

Report Provided by the Lead Local Flood Authority to Overview and Scrutiny in January 2022

Appendix C: The role of the Lead Local Flood Authority in Planning and Development

Introduction

Planning and development go hand in hand, and it is a discipline comprised of plan making (the Local Plan) and the planning application process designed to manage development at a local level.

There are thirteen Local Planning Authorities within Lancashire County Council's administrative area; twelve District Councils and the County Council. The County Council is responsible for determining upper-tier planning matters such as minerals and waste, transport and school applications (often termed 'regulation three applications'). District Councils process planning applications for everything else.

The Lead Local Flood Authority is just one risk management authority in Lancashire with a distinctly defined role in planning and development. Other risk management authorities similarly have a district role as set out in Table 1.

Table 1: Roles of risk management authorities in the context of flood risk for Planning and Development

Risk Management Authority	Comments on (in planning)	Role in Planning Making	Role in Planning Applications
Lead Local Flood Authority	Surface water flood risk Surface water sustainable drainage design	Not a statutory consultee, but national planning policy states the LLFA should be consulted. LLFA encourages plan makers to consult and seek their advice at the earliest opportunity.	Statutory consultee for major development with surface water drainage
Environment Agency	Fluvial (watercourse) and coastal flood risk	Statutory consultee during plan making	Statutory consultee for: <ul style="list-style-type: none"> development, other than minor development, on land in Flood Zones 2 or 3, or on land in Flood Zone 1 which has critical drainage problems. developments within 20 metres of a main river (which may be outside the extent of a FZ 2/3)

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			<ul style="list-style-type: none"> major developments that don't use public sewers for the disposal of sewage
Water and Sewerage Company	Public sewer network (foul, surface water, combined)	Statutory consultee during plan making	<p>Not a statutory consultee.</p> <p>Proactively comments on planning applications which may impact on the public sewer network</p>
Highway Authority	Adopted highway drainage and other highway assets? E.g. culverts, trash screens, bridges etc	Statutory consultee during plan making	Statutory consultee for the laying out or construction of a new street and/or the formation, laying out or alteration of any means of access to a highway or trunk road
District Council	Support the management of local flood risk	As the Local Planning Authority, responsible for creation of Local Plans and guidance on flood risk	As the Local Planning Authority, responsible for deciding planning applications and enforcing associated conditions

National Planning Expectations of Flood Risk in Planning and Development

The [National Planning Policy Framework \(NPPF\)](#) sets out government's planning policies for England and how these are expected to be applied. It was most recently revised on 20 July 2021. Section 14 sets out policies for 'meeting the challenge of climate change, flooding and coastal change'. Policies 159 to 169 cover 'Planning and flood risk' and set out expectations for both plan making and development decisions. In relation to surface water, Policy 167 and Policy 169 are the policies which are most frequently utilised by the Lead Local Flood Authority in the management of surface water and sustainable drainage systems (SuDS) as a statutory consultee.

The National Planning Policy Framework is supported by the Planning Practice Guidance (PPG) which adds further context to the National Planning Policy Framework and the two documents should be read together. The ['Flood risk and coastal change'](#) section provides guidance on interpreting the flood risk policies within the National Planning Policy Framework and is a material consideration.

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The [National Model Design Code](#) was published on 20 July 2021 and revised on 14 October 2021. It provides detailed guidance on the production of design codes, guides and policies to promote successful design. It forms part of the government's Planning Practice Guidance, expanding on the ten characteristics of good design set out in the National design guide. The Code includes sections on sustainable drainage systems (SuDS) and flood risk promoting water sensitive design within planning and development.

Lead Local Flood Authority role in Plan Making

The Lead Local Flood Authority is not a statutory consultee in plan making, including Local Plans and Neighbourhood Plans. This means that the Local Planning Authority has no legal obligation to consult with the Lead Local Flood Authority on any part of plan making, from collating the evidence base, such as the Strategic Flood Risk Assessment, through to writing policies and guidance.

That said, Paragraph 160 of the National Planning Policy Framework, which is primary national policy and has legal standing, states:

"Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources. They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards."

