

# **Flood and Coastal Erosion Risk Management**

## **Ordinary Watercourses Diverting Policy**

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## 1. Introduction

The Flood and Water Management Act (FWMA) 2010 designated all county and unitary authorities, and thus Sefton Council, as 'Lead Local Flood Authorities' (LLFAs) and introduced a number of new duties in relation to flood investigation.

As the LLFA, the Council is required to oversee and participate in the management of local flood risk, which includes the risk of flooding from surface water, groundwater and from ordinary watercourses. Ordinary watercourses include every river, stream, ditch, drain, cut, dyke, sluice, sewer (other than a public sewer) and passage through which water flows and which does not form part of a main river.

Inappropriate diverting of ordinary watercourses can significantly increase flood risk to surrounding areas and lead to a legacy of issues relating to maintenance and enforcement.

Diverting watercourses can increase flood risk as flow dynamics are altered. This can change how water progresses down the system that could lead to flooding in different locations and increase erosion of banks. This will also alter the maintenance regime required of the watercourse.

## 2. Legislation

There is no legislation against diverting of ordinary watercourses. However, there are other legislative implications and policy statements that are relevant.

### 2.1 Flood and Water Management Act 2010

Any changes to an ordinary watercourse must seek consent from the LLFA prior to works being undertaken as set out in the FWMA 2010. Sefton Council's position on consenting and enforcement is set out in the Ordinary Watercourse Consents and Enforcement Policy.

### 2.2 The Environment Act 1995

The Environment Act 1995 places both general and specific duties on Sefton Council relating to environmental, recreational and nature conservation matters. Sefton Council must be mindful of these duties in discharging all its functions, including those relating to flood defence and land drainage.

### 2.3 Natural Environment & Rural Communities Act 2006

This requires biodiversity to be taken into account in all local authority plans, policies, projects, permits and consents. This is known as the biodiversity duty.

### **3. Ordinary Watercourse Diverting Position Statement**

- **Sefton Council is opposed to the diverting of watercourses and considers that it is beneficial for watercourses to remain along their original route.**
- **However, Sefton Council recognise that there may be instances where diverting is the preferred option.**

### **4. Ordinary Watercourse Diverting Policy**

The FWMA requires anyone wishing to alter an ordinary water course to obtain consent from the Council prior to undertaking the work.

Sefton Council will only consider for approval an application to divert an ordinary watercourse where it can be demonstrated to be the preferred option and bring benefits for flood risk management and habitats. The application must:

- demonstrate that the alteration is in the public interest.
  - provide a reduction in flood risk.
  - demonstrate that flood risk will not be transferred to another location
  - maintain or increase the size of the watercourse cross section
  - increase the total capacity of storage along the length of watercourse to be altered.
  - include a detailed maintenance plan and schedule.
  - increase the length or area of wet habitat.
  - take into consideration and design for increases in flows, as may reasonably be foreseen, as a result of incremental development not requiring planning permission.
  - take into consideration and design for increases in flows, as may reasonably be foreseen, as a result of increased development.
  - take into consideration and design for increases in flows, as may reasonably be foreseen, as a result of climate change.
  - demonstrate that a Licence to displace water voles for development works or a licence to displace water voles for work on flood defences, water courses or drainage systems has been granted.
  - secure any other permissions required.
- \*further details are set out in appendix 1*

Sefton Council will not take on any responsibility for the maintenance of the altered sections of watercourse unless this is legally agreed with both parties.

### **5. Links to the development management process**

There will some instances where sites for which planning permission, other permissions and pre-application advice has been sought include or are adjacent to ordinary watercourses or 8 metre buffers around them, or may initially involve culverting of the ordinary watercourses. In such cases the Lead Local Flood Authority (LLFA) would usually be consulted. This would allow the LLFA to make

comments on the planning applications and/or recommend that an “Informative” is added to the planning or other application Decision Notice to state that:

“Any changes to an ordinary watercourse must seek separate consent from the Council as Lead Local Flood Authority prior to works being undertaken, as set out in the Flood and Water Management Act 2010. Sefton Council’s position on consenting and enforcement is set out in its Ordinary Watercourse Culverting, Diverting, Enforcement and Flood Investigation Policies”.

## Appendix 1

Further explanation of the criteria for diverting a watercourse

- *demonstrate that the alteration is in the public interest.*  
This should clearly show what benefits that the alteration to the ordinary watercourse will have to the local community and/or wider within Sefton.
- *provide a reduction in flood risk.*  
The existing level of flood risk must be reduced by the proposed alteration
- *demonstrate that flood risk will not be transferred to another location*  
Flood risk must not increase elsewhere as a result of the proposed alteration.
- *maintain or increase the size of the watercourse cross section*  
The diverted section must have a cross section at least equivalent in shape and design to the original watercourse.
- *increase the total capacity of storage along the length of watercourse to be altered.*  
The new diverted section must have a storage volume greater than the altered original watercourse.
- *include a detailed maintenance plan and schedule.*  
The maintenance plan should clearly state what maintenance will be undertaken, including inspections and works. State who is going to undertake these and how it is going to be funded. This will have to be acceptable to Sefton Council.
- *increase the length or area of wet habitat*  
The alteration of the watercourse must provide an increase of additional wet habitat. For example this could include flood storage area, ponds, new habitat. Consideration of existing environmental status must be included with particular reference to the Licence to displace water voles for development works.
- *take into consideration and design for increases in flows, as may reasonably be foreseen, as a result of incremental development not requiring planning permission.*  
It can reasonably be assumed that there will be an increase in hard surfaces within private property that doesn't require planning permission. These will increase flows into the system and must be considered.
- *take into consideration and design for increases in flows as may reasonably be foreseen as a result of increased development.*  
An assessment of the catchment served by the watercourse must be undertaken to identify potential developmental increases in that area, where it be new builds or property improvements/extensions. This increase must be accounted for.

- *take into consideration and design for increases in flows, as may reasonably be foreseen, as a result of climate change.*  
As set out in the National Planning Policy Framework and Planning Practice Guidance climate change allowances must be taken into account.
- *demonstrate that a Licence to displace water voles for development works or a licence to displace water voles for work on flood defences, water courses or drainage systems has been granted*  
Due to the widespread distribution of water voles throughout Sefton's watercourses it is assumed that all watercourses provide habitat or passage for water voles as such the appropriate aforementioned licences must be gained.
- *secure any other permissions required*  
There are a variety of other permissions that may be required dependent upon the location of the watercourse that will need to be secured.