



MINUTES OF THE SPECIAL MEETING OF EAST LoTHIAN COUNCIL

TUESDAY 23 JANUARY 2024
VIA DIGITAL MEETING FACILITY

Committee Members Present:

Provost J McMillan (Convener)
Councillor S Akhtar
Councillor E Allan
Councillor R Bennett
Councillor L Bruce
Councillor D Collins
Councillor F Dugdale
Councillor J Findlay
Councillor A Forrest
Councillor N Gilbert
Councillor N Hampshire

Councillor L Jardine
Councillor C McFarlane
Councillor C McGinn
Councillor G McGuire
Councillor S McIntosh
Councillor K McLeod
Councillor L-A Menzies
Councillor B Ritchie
Councillor T Trotter
Councillor C Yorkston

Council Officials Present:

Ms M Patterson, Chief Executive
Ms L Brown, Executive Director for Education and Children's Services
Ms S Fortune, Executive Director for Council Resources
Ms F Wilson, Director of Health and Social Care
Ms L Byrne, Head of Children's Services
Ms E Dunnet, Head of Finance
Ms M Ferguson, Head of Corporate Support
Ms W McGuire, Head of Housing
Mr T Reid, Head of Infrastructure
Ms S Saunders, Head of Communities
Mr S Cooper, Team Manager – Communications
Ms R Crichton, Committees Officer
Ms A-M Glancy, Service Manager – Corporate Accounting
Mr C Grilli, Service Manager – Governance
Ms J Mackay, Senior Communications Adviser
Mr C Price, Project Manager – Musselburgh Flood Protection Scheme
Ms M Scott, Committees Officer
Mr A Stubbs, Service Manager – Roads
Mr P Vestri, Service Manager – Policy, Improvement and Partnerships

Visitors Present:

Mr J Baxter, Jacobs
Dr A Rennie, Dynamic Coast

Clerk:

Mrs L Gillingwater

Apologies:

Councillor C Cassini

Declarations of Interest:

None.

The Provost advised that the meeting was being held remotely, as provided for in legislation; that the meeting would be recorded and live streamed; and that it would be made available via the Council's website as a webcast, in order to allow public access to the democratic process in East Lothian. He noted that the Council was the data controller under the Data Protection Act 2018; that data collected as part of the recording would be retained in accordance with the Council's policy on record retention; and that the webcast of the meeting would be publicly available for up to six months from the date of the meeting.

On behalf of the Council, the Provost thanked all those involved in the preparation of the reports for the meeting.

The Provost welcomed Dr Alistair Rennie of Dynamic Coast and Mr Jim Baxter of Jacobs to the meeting.

The clerk recorded attendance by roll call.

1. UPDATE ON DYNAMIMC COAST ASSESSMENT

A report was submitted by the Executive Director for Place, presenting an update on the Musselburgh Coastal Change Assessment (2024) report prepared by Dynamic Coast and the University of Glasgow.

Alan Stubbs, Service Manager for Roads, presented the report, advising of the work undertaken by Dynamic Coast and the University of Glasgow in relation to coastal change in the Musselburgh area and the future risks posed by climate change. He pointed out that coastal erosion featured on the Council's Corporate Risk Register for the whole county and that an update based on this new report from Dynamic Coast would be added with a recommendation that a monitoring programme is put in place so that action could be considered, as required.

Dr Alistair Rennie of Dynamic Coast explained that the work had been commissioned to support the Flood Protection Scheme, but that even without the Scheme there was merit in looking into coastal erosion, advising that all councils on the coast should undertake coastal change adaptation planning. He noted that 39% of the coastline in the Musselburgh area had experienced erosion between 2019 and 2023, and that it was essential to adapt and mitigate against further damage and to protect flood management structures. He drew Members' attention to the Executive Summary of the Musselburgh Coastal Change Assessment, attached as Appendix 1 to the report.

Councillor Dugdale asked a question in relation to the modelling used for the study. Dr Rennie explained that the research focused on how the Musselburgh beaches have changed, and this evidence was then used to inform potential future changes. This, together with the monitoring programme, would inform the Council on any action required. He added that the various parts of the coastline would experience different changes.