The Lead Local Flood Authority recognises the importance of early involvement in the plan making process to ensure that local plans and policies, which ultimately steer development proposals that come forward in Lancashire, are appropriate to achieve improved surface water management and high-quality blue-green sustainable drainage systems, where possible and in line with the expectations set out in the National Planning Policy Framework. The Lead Local Flood Authority therefore strongly advises and encourages Local Planning Authorities to engage us from the earliest opportunity and we work with planners to shape evidence base documents and respond to policy consultations, either directly or through the County Council's 'one council' planning response.

Lead Local Flood Authority role in Planning Applications

Under Schedule 4 of the Town and County Planning (Development Management Procedure) (England) Order 2015 the Lead Local Flood Authority is a statutory consultee on major¹ development with surface water drainage. This duty started on 6 April 2015.

¹ Major development is defined in Part 1(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 Major Development means development involving any one or more of the following: (a) the winning and working of minerals or the use of land for mineral-working deposits; (b) waste development; (c) the provision of dwellinghouses where (i) the number of dwellinghouses to be provided is 10

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This means that the Local Planning Authority has a legal obligation to consult the Lead Local Flood Authority prior to the grant of planning permission on development which meets this criteria.

As a statutory consultee, the Lead Local Flood Authority must provide a substantive response to the Local Planning Authority within 21 calendar days. A substantive response is one of three things; no comment, no objection or a removal of an objection which can be subject to recommended conditions and informatives or not, or an objection.

The Lead Local Flood Authority does not 'approve' any part of planning applications (flood risk assessments, drainage strategies etc); this is the role of the Local Planning Authority. Statutory consultees are consulted by the Local Planning Authority to provide technical advice which the Local Planning Authority must consider in their planning decision, whether by through a delegated officer or through planning committee. The Local Planning Authority can go against the advice of any statutory consultee, this usually happens where in the interests of planning balance the flood risk concern may outweigh other benefits of development. The Lead Local Flood Authority is only aware of a handful of occasions where this has happened in Lancashire.

If developers do not comply with the conditions of their planning permission, only the Local Planning Authority has the power to take enforcement action.

The Lead Local Flood Authority is not a statutory consultee on minor development (i.e. less than 10 dwellings or equivalent) and it is not resourced to provide Local Planning Authorities with technical advice on such applications. The Lead Local Flood Authority has, however, issued the Local Planning Authorities with 'Lead Local Flood Authority Standing Advice' to provide planners with some technical surface water and sustainable drainage advice which planning case officers can apply to minor planning applications. This has been positively received and is an example of how the Lead Local Flood Authority has gone beyond its statutory remit to provide support to planning colleagues.

Service Delivery

What the Lead Local Flood Authority looks at

The Lead Local Flood Authority's statutory role in major planning applications is to assess the surface water drainage associated with the proposed development. This is achieved through assessing two key aspects:

- 1) Surface water flood risk to and from the development, both pre- and post-development.**

or more; or (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i); (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or (e) development carried out on a site having an area of 1 hectare or more.

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This is assessed through a site-specific flood risk assessment, which the Local Planning Authority requires in accordance with footnote 55 of paragraph 167 of the National Planning Policy Framework, and/or in accordance with any local policy requirements that are more stringent.

The requirements of a site-specific flood risk assessment are set out on [gov.uk](https://www.gov.uk).

2) Surface water sustainable drainage proposals.

This is typically set out in a sustainable drainage strategy which is required by the Local Planning Authority through its validation checklist or local planning policy. The strategy should take account of any recommendations made in the site-specific flood risk assessment to manage surface water flood risk, using these to inform the design of a sustainable drainage system.

Sustainable drainage systems (SuDS) are designed to control surface water run off close to where it falls and mimic natural drainage as closely as possible. Paragraph 169 of the National Planning Policy Framework sets out that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. You can find out more about sustainable drainage systems, including recent case studies, on [The Flood Hub](#).

Sustainable drainage systems should be designed to satisfy the relevant [Defra Non-Statutory Technical Standards for Sustainable Drainage Systems](#) and incorporate an [allowance of up to 40% for climate change](#). The Lead Local Flood Authority also expects an allowance for urban creep (extensions etc), typically 10%, to be incorporated within the design.

