suitably aware of this. Obviously, an alternative for your client to consider is whether direct mediation between the two parties may achieve the desired outcome, noting your client's concerns around timeframes as you recently communicated.

If you require any additional information, please do not hesitate to contact the undersigned on 0800 732 732.

Yours faithfully



Bruce Halligan  
**GROUP MANAGER ENVIRONMENTAL SERVICES**

r/17/9/21840

**From:** Bruce Halligan  
**Sent:** Thursday, 8 February 2018 11:12 a.m.  
**To:** Liz Williams  
**Subject:** FW: Southland Land Drainage Act request for hearing - Mr Woolhouse

Hi Liz, here is the email for inclusion in Appendix B  
Thanks very much  
BGH



**Bruce Halligan**  
**GM - Environmental Services**  
**Southland District Council**  
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Invercargill 9840  
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M: 027 223 8048  
DDI: 03 211 2523

**From:** Alice Anderson [<mailto:Alice.Anderson@PRLaw.co.nz>]  
**Sent:** Monday, 15 January 2018 10:35 a.m.  
**To:** Bruce Halligan  
**Cc:** Riki Donnelly  
**Subject:** RE: Southland Land Drainage Act request for hearing - Mr Woolhouse

Good morning Bruce and happy new year to you as well.

We have been in contact with Mr Woolhouse and advise as follows:

Item 3.1: Mr Woolhouse has approximately 3 metres of pipe that was blocked off by Mr Pullar needing repaired, and another dig out that "blew out" because of the pressure caused by having the outlet blocked.

Item 3.3: Mr Woolhouse has approximately 20 metres of fencing that would need repairing, and approximately half a hectare of land needing the pasture repaired.

I understand the Council are conducting the site visit tomorrow; please do not hesitate to contact us if you require any further information ahead of the visit.

Many thanks,  
Alice

**From:** Bruce Halligan [<mailto:bruce.halligan@southlanddc.govt.nz>]  
**Sent:** Friday, 5 January 2018 9:01 a.m.  
**To:** Alice Anderson <[Alice.Anderson@PRLaw.co.nz](mailto:Alice.Anderson@PRLaw.co.nz)>  
**Cc:** Riki Donnelly <[Riki.Donnelly@PRLaw.co.nz](mailto:Riki.Donnelly@PRLaw.co.nz)>  
**Subject:** RE: Southland Land Drainage Act request for hearing - Mr Woolhouse

Hello Alice, happy new year hope you are well.

With regard to Mr Woolhouse's application under the Southland Land Drainage Act, I am looking to progress the hearing arrangements and arranging the appropriate reporting.

With regard to your letter dated 6 December 2017 in which you detail the extent of the works which your client considers are required, I note that this information is non-specific as to:

Item 3.1 - the extent/ length of the section of pipe which he considers "will need to be uncovered by an excavator and the intentionally damaged section repaired" .

Item 3.3- the extent/ length of fencing he considers will need to be repaired and the approximate physical dimensions of the area which he considers will need to have the pasture repaired/ reinstated

It would be appreciated if you could please clarify these matters with your client and advise accordingly .

FYI I have been unsuccessfully trying to contact Mr Pullar by phone to advise of this application by Mr Woolhouse and pending hearing, but will write to him also

Thanks and Regards  
Bruce Halligan



**Bruce Halligan**  
**GM - Environmental Services**  
**Southland District Council**  
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**From:** Alice Anderson [<mailto:Alice.Anderson@PRLaw.co.nz>]  
**Sent:** Friday, 22 December 2017 8:20 a.m.  
**To:** Bruce Halligan  
**Cc:** Riki Donnelly  
**Subject:** RE: Southland Land Drainage Act request for hearing - Mr Woolhouse

Dear Mr Halligan,

Thank you for providing this information. I can confirm that this time and date is acceptable to our client, and he will be represented by Mr Riki Donnelly at the hearing.

Our client will make the appropriate deposit, and we look forward to receiving the appropriate documentation ahead of the hearing.

