



**MINUTES OF THE MEETING OF THE
PETITIONS AND COMMUNITY EMPOWERMENT REVIEW COMMITTEE**

**WEDNESDAY 20 DECEMBER 2023
ONLINE DIGITAL MEETING FACILITY**

Committee Members Present:

Councillor N Hampshire
Councillor G McGuire
Councillor L-A Menzies

Council Officials Present:

Ms M Ferguson, Head of Corporate Support
Ms A Stubbs, Service Manager – Roads

Others Present

Mr J Baxter, Jacobs
Dr J Wright, Principal Petitioner

Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor J McMillan
Councillor L Jardine (sub. Councillor L-A Menzies)

Declarations of Interest:

None

**1. PET0223: CALLING ON EAST LOTHIAN COUNCIL TO PAUSE AND
REVIEW THE MUSSELBURGH FLOOD PROTECTION SCHEME**

A report had been submitted by the Executive Director for Council Resources to advise of a petition submitted by Jeff Wright, principal petitioner, on behalf of the Musselburgh Flood Protection Action Group, calling on East Lothian Council to pause and review the Musselburgh Flood Protection Scheme. The petition had 2761 signatures.

The Provost would ordinarily be the Convener of the Petitions and Community Empowerment Review Committee, but as he had submitted apologies, the clerk invited Members to make nominations. Councillor McGuire nominated Councillor Hampshire,

and all Members confirmed they were content for Councillor Hampshire to act as Convener.

Morag Ferguson, Head of Corporate Support, provided an outline of the role of the Petitions and Community Empowerment Review Committee. She advised that if, having heard from the lead petitioner and council officer, the Committee considered that action should be taken, it could refer the matter to the appropriate chief officer or Committee for further consideration. If the decision was to refer to the appropriate committee, she suggested that Members would refer to the special meeting of East Lothian Council on 23 January 2024 where the substantive report on the Musselburgh Flood Protection Scheme would be considered.

Councillor Hampshire explained the procedure for the meeting and invited Dr Wright to speak to the petition.

Dr Wright said that the Musselburgh Flood Protection Scheme had created considerable interest in the community and with visitors, who all enjoyed the amenity of green spaces along the coast and by the river. He said the importance of green spaces for mental health and wellbeing of the community had only recently begun to be appreciated. He reported a rise in public anxiety and consternation about the lack of practical input from the public in the project. He listed doubts in relation to the scheme, including: the council's motivations in bringing three separate projects together, thereby muddying the discussion and scrutiny each should be subject to; the overreliance on paid consultants and lack of independent expert scrutiny; the lengthy negotiation with Scottish Power over liability for £50m of lagoon wall repairs; the lack of independent scrutiny of the scheme's underlying technical evidence and assumptions; and the minimal use of nature-based solutions, which he said were the only flood protection measures which could reduce the effects of climate change.

Dr Wright said the Musselburgh Flood Protection Action Group had been led to question the democratic processes in East Lothian and the community's ability to be involved. He felt the significance of the project meant that there had to be a strong bond of trust and openness between residents and Councillors. He said agreement to pause and review the scheme would go a long way to re-establishing trust which was vital if the project was to go ahead. He said a pause and review would confirm that the project was being conducted with the right intentions of providing the best solution for Musselburgh and helping tackle the climate emergency. He said that a pause would also show that the council's actions were not motivated by a dash for Cycle 1 cash, which he highlighted ultimately came from taxpayers via the Scottish Government. He objected to Cycle 1 cash being described as if it were a lottery win for the council during a cost-of-living crisis, and said Musselburgh deserved better. He said the community wanted to get involved and he said a pause in the scheme would allow them to do so. He described the engagement and consultation processes as having spoken to the community superficially.