The Lead Local Flood Authority has also asked all 13 Local Planning Authorities in Lancashire to adopt the North West Sustainable Drainage Pro-forma via their planning validation checklist for major applications. The pro-forma, recommended by the North West Regional Flood and Coastal Committee, does not replace the need for a site-specific flood risk assessment or sustainable drainage strategy; it is a tool which asks developers to summarise and confirm all aspects of surface water flood risk and sustainable drainage systems have been adequately assessed and designed appropriately in accordance with the requirements. It is particularly helpful to small to medium sized developers because it clearly sets out the requirements that need to be achieved for the Lead Local Flood Authority to be satisfied. In doing so it helps to ensure the right information is received the first time and, through following the proformas logic, should facilitate the design of higher quality blue-green sustainable drainage systems which are eligible for adoption by the water and sewerage company (United Utilities / Yorkshire Water), giving an option of maintenance by a risk management authority rather than by a private company.

How is Climate Change considered with regards to surface water?

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To increase resilience to surface water flood risk, developers should make [allowances for climate change](#) in the design of the sustainable drainage systems. This is achieved by assessing what climate change allowance of between 5% and 40% for 'peak rainfall intensity' is most appropriate to apply based on the lifetime of the development. The lifetime for all residential development is 100 years and this is our presumption unless otherwise stated. For example, the development lifetime may vary for other use classes and/or may be capped by a time limited planning condition.

Through the site-specific flood risk assessment, developers assess both the central and upper end allowances and must evidence that the design of the sustainable drainage system ensures there is no increase in the rate of runoff discharged from the site for the upper end allowance.

Where on-site flooding for the upper end allowance presents a significant flood hazard (for example, where depths and velocities of surface water runoff cause a significant danger to people), developers need to take measures to protect people and property. This could include, for example, raising floor levels. As a minimum, there should be no significant flood hazard to people from on-site flooding for the central allowance.

What the Lead Local Flood Authority may recommend

The response and comments provided to Local Planning Authorities by the Lead Local Flood Authority, including conditions, are advisory and ultimately it is the decision of the Local Planning Authority whether any recommendations are acted upon. Comments given are composed based on the knowledge of and information provided to the Lead Local Flood Authority with the application at the time of each response.

The Lead Local Flood Authority must provide the Local Planning Authority with an informed substantive response which is one of three things:

- **No comment.** These responses are typically given where there are no surface water implications with the development or where the Lead Local Flood Authority has been consulted on a minor application, in which case the Local Planning Authority is directed to apply the Lead Local Flood Authority Flood Risk Standing Advice.
- **No objection or removal of objection,** and this may be subject to recommended conditions and informatives or not.
 - All template conditions which the Lead Local Flood Authority may recommend comply with the conditions requirements set out in paragraph 56 of the National Planning Policy Framework. Conditions may be pre-commencement or pre-occupation. A clear reason is always given to justify any recommended pre-commencement condition. Planning conditions can only be required for matters concerning planning legislation.
 - Informatives are notes which enable the Local Planning Authority to draw attention to other relevant matters which are not included under planning legislation. For example, the requirement to seek additional consents

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(such as Land Drainage Consent) under other regimes and legislation. Informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes. They may be used as non-binding best practice, but lack a statutory basis.

- **Objection.** In cases where the Lead Local Flood Authority objects, a reason for objection is always given, linked to planning policy. If the objection is unless or until further evidence is provided or the drainage design is amended, then the Lead Local Flood Authority always advises how the objection can be overcome. If it is an objection in principle, this means that no matter what the developer proposes the principle of development in surface water terms is not advisable or supported by the Lead Local Flood Authority.

How we communicate with Local Planning Authorities

Communication with Local Planning Authorities occurs at various levels and through a range of means, including:

- **Meeting with all Lancashire Planning Managers** through the Development Control Officer Group (DCOG) and the Development Planning Officers Group (DPOG). These meetings take place quarterly and the Lead Local Flood Authority has committed to attending both of these meetings at least once a year to provide a strategic update to all planning managers.
- **13 Planning Team Briefings** which have taken place between October 2021 and February 2022. These briefings were conducted for the first time on a 1-2-1 basis with each development management planning team to communicate to them the changes that have occurred within the team and to seek feedback on how they are finding these changes as well as what more can be done to continually improve our service delivery. Feedback has been collected from these meetings which were positively received, with planners wanting this to become an annual event.
- **Planning Officer Training** opportunities are communicated ad-hoc via email. Feedback from the briefings above has also identified an ask for more planning officer training on sustainable drainage. The Lead Local Flood Authority will explore the feasibility of providing a 'lunch and learn' session on sustainable drainage and has signposted to further training at cost. Laura Makeating is also hosting Royal Town Planning Institute training in September 2022 on surface water and sustainable drainage in planning.
- **Planning Committee Training** has been offered by the Lead Local Flood Authority. So far this has been delivered to Preston City Council Planning Committee where it was positively received and the team has been invited back to deliver a more detailed session on sustainable drainage components. A

