Dear Sir/Madam

FORMBY DRAFT NEIGHBOURHOOD PLAN
CONSULTATION ON SUBMISSION PLAN (REGULATION 16 STAGE)

Thank you for consulting us with the above Neighbourhood Plan (herby referred to as the plan) prior to its submission for examination.

Environment Agency position

Having reviewed the plan, we welcome the addition of objectives and policies seeking to reduce the risk of flooding and promote sustainable development. However, we would strongly recommend the current wording of the plan is subject to amendments and/or clarification prior to the current draft being submitted for examination.

Please see outlined below and explanation of our reasoning and commentary for inclusion within any subsequent plan revision.

Reason for amendments

Presently, the plan makes several flood risk recommendations for proposed developments within the outlined plan area. These recommendations go beyond the current expectations of the Agency in terms of ensuring development does not increase the risk of flooding. The current plan recommendations also go beyond the requirements of the Sefton Local Plan and/or the National Planning Policy Framework (NPPF) and Planning Guidance, from which the standard of sustainable development should be taken. In several instances, it can be deduced that the current draft requirements are based on locally known information and / or opinions.

We appreciate local anecdotal information on flood risk may exist and can provide a useful basis from which to initially consider neighbourhood policy. However, statements such as 'locally known' and 'real world' cannot be considered appropriate
evidence of the fact or viable terminology when describing the risk of flooding in a planning policy document.

Whilst we do not have an objection to the Parish Council having their own flood risk requirements (indeed we would welcome it), we recommend terminology used within the plan is corrected, clarified or deleted where the issues outlined above are present. Flood risk requirements and policies within the plan must be based on a robust and a quantifiable evidence base.

To assist in revision of the current draft plan, we would like to make the following comments;

Environment Agency comments

Section 2.4 – the wording is in harmony with the Government's ‘A Green Future: Our 25 Year Plan to Improve the Environment’. However there is no specific reference to this document within the biodiversity section of this Neighbourhood Plan.

We recommend reference to the Government’s 25 Year Plan to Improve the Environment would further strengthen this section, along with the addition of a web link to the relevant document provided within the appendices.

Paragraph 2.4.7 could include a direct quote from the 27 Year Plan e.g. “new development should result in net environmental gain - with neglected or degraded land returned to health and habitats for wildlife restored or created”.


Paragraph 3.2.4 The plan suggests ‘the EA will be switching off pumping and returning the land east of the A565 into natural flood plain for the future’. At present there are no plans to alter the pumping regime near Formby, as such this statement is not correct and all reference to the fact should be removed.

Paragraph 3.2.7.4 states ‘the vast majority of surface water for this catchment drains to the Alt’ but contrary to this 3.2.7.5 states ‘therefore all water that enters Formby or Little Altcar will eventually enter the River Alt’. We would suggest this is clarified and the source of this information clearly stated and referenced within the plan document as supporting evidence.

Paragraph 3.2.7.7 states ‘The National Planning Policy Framework refers to the “lifetime of developments” - based on current property ages in Formby and Little Altcar, the likely lifetime of any new development will be well in excess of 100 years’.

The 100 years threshold is based upon national planning policy guidance for Flood Risk and Coastal Change, which states ‘Residential development should be considered for a minimum of 100 years, unless there is specific justification for considering a shorter period’. In our experience, developers will be required to demonstrate a development lifetime of 100 years as default.

Ultimately it is for the developers and planning authority to determine the lifetime of development. We therefore, advise you discuss with Sefton Council how practicable
a requirement for a design life of >100 years is for any subsequent residential
development proposal within Formby and Little Altcar.

**Paragraph 3.2.7.9** states ‘the River Alt and Downholland Brook are being kept at
high water levels by the EA during heavy rainfall events’. This statement is incorrect
and all statement to the fact should be removed.

**Paragraph 3.2.8.2** states ‘Where a policy from an external body or organisation
apparently prevents an acceptable and positive solution to existing problems, or
enables developers to propose designs that Formby and Little Altcar Parish Councils
decom unacceptable, Formby and Little Altcar Parish Councils will seek to publicise
these anomalies and shall make efforts to inform and change the views of the
organisation that has set the offending policies. Where a policy can be shown to
increase flood risk, Formby and Little Altcar Parish Councils reserve the right to
object to the imposition of any such development’.