Dr Wright continued by saying that building climate change resilience required many skills, new approaches, and creative thinking, and said Musselburgh was ready to engage with the council to co-produce a scheme appropriate to the future levels of flood risk and that would actively contribute to reducing the impact of climate change, promote biodiversity, and that valued green spaces as essential community resources. He felt these were reasonable demands in line with leading bodies who stressed how central nature-based solutions must be in tackling the climate crisis. He said the proposed scheme was an unsuitable 20th century hard engineering approach to a complex 21st century problem. He was unsurprised that technical advisers, who would make profits from the structures, suggested a solution predominantly involving large

concrete walls. He said that a review of the scheme would allow the community to feel confident that key technical assumptions were reasonable and could stand up to independent expert scrutiny. He said the Musselburgh Flood Protection Scheme Action Group were concerned about the scheme's unwillingness to share key technical information from the start of the project; he said the community were being treated as if they were unable to comprehend the information, He also suggested the lack of information sharing could be because the information would not stand up to independent scrutiny. He said citizens were shocked that £100m of public expenditure was not subject to greater independent and expert scrutiny at every stage.

Dr Wright summarised that the community was ready to help the council using the many skills of the members of the Musselburgh Flood Protection Scheme Action Group. He said that it would be possible to co-produce a scheme that preserved Musselburgh's character and amenity. He said the group rejected the design presented in June entirely and had lost confidence in the project manager and the team following two years of interaction. He reiterated his call on the council to accept the petition and pause and review the scheme, and warned that opposition would grow if the opportunity to pause was not taken. He reported that the group had doubled in size following the June exhibition, and said concerns grew as more was learned about the proposals. He advised that other councils had paused their flood protection schemes because of community concerns and asked East Lothian Councillors to serve their community by agreeing to pause and review the scheme.

Councillor Menzies asked what changes the group would wish to make to the democratic processes. Dr Wright responded that the group wished for greater involvement in the decision-making processes. They wished for greater information about the underlying technical data to be shared as the group included flood forecasters and climate scientists. He said that information should be shared with the community, and there should not be barriers, silence, and unreturned emails. He said the group were willing to work with the council to make sure the processes were clear.

Councillor Menzies asked about the addresses of signatories. Dr Wright advised that about half of the 2761 signatories were from within the county, but advised that a further 960 signatures collected on foot in Musselburgh, which had not yet been submitted, were mostly EH21 or EH postcodes. He advised that the total number of signatures was now closer to 4000.

Councillor Menzies asked about the group's reaction should the scheme be paused and go into Cycle 2 if it remained similar to the current design. Dr Wright said that the opportunity to openly review the key technical assumptions was crucial to gaining the confidence of the community. He said the community wanted to have confidence that the scheme offered the right level of protection to the right level of risk, and for this to be communicated well and clearly. He said there was no set opposition to a type of scheme, but said there was opposition to the lack of independent scrutiny to the key assumptions and evidence being used to create the scheme.

Councillor McGuire asked what the group would like to see in place of the current design. Dr Wright said the group wanted a scheme that properly considered green spaces and tackling the climate crisis. He highlighted that concrete walls added to the climate crisis because of greenhouse gases produced. He said that elsewhere, there were climate strategies using nature-based solutions which preserved or enhanced green spaces and biodiversity. He felt it was not his role as a citizen to describe a vision of a new scheme, but said that people in the Musselburgh Flood Protection Action Group had presented different proposals to the community and there had been wide engagement with those proposals. He said it was possible to have nature-based

solutions that properly provided a level of risk protection against future flood events. He added that concrete walls did not necessarily remove flood risk, and highlighted significant flooding in Brechin despite investment in flood defences.

Councillor McGuire asked which key information had not been provided to residents. Dr Wright said the group had requested the modelling assumptions and the input into that model. Dr Wright's own background was in science and engineering and he said that scientists shared data for scrutiny because they were confident that would stand up to scrutiny. He said that the community had not been able to review data and gain confidence despite having requested it many times.

Councillor Hampshire asked whether the group accepted that Musselburgh was at risk of flooding. Dr Wright responded that Musselburgh would always be at some risk of flooding given its geography. He said the effect of climate change would not be uniform across all parts of Scotland. He noted that Musselburgh had not had a substantial flood for a very long time, and there had been very little change in the flood risk and frequency in Musselburgh in the last 30 years; he compared this to other parts of Scotland where the flood risk had gone up by as much as a factor of five. In response to a further point from Councillor Hampshire, Dr Wright said that drains were currently the biggest source of flooding in Musselburgh.