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number of Local Planning Authorities stated they will invite the Lead Local Flood Authority to deliver Planning Committee training in 2022.

- **Ad-hoc emails** of significant or relevant news or events that could impact on surface water flood risk and/or sustainable drainage systems through the planning process. The team also strives to inform planning colleagues of relevant training and development opportunities.
- **A new ringfenced mailbox** just for planning consultations was introduced in 2021 to separate planning consultations from other flood risk management business. This has resulted in planning consultations being quickly identified and logged, removing the potential for time lost at the start of the consultation process. Local Planning Authorities are aware of this mailbox and are clear all consultations must be sent here and not directly to flood risk officers.

The Lead Local Flood Authority is exploring other means of effective communication with Local Planning Authorities, such as a newsletter, to continue to build and maintain the positive working relationships we have worked hard to progress.

Monitoring Service Delivery

Improvements have been made to the Lead Local Flood Authority's planning log and there has been a significant performance improvement in relation to planning responses. Data from the planning log is used to performance manage resources within the team as well as the team as a collective. Resources are now managed more dynamically to ensure peaks and troughs in supply and demand can be managed to maintain a consistent service level. This will continue to be monitored and any additional resource needs, for example because of legislative change, will be raised at the earliest opportunity.

Statutory consultees on planning are required, under Section 23 of the Town and County Planning (Development Management Procedure) (England) Order 2015, to report their performance to the Secretary of State by 1 July each year. This reporting mechanism is in place for the Lead Local Flood Authority with a return filed for 2021 and an annual reporting progress now in place to ensure this is achieved.

Other progress and planned work

There are actions within the Flood Risk Management Team's Service Plan which will drive continual improvement of our planning service delivery within the remit of current resources. These include actions to refresh template suites, update and revise the pre-application service, further explore communication methods and deliver improvements to data use, such as increased use of GIS mapping.

The North West Regional Flood and Coastal Committee (RFCC) has tasked the Lancashire Flood and Coastal Erosion Risk Management (FCERM) Partnership to

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lead on Planning and Development for the region. As Partnership Chair, County Councillor Stephen Clarke is working closely with Laura Makeating (Technical Lead for Planning and Development), Lorah Cheyne (Partnership Coordinator for Lancashire) and Chris Findley (independent member of the RFCC for Planning and Development) to progress this.

In 2020 the County Council became a Member of the Association of Sustainable Drainage Systems (SuDS) Authorities (ASA) and the County Council, through Laura Makeating, is now the Vice Chair and Reference Group Chair of ASA. ASA is a member paying group representing Lead Local Flood Authorities at a national level, liaising with Defra, the Department for Levelling Up, Housing and Communities and the national Environment Agency team in relation to surface water flood risk and sustainable drainage. There are many benefits to membership which can be found on [ASA's website](#).

The County Council has been working closely with the Royal Town Planning Institute (RTPI) to develop a continuous professional development (CPD) webinar for planners to be delivered on 8 September 2022. This will showcase progress, challenges, best practice and tools to help planners in relation to surface water flood risk and sustainable drainage.

Looking to the future, the Lead Local Flood Authority is not resting on its laurels. As well as continuous improvement to service delivery, there is a focus on the personal and professional development of staff, dynamic partnership working, and the potential to explore working closely with the learning and development team to develop our own e-learning for partners and customers, such as our Local Planning Authorities.

To conclude, the Lead Local Flood Authority has delivered significant improvements to its planning service over the last 18 months and feedback to date has been overwhelmingly positive, but we recognise there is still more we can do. We strive to continue to deliver the County Council's corporate priorities to deliver better services to protect our environment and support Lancashire's economy.