Councillor Jardine asked for information on the options available to the Council to tackle coastal erosion, and also what the potential impact coastal erosion would have on homes and businesses in Musselburgh. Mr Stubbs indicated that further investigation was required as regards understanding and mitigating the risks, which would be reported back to Council in

due course. Dr Rennie suggested that there were several approaches that could be taken, including building seawalls, although these would only protect the land behind the walls and could result in problems in front of the defences and further along the coast. He proposed, therefore, that adaptive approaches had to be considered alongside mitigation – the Coastal Change Adaptation Plan (CCAP) would take this into account to ensure that the community was protected.

Councillor Menzies asked if the Flood Risk Management Plan would align with the Council's Local Development Plan. Mr Stubbs assured her that it was vital to align these plans, and that his team would engage with other relevant Council services as required. Tom Reid, Head of Infrastructure, added that a team involving officers from various Council services would be mapping the coastline from Musselburgh to Cockburnspath, and that this work would feed into the emerging Local Development Plan. Dr Rennie also provided Councillor Menzies with more detailed information on the dynamic adaptive approach option, which would allow the Council to plan for various scenarios as well as monitoring and responding to issues as they arise.

Responding to a series of questions from Councillor Forrest, Mr Stubbs assured him that the full Dynamic Coast report would be shared with Members and publicly, once it had been reviewed/considered by the Project Team and other relevant Council services. In relation to the beach surveys taken since 2018, the data on this would be provided in the full report; however, he indicated that changes to the upper area of the beach were noticeable and that it was clear that parts of the dunes were being lost. As regards the movement of sediment, Dr Rennie confirmed that, as informed by surveys and the use of drone technology, 4,000m³ of sediment had moved to adjacent areas, with a lot of sediment from the east beach being moved towards the west which has been held up by the harbour. He cautioned that the risks of this eroded sediment choking up adjacent river mouths was not currently a matter of great concern, but that there was a need to ensure that this did not cause the river to back up. He added that monitoring would identify where the sediment was and where it would need to be moved to.

With reference to the building of seawall defences and the potential increased risk of erosion, Councillor McIntosh asked how the Council could be sure that the problem of erosion was not being exacerbated by the building of such defences. Dr Rennie informed her that the broad 'anatomy' of Musselburgh had not changed in 150 years, and that lessons could therefore be learned from decisions made in the past. He advised that seawalls were necessary and appropriate in certain places, e.g. where there were buildings and communities situated close to the coast and, as it was predicted that by the end of this century the sea level would be 90cm higher than at present, decisions would have to be taken as to how to address this challenge. Councillor McIntosh also highlighted the importance of involving the community in the development of the CCAP and asked if it was intended to discuss this plan with the public. Dr Rennie referred her to the Dynamic Coast website, which provided information on CCAPs in other areas and stated that community involvement was a key component of the CCAP. Mr Reid added that a public consultation would be carried out on conclusion of the survey work and identification of the risks. Referring specifically to the point raised by Councillor McIntosh on the impact of coastal erosion on flood defences, Conor Price, Project Manager, advised that this could be covered in detail at Item 3. He also noted that this item included a recommendation on undertaking further investigation into the risk of coastal erosion in Musselburgh in order to assess new risks. He pointed out that existing coastal structures would be repaired or replaced and that the only new proposed coastal structure would be constructed between Fisherrow and the mouth of the River Esk, which would be set back from the beach, where it was assumed there would be no coastal erosion risk – this aspect would be the subject of further investigatory work undertaken by Dynamic Coast.

In response to questions from Councillor Hampshire in relation to scenario planning, Dr Rennie explained that Dynamic Coast had looked at how the coast had changed and the evidence to support that, which was covered in the full report. However, it only looked at the current risks and how these could worsen at various parts of the beach, hence the need for the CCAP

(described in Section 5 of the Executive Summary), which would be linked to the Local Development Plan. Dr Rennie also pointed out that, due to climate change, it was likely that there would be an increase in storms, and that the Council would need to plan for this. He suggested that a staged approach based on risks would be appropriate, and that monitoring was important. As regards a suggestion made by Councillor Hampshire to construct off-shore reefs, Dr Rennie proposed that the full range of options should be considered, including off-shore constructions.

Councillor Akhtar sought assurance on the robustness and independence of the project. Dr Rennie explained that the report contained evidence which had been presented in an open and transparent way, and therefore much of the surveyed changes were not open to interpretation. He expected the Council to ensure that options were considered properly using the available evidence, and that the CCAP approach would allow for opportunities to consult with the community at various stages.

Councillor Menzies welcomed the information provided by Dr Rennie and thanked all officers and others involved in the public consultations. She highlighted the importance of community engagement and listening to the views of the public.