Councillor Hampshire highlighted damage caused by Storm Babet and the potential risk it had posed to Musselburgh. He highlighted Councillors' responsibility to protect the community and asked how they should decide whether to go ahead with a worked-up scheme or an option that was currently unknown. Dr Wright responded that the community were calling to co-produce a scheme with the council and to manage the risk between the council and the community. He said Musselburgh could have been flooded at any point over the last 100 years, but there had been no substantial flood in that time. He said parts of the country with regular flooding had to take immediate action. He said scientists did not yet know how the climate would affect the high winds in the atmosphere above northern Europe, so asked how Councillors could reasonably make a plan based on assumptions that were not known. He said the flood risk in Musselburgh would not be removed no matter how high the wall was built but said there was time to create a system that would help to reduce climate change and would fully involve the community. He said that Councillors to date had risked not building walls, and said this was a reasonable assumption to make based on 60 years of clear data. He said it would take a fraction of the money invested so far in the concrete walls solution to have a better scheme that would fall in line with Scottish and UK Government policy and the directions of organisations such as the United Nations.

Councillor Hampshire said that of the 2761 signatories of the currently submitted petition, 760 were from Musselburgh, and Dr Wright offered to deliver the further 960 signatures. Councillor Hampshire asked whether those living in the 3000 Musselburgh properties at risk from flooding would be happy to wait for a scheme that was hitherto unknown. Dr Wright advised that many people in the group lived directly along the river or along the coast. He said that the 3000 houses to which Councillor Hampshire referred were based on assumptions that had not been independently scrutinised, and contended that there had been some scaremongering. He reiterated that people who were most affected were prominent members of the group. He said that, if challenged, the group could speak to the majority of the 3000 households and they would support a scheme comprising nature-based solutions to reduce the threat of a climate crisis.

There was discussion between Councillor Hampshire and Dr Wright regarding the expectation that Scottish Power would fund the necessary repairs to the sea wall, but Ms Ferguson highlighted that negotiations between the council and Scottish Power

were confidential for the time being. She said there was a legal and contractual basis for the handover of the wall and said the council was using its best attempts in negotiation with Scottish Power to obtain the best value for the taxpayers of East Lothian, but did not have information with regards to a timeline.

Alan Stubbs, Service Manager – Roads, responded to the petition. In response to the petition's request to pause and review the scheme, he said that the timeline for advancement of the outline design had been approved at the October 2022 Council meeting. He reported that the project team had been advancing the scheme through an extensive consultation process with regulatory organisations, key stakeholders, community groups, businesses, and the people of Musselburgh. He said that council officers would present the finalised outline design for review at a meeting of East Lothian Council on 23 January 2024, and Councillors would decide how to proceed.

Responding to the petition's request for co-production of options that reduced the flood risk and preserved the character of the town, focusing on nature-based solutions on the River Esk catchment and along the coast, Mr Stubbs advised that the procedure for promoting a flood protection scheme was set out in the Flood Risk Management (Scotland) Act 2009, with which the council was legally bound to comply. He said the Act contained no provision or mandate for co-production, but provided that any person may object to the proposed scheme when it had been published. Mr Stubbs said that prevention of the scheme's publication would therefore prevent individuals from exercising their democratic right to object to the proposed scheme. He advised that the proposed scheme should be published and thereafter the petitioners could object to it, should they wish, through the procedure set out in the Act.

Mr Stubbs further advised that the Scottish Government had instructed that if the proposed scheme was not notified by 31 March 2024, then it would be withdrawn from Cycle 1 of the flood protection programme, and in this circumstance, all funding would be withdrawn. Mr Stubbs advised that there was insufficient time before this deadline to make further changes to the currently proposed scheme and it was therefore not possible to undertake co-production of the scheme per the petition's request. He said the choice for Councillors on 23 January 2024 was to publish the scheme in its current form by 31 March 2024 or to allow the deadline to pass and have funding removed by the Scottish Government.