Ngā mihi,  
Alice

**Alice Anderson**

Solicitor

03 211 1394

[alice.anderson@prlaw.co.nz](mailto:alice.anderson@prlaw.co.nz)[prlaw.co.nz](http://prlaw.co.nz)

**From:** Bruce Halligan [<mailto:bruce.halligan@southlanddc.govt.nz>]  
**Sent:** Wednesday, 20 December 2017 9:08 a.m.  
**To:** Alice Anderson <[Alice.Anderson@PRLaw.co.nz](mailto:Alice.Anderson@PRLaw.co.nz)>  
**Subject:** Southland Land Drainage Act request for hearing - Mr Woolhouse

*Dear Ms Anderson,*

***Re Woolhouse- Southland Land Drainage Act request for hearing***

*Thank you for your most recent letter dated 6 December 2017 regarding the above matter.*

*Firstly, I apologise for the delay in replying, which was due to the need to confirm hearing date timetabling for 2018 with our Governance team.*

*I now advise as follows with respect to this matter:*

- 1) A hearing of this matter can be scheduled before the council's Regulatory and Consents Committee, which has delegated authority to hear and decide this matter from Council, on **Wednesday 7<sup>th</sup> February at 2pm in the Council's Invercargill Council Chambers, 15 Forth Street, Invercargill**. Please advise if this date and time is acceptable to your client, if not this can be rescheduled to a later date, likely to be in mid-late March.*
- 2) In advance of this hearing, Mr Pullar will be served with a copy of the relevant documentation and notice of the date, time and venue of the hearing*
- 3) Each party will have 30 minutes maximum to present to the Committee. If any additional material is to be presented, this should be pre-circulated to the Council and the other party so that it is received at least 5 working days in advance of the hearing, and 10 copies made available on the day*
- 4) Prior to the hearing, a staff report to the Committee will be prepared and a site visit will be undertaken as part of this preparation by Council staff, which both parties will be invited to attend. The Council has also arranged for Mr Gary Morgan, Land Sustainability Officer from Environment Southland, to provide technical advice on this matter and having regard to his technical knowledge of land sustainability/ drainage issues and previous Environment Southland involvement, and Mr Morgan is also likely to be present at the site visit.*
- 5) The Council written report will be provided to your client and Mr Pullar at least 5 working days in advance of the hearing*
- 6) The Committee will issue a written decision within 15 working days of the conclusion of the hearing. There is no formal right of appeal under the Southland Land Drainage Act, although a party could challenge a procedural element via judicial review to the High Court*



*If the above is acceptable to your client, please advise by return e-mail and arrange for the payment of the \$620.00 gst inclusive processing deposit to the account specified on the attached deposit slip, and I will then proceed accordingly with making the necessary arrangements*

*I would stress that I can not prejudge what the outcome of any hearing may be and would appreciate if you could please ensure that your client is aware that proceeding to a hearing on this matter is no guarantee that he will necessarily get the outcome he is looking for. Council's charges for the preparation of the report and hearing process will be at the rate as specified in the Council's Approved Schedule of Fees and Charges as appended below, as previously advised in my letter of 12 September 2017.*

*Thanks in advance*

*Regards*

*Bruce Halligan*

*GM- Environmental Services*

FOR SOUTHLAND DISTRICT COUNCIL  
SOUTHLAND-COUNTY FUND ACC

\$

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Hearings Charge - Decision maker(s) Per hour  
and administrative staff time

\$620.00

There is a one hour  
minimum charge then a  
pro rata cost in  
15 minute segments of  
\$155.00 plus  
disbursements



**Bruce Halligan**  
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# Attachment C

**Kevin Woolhouse/Logan Pullar Drainage issue. Long Valley, Te Anau.****History.**

Both the Woolhouse and Pullar farms were part of the Long Valley Farm Settlement bought by the Department of Lands and Survey in 1953. Early black and white aerial photographs show extensive surface drainage works on peat ground in the lower Long Valley, in the area where the current drainage issues exist.