This paragraph appears to suggest where there are (assumed non-planning related)
policies which the Parish Council deems unacceptable then they will object to the
proposed development on this basis and try to change said related policy.
For the avoidance of doubt we welcome opportunities to discuss matters relating to
flood risk, but the correct procedure should be if the Parish Council deem solutions
to be unacceptable they formally object to the planning authority with a sound reason
outlined for the objection.

In terms of flood risk our role in the planning process is to provide impartial advice to
ensure development is compliant with the National Planning Policy Framework. As
such we will continue to follow a nationally consistent approach to dealing with
matters of flood risk within our remit, within in the planning process.

**Paragraph 3.2.8.3** states ‘flood maps are theoretical therefore can only be treated
as a guide rather than definitive’. This is incorrect, our flood maps are indicative but
they are also based on modelling, some of which is sometimes generalised
modelling but in other areas more precise and localised. We are able to provide
information on the type of modelling undertaken with the area of the Formby & Little
Altcar should this be required. For all instances relevant to the above, ‘theoretical’
should be replaced with the wording ‘indicative’.

The second bullet point under **paragraph 3.2.8.3** references ‘real world evidence’.
This real world evidence should be provided where it differs, or is thought to differ,
from that of the Sefton Strategic Flood Risk Assessment(s) and/or our flood maps to
ensure a sound evidence base to the plan.

**Paragraphs 3.2.8.4 to 3.2.8.9** discuss the types of modelling Formby & Little Altcar
Parish Council will accept in planning proposals amongst other conditions they want
to impose on developers who submit proposals for this area, to compare it to ‘real
world’ experience. **Paragraph 3.2.8.5** specifically explains the Parish Council ‘will
compare developers modelling of the existing systems in the area to the real world
experienced by residents’. We recommend the real world evidence is provided as
part of the evidence base to support the plan at examination and aid developers who
will be required to produce Flood Risk Assessments.

**Paragraph 3.2.8.9** seems to suggest a development would not be considered
sustainable if ‘affordable insurance cannot be obtained’, which we assume is
implying it does not comply with national planning policy. While not a requirement of
the Environment Agency we would urge the Parish Council review this statement to ensure it is a viable material planning consideration.

You may wish to modify paragraphs 3.2.9.1 – 3.2.9.3 because while they seek to restrict the development of standing waterbodies (to protect downstream), the wording as stated may also prevent flood risk schemes being implemented which consequently would hinder future flood risk mitigation.

We welcome paragraph 3.2.9.4 seeks the use of grey water recycling systems where appropriate in new development. However if there is an already perceived issue should this be expanded to consider the use in the existing built environment?

**Paragraph 3.2.10.2** - The need to avoid areas of flood risk is covered in NPPF by the requirement to undertake the Sequential and Exception tests.

**Paragraph 3.2.10.3** - We would resist development within 8m from the landward toe of any of our formal flood defences or a main river.

With regards to the failure of said defences, FRAs are required to assess the residual risk of flooding for this very reason.

**Section 3.2.11 Sustainability of drainage design**

We do not normally comment on drainage or surface water sections as this falls within the remit of the Lead Local Flood Authority. However in this instance it appears this chapter also discusses the requirements of the sequential and exception test. Our role in the tests is to review a site specific flood risk assessment where it falls within our planning remit, and provide impartial advice and recommendations to the local planning authority. However, in this instance we feel our advice below would be beneficial to the Parish Council

**Paragraph 3.2.11.6** The exception test is not ‘invoked’, it is applied as set out in Paragraph 159 of the National Planning Policy Framework, in line with Flood Risk Vulnerability Classifications.

The first bullet point appears to refer to the flood risk sequential test, this does not form part of the exception test.

In our experience it is unusual for the required scope of the sequential test to go beyond a Local Planning Authority boundary because the determining planning authority have no say on the potential viability of a site within another local planning authority boundary, and any alternative site fall outside the scope of the determining Local Plan. We recognise we are not the expert authority in such matters, and therefore strongly recommend you discuss this with Sefton Council and the surrounding authorities (Liverpool, Knowsley, St Helens and West Lancashire local planning authorities) who we suspect may resist this recommendation.