Mr Stubbs then advised that nature-based solutions and natural flood management had been considered in the development of the scheme. He said the outline design would include maximum nature-based solutions as part of the design, including the modification of Rosebury Reservoir and Edgelaw Reservoir to store large volumes of water during a flood event, and the provision of a large debris catcher by Whitecraig. He further advised that a report had been taken to East Lothian Council in October 2023 on the lessons learned from the Eddleston Water site visit on natural flood management, the conclusion of which was that natural flood management could help to protect land and properties from flooding, but alone it would not eliminate the need for defences such as walls and barriers; he advised that this conclusion was supported by the Scottish Government. He reported that on a recent visit to East Lothian Council, Mairi McAllan, the Cabinet Secretary for Transport, Net Zero and Just Transition, when asked about the project and specifically nature-based solutions, said that she was a significant supporter of nature-based solutions to climate change and to catchment level management as far as possible. He reported that Ms McAllan spoke about the Scottish Government funded Eddleston Water project and said one of the results was that nature-based solutions could play an important part, but it would often be unable to fully mitigate the risk; this was why a combination of engineered and nature-based solutions was often the best approach.

Mr Stubbs said that the council and the project team aspired to deliver a flood protection scheme tailor made to meet the unique needs of each location of the town and the residents, businesses, and visitors of Musselburgh. He said the project team recognised and acknowledged the wider public interest, and as such, had invested significant time and resources into meaningful consultation and engagement with the public, residents, community groups, businesses, and statutory stakeholders including: public meetings; local area meetings; workshops; presentations; drop-in sessions; site visits; bespoke meetings; and presentations with various community groups and stakeholders. He said this had culminated in a public exhibition of the first vision of the outline design in June 2023. He advised that the project team had also visited numerous homes of residents where the scheme might directly impact their property. He said this engagement and consultation had allowed the project team to shape a scheme that worked for local people, including consultation with statutory and regulatory bodies. He said the project team were now working to prepare reports and documentation to be presented to Council at the special meeting on 23 January.

Mr Stubbs responded to questions from Councillor Menzies. He advised that Members would have one week to absorb the papers for the meeting on 23 January, but there would be a further briefing for Elected Members prior to the meeting.

Councillor Menzies asked whether the scheme would be permanently withdrawn if not reported by 31 March 2024, or whether it would fall into Cycle 2. Mr Stubbs said that this question would have to be addressed to the Scottish Government. Jim Baxter, a representative of Jacobs, confirmed that a scheme which failed to meet the deadline of 31 March 2024 would cease to be part of Cycle 1. He said that current understanding was the schemes which left Cycle 1 would have the opportunity to become part of Cycle 2, but advised that there were currently no plans for how Cycle 2 would be funded. He advised that should the scheme drop off Cycle 1, it would effectively cease to exist and no further work would be carried out until such time as the Scottish Government established how Cycle 2 would be funded. He said that the petition's request for co-production of a scheme would assume that work could continue on the scheme as part of Cycle 2, which he said was not correct.

Councillor Menzies asked whether officers accepted the petition's assertion that consultation could have been better. Mr Stubbs said that while there could always be room for improvement and reflection, he had never been involved with any project with such significant engagement and consultation. He said that a real effort had been made to engage with individuals and agencies, but it had not always been easy on this emotive and important issue for the community. He said the project had evolved since 2016 as new information had emerged about climate change, natural flood management, and nature-based solutions. He said officers were aware of both support for and objection to the scheme. He advised that although the Act only required engagement at the outline design stage, the importance of engagement was recognised and begun at a very early stage of the project and well before the outline design stage. He said that consultation had also evolved as officers had taken on board feedback from earlier events.

Councillor McGuire asked about scaremongering, the design, and if the town would be covered in concrete walls. Mr Stubbs asked Mr Baxter to provide information on the design. Mr Baxter said that the accusation with regards to scaremongering could be made on both sides of the debate. He said there was a perception that concrete was a bad product which was responsible for climate change and should be avoided, and said the issue was made to be black and white. In considering Scotland's current and future flood risk, he said it was recognised that climate resilience was needed, but also

climate adaptation, which was about changing communities and towns to live with the effects of climate change because there was not power at county and national level to counteract the powers of climate change. He said climate adaptation meant protecting and altering towns and concrete was one form of technology which could contribute to this. He advised that that the carbon aspect of concrete derived mainly from its cement content; modern technologies replaced as much as 50% of the cement content with lower carbon additives in some of the schemes around Scotland.