Councillor Hampshire echoed Councillor Menzies's comments. He also thanked the Scottish Government for bringing forward this initiative, noting that the Council could not have dealt with this issue without financial support from the government. He also suggested that SEPA and the Crown Estate should have a greater involvement, and that the Crown Estate should have a responsibility for investing in coastline protection.

Councillor McIntosh looked forward to the publication of the full report, remarking that the best nature-based solution would be to stop extracting oil and gas.

The Provost moved to the roll call vote on the recommendations, which were approved unanimously.

Decision

The Council agreed:

- i. to note the content of the Executive Summary report by Dynamic Coast and the University of Glasgow (Dynamic Coast), attached as Appendix A to the report;
- ii. to note the risk of coastal erosion to Musselburgh outlined by Dynamic Coast, deriving from the future impacts of climate change, and that East Lothian Council updates this risk within the Council's Corporate Risk Register;
- iii. that further investigation would be undertaken into the risk of coastal erosion to Musselburgh due to the impact of rising sea levels/climate change. This further investigation should continue the partnership working between the Musselburgh Flood Protection Scheme and Dynamic Coast such that this risk, to both the town of Musselburgh and the proposed Scheme, and appropriate mitigations are fully understood; and
- iv. that a report would be brought back to Council to fully update on the coastal erosion risk to Musselburgh and that this would include developed proposals on how this risk might be mitigated. It was currently assumed that such mitigation may be through the proposed Scheme or the proposed Coastal Change Adaptation Plan, or a combination of the two.

2. PETITION CALLING ON EAST LOTHIAN COUNCIL TO PAUSE AND REVIEW THE MUSSELBURGH FLOOD PROTECTION SCHEME

A report was submitted by the Executive Director for Council Resources, seeking determination of a petition calling on the Council to pause and review the Musselburgh Flood Protection Scheme.

The Head of Corporate Support, Morag Ferguson, presented the report, explaining the petition had been heard by the Petitions and Community Empowerment Review Committee on 20 December, and that the Committee had heard from the lead petitioner, Dr Jeffrey Wright, Alan Stubbs, Service Manager for Roads, and Jim Baxter from Jacobs. The Committee had decided to refer the petition to this Council meeting so that it could be determined alongside the report on the proposed Flood Protection Scheme. The petition and the minute of the Committee meeting were attached as Appendix 1 to the Council report.

Councillor Menzies, who had participated in the meeting of the Petitions and Community Empowerment Review Committee, advised that she had proposed at the Committee meeting that all Members should be given the opportunity to consider the petition. She proposed a motion as follows: Council notes the terms of the petition but considers it to be premature to make a decision on the progress of the Scheme before considering the report at Item 3 [on this Council meeting agenda].

Councillor Gilbert seconded the motion.

Speaking in support of the motion, Councillor Hampshire noted that it was sensible to consider the petition at the same time as the officer recommendations for Item 3.

In response to questions from Members, Mrs Ferguson advised that it was for Members to decide to debate the terms of the petition at this point in the meeting or to vote in favour of the motion, which, if carried, would allow the Council to move to Item 3 on the agenda. Should the terms of the petition be supported, then this could be raised during Item 3 by way of an amendment [to the recommendations].

Councillor McIntosh agreed with the views of other Members on considering the petition at the same time as Item 3. She thanked all those who participated in the Petitions and Community Empowerment Review Committee meeting for their contributions. She pointed out, however, that there was no real option to pause the Scheme, due to the funding arrangements, and also that there were no additional resources, or provision in legislation, to look at co-producing a scheme with the community.

The Provost moved to the roll call vote on the motion, as proposed by Councillor Menzies and seconded by Councillor Gilbert, which was approved unanimously.

Decision

The Council agreed:

- i. to note that, at its meeting of 20 December 2023, the Petitions and Community Empowerment Review Committee considered a petition submitted by Dr Jeffrey Wright, on behalf of the Musselburgh Flood Protection Action Group, requesting that the Council should pause and review the Musselburgh Flood Protection Scheme, and that the Committee agreed that this matter should be referred to Council for determination; and
- ii. to note the terms of the petition but considered it to be premature to make a decision on the progress of the Scheme before considering the report at Item 3.

3. MUSSELBURGH FLOOD PROTECTION SCHEME – PRESENTATION OF THE OUTLINE DESIGN