With regards to the second bullet point, to clarify, the exception test requires developments to show it has (1) sustainability benefits to the community that outweigh flood risk and (2) it will be safe for its lifetime, without increasing flood risk and possibly reducing flood risk overall. The exception test is only triggered as set out in paragraph 160 of the NPPF. If the exception test is passed, this means developer and local planning authority are accepting the flood risk problems have been solved and will not increase the risk of flooding over its lifetime.
With reference to the forth bullet point, it is for the developer to provide evidence to local planning authority who then apply the Sequential and Exception tests. It is the role of the developer to ensure any mitigation measures proposed as part of the exception test or from a site specific flood risk assessment are implemented and it is the Councils role to enforce planning matters.

With regards to point 6 (and the first paragraph), the exception test is not invoked, it is applied as set out in Paragraph 159 of the NPPF, in line with Flood Risk Vulnerability Classifications.

**Paragraph 3.2.11.7** refers to the NPPF as guidance, this is incorrect, it is Her Majesty’s Governments planning policies for England and how these are expected to be applied. All local strategic planning documents, Neighbourhood Plans included, are required to be in compliance with the NPPF otherwise they will not be considered sound at examination.

**Paragraph 4.8.3** refers to paragraph 2 of Appendix 1a – Letter from Department for Communities and Local Government however, we are unable to locate this letter in the Plans Appendix.

**Paragraph 4.8.6** refers to paragraphs 2 & 3, Appendix C, page 27 – letter from Planning Minister, however we are unable to locate this letter in the Plans Appendix.

**Paragraph 4.8.7** states ‘Flood maps cannot be relied upon for accuracy. They can only estimate areas deemed to be “at risk” of flooding. See the Flood Maps section of the Neighbourhood Plan – some locations marked as “at risk” only from a 1 in 100 year storm flood EVERY year (Formby and Little Altcar residents have a significant quantity of evidence to back this claim up should any party seek to claim that certain sites or locations only flood once in every 100 years.)’

This is a common misunderstanding of the term 1 in 100 year. The term 1 in 100 is based on the extremity of a flood event and the probability of its occurrence. The term does *not* mean an area in Flood Zone 3 that has a 1 in 100 year probability of flooding will only flood once in 100 years. On this understanding the paragraphs conclusions may need to be changed.

**Paragraph 4.8.7** also refers to ‘attached flood maps’, however they do not appear to have been included in the plan.

**Paragraph 4.8.7 and 4.8.8** discusses flood maps as being ‘EFFECTIVELY a rough guide’ in relation to insurance companies. We reiterate our comments as set out in relation to Paragraph 3.2.8.3 above.

**Paragraph 4.8.8** recommends no development within 250m of a flood zone, however flood zones are considered to be 3 (high risk), 2 (medium risk) and 1 (low risk). Flood Zone 1 (low risk) is considered to be anywhere that is not flood zone 2 or 3. As such this paragraph could be interpreted as establishing a principle of ‘no development’ which is not the role of a Neighbourhood Plan.

**Paragraph 4.8.10** refers to Formby being shaped like a ‘bowl’, although it is unclear what is meant by this. We have previously advised, and it was agreed by the Parish Council, this reference be removed because it does not provide a correct description of the area. We also suggested a 3D drawing / inclusion of a relevant diagram for Formby may better aid the description and the evidence base.
In paragraph 4.8.12 “compensatory land lowering” should be changed to ‘compensatory flood storage’ as this is the correct terminology. Furthermore we ask if “induce” is the correct term for this paragraph?

Policy FLD1 – Should this be amended to read ‘all development should demonstrate it does not increase flood risk, and should seek where appropriate to reduce the risk of flooding’?

Policy FLD1 - Justification and supporting text refers to Formby being shaped like a bowl. As above we have previously advised, and it was agreed by the Parish Council, this reference to a bowl be removed because it does not provide the correct description of the area.

Policy FLD2 There is a typo error in the policy wordings first paragraph needing correction. Despite this, the requirement of the policy appears very similar requirement to that set out in Policy FLD1.

Policy FLD6 What is a flood sensitive area and are the requirements and outcomes of Policy FLD6, similar to Policies FLD1, FLD2 & FDL9?

Policy FLD9 Does this policy replicate Sefton Local Plan policy and if so should it be deleted?

FLD Community Action 3 Would this work not be done as part of the flood risk sequential test?

Appendix B Glossary Flood Zone 1 is Low risk, not no risk.

We trust the above clarifies our position. Should you wish to discuss the contents of this letter in more detail, please do not hesitate to contact this office.

Yours faithfully

Sustainable Places Planning Advisor

Direct e-mail