Councillor Hampshire asked whether the scheme was able to deal with rainfall, sea level rises, and storm surges. Mr Baxter advised that the scheme was designed to protect against the current risk of rainfall from the catchment and from storm surges, but also took account of climate projections for greater intensity of rainfall and higher flows in rivers over the next 100 years. He said a view had been taken on current sea levels and how much this might rise by towards the end of the century. He said that the exhibition in June had tried to stress to the public that the design did not advocate for the worst-case scenario for climate change, as it had become clear through previous engagement and consultation that this was not what local people wanted. He reported that residents had wanted multiple climate change scenarios to be considered, and as such, four different climate change scenarios had been presented to Council. He advised that one of the intermediate scenarios had been the basis for the exhibition in June. He highlighted that the designers and consultants were not taking this decision, and it was the decision of Council to take a view on their appetite for risk.

Responding to a further question from Councillor Hampshire, Mr Stubbs advised that the first outline design presented in June was a first vision which had taken feedback and input from previous consultations into account, and since then, officers had taken on board feedback and were working to present the finalised outline design on 23 January.

Councillor Hampshire asked about the consequences of not meeting the 31 March deadline. Mr Stubbs advised that the council had been working to this timeline for a number of years, and confirmed to the best of his knowledge that the Scottish Government currently had no budget confirmed for Cycle 2. Mr Baxter added that there was currently no knowledge as to the delay that might be caused should the deadline not be met as there was no clarity on funding for Cycle 2. He stressed that publication of the scheme was not the end of the process, and therefore delaying the scheme to move from Cycle 1 to Cycle 2 did not achieve the objective of having greater community involvement in the scheme as no further work would happen until funding would occur. He said that if the scheme was published in March, then people could object if they wished to, and there was then a statutory process set out whereby the council could take a decision to modify the scheme. Following publication, he said there was opportunity for the community to participate in refining the design of the scheme. He said his experience on numerous flood protection schemes was that the community could still be involved in the refinement of the design and tailor certain aspects, but ultimately recognising that the main building blocks of the scheme were fixed by the publication. He said if the scheme was not published in March, there would be no community involvement and no scheme until such time as funding became available again.

Councillor McGuire asked about Dr Wright's assertion that the council had an overreliance on one group of consultants. Mr Stubbs responded that the consultant had been through a tendering process which complied with the council's governance and had been appointed through a rigorous procurement exercise.

Councillor Menzies said that most people understood that some form of action had to be taken to protect Musselburgh from flooding, but expressed that it was a more nuanced decision than simply being in favour of or against a flood protection scheme. She said the Petitions and Community Empowerment Review Committee was a tool to allow the public access to the democratic process of the council. She compared other decisions made with far fewer responses than the 760 Musselburgh residents who were signatories to this petition. She thought there should be full opportunity for Councillors to discuss objections and all the other evidence. She proposed to refer the petition to the special meeting of East Lothian Council on 23 January 2024 as she felt it would be beneficial for all Councillors to consider the points raised and to allow the public access to the democratic process.

Councillor McGuire agreed with Councillor Menzies' points, and described the flood protection scheme as being a massive issue. He acknowledged that years of work had gone into the plans, but also acknowledged the significant number of Musselburgh residents raising concerns. He thought it was important to show that people would be listened to as part of the democratic process. He agreed that the matter should be referred to the special meeting of East Lothian Council in January for debate and discussion.

Councillor Hampshire agreed with Councillors Menzies and McGuire. He felt the petition should be considered alongside the proposed scheme on 23 January for Councillors to decide how to move forward after hearing hear the evidence provided by council officers as well as the petition.

It was confirmed that Councillor Menzies had formally proposed the petition be referred to the special meeting of East Lothian Council on 23 January 2024, and this had been seconded by Councillor McGuire. Members then confirmed their support for this proposal by roll call vote.

Decision

The Petitions and Community Empowerment Review Committee agreed to refer the petition to the special meeting of East Lothian Council on 23 January 2024 for discussion alongside the proposed scheme.

Signed

Councillor N Hampshire
Convener of the Petitions and Community Empowerment Review Committee