One of these open drains on the Woolhouse property was filled and piped in the early 2000's and a network of subsurface drains was installed which exit the property further to the south (the 'common subsurface drain') so as to pick up more fall.

**Soils and Physiographic Units.**

Soil types in the area were mapped by the NZ Soil Bureau in 1986. The soil type of the hilly moraines on the Woolhouse property is Whitestone gritty silt loam formed on glacial till. The flats on the Woolhouse western boundary and the flats running down to the Long Valley drain are mapped as Monowai soils and Otanomomo peat.

The physiographic units (pSWLP) describe how water moves across the landscape and represents areas of the landscape with common attributes that influence water quality.

The physiographic unit that covers the moraine hill country on the Woolhouse property is bedrock/hill country. This is land with bedrock or glacial till found near the surface. Glacial till is a mixture of rock debris and sediment that has been deposited by a glacier. It is relatively impermeable, allowing little water to get through. Rainfall flows downslope as surface runoff/overland flow.

On the flats between the hill and the Long Valley drain the physiographic units are a mixture of Oxidizing and Peat wetlands. Water movement in the Oxidizing zone is through artificial drainage and overland flow on sloping ground. In the Peat wetland physiographic water logging is common and there is often a seasonal water table that sits close to the ground surface. Seasonal ponding and overland flow to nearby waterways is common.

Given the topography, area of catchment, soil type and physiographic units, heavy rain events over the area will result in significant surface runoff/ overland flow.

**Environment Southland advice.**

ES was contacted by Mr Woolhouse in August 2016 regarding issues Mr Pullar had with overland flow entering his property. A visit to the site was made on 20<sup>th</sup> October 2016. I noted that the historic drain outlet at Point A was not discharging drainage water into the open drain on Mr Pullar's property, but the common subsurface drain was discharging a significant amount of water into the open drain at about Point B.(approx.) See Woolhouse –Pullar drainage Map.

I suggested the construction of an open drain on Mr Pullar's side of the boundary fence which would intercept surface runoff and deliver it to the existing open drain. In March 2017 Mr Pullar contacted me and said that he had decided against the idea of putting an open ditch along the boundary and would like to build a laneway on his side of the boundary fence which act as a low bund and would prevent surface runoff entering his property. The bund would divert the surface runoff into a short shallow ditch running on the Pullar side of the boundary fence and into the existing open drain (photo 1 ). Mr Pullar asked if Environment Southland would have any issues with this. I told him that ES had rules around dams and weirs constructed in the bed of a waterway only and that we would have no issue with the construction of the laneway. I also informed Mr Woolhouse of this proposal and he had no issues given that any ponded overland flow would be drained away by the common subsurface drain which, as I had noted earlier seemed to be working well. The laneway was duly constructed. Rainfall during winter 2017 resulted in significant ponding on the Woolhouse property which remained for a long period suggesting that the common drain is not functioning as well as it has previously.

#### **My recommendation**

The solution to the problem of ponded surface runoff on both properties is to convey that water as quickly as possible to the Long Valley drainage system. This could be achieved by the construction of a longer open drain on Mr Pullar's side of the boundary fence which would convey runoff into the existing open drain. This would require the shifting of the laneway further west to allow surface water to flow through the boundary fence and straight into the drain. It would also require the taking of levels to ensure enough fall to allow flow into the existing open drain. If the 'common subsurface drain' could also feed into this new open drain it would significantly improve drainage for both parties. According to Mr Woolhouse the 'common subsurface drain' is too deep to allow subsurface drainage water to be picked up by an open drain. Levels need to be taken to confirm this, and with Mr Woolhouse being the applicant in this instance it would seem the onus would be on him to identify that his proposed course of action (reinstatement and cleaning of the subsurface drain) would be effective.

If the common subsurface drain is too deep to feed into the existing open drain then it needs to be cleaned/maintained to provide outfall for Mr Woolhouse.

Gary Morgan  
Principal Land Sustainability Officer  
Environment Southland  
8/2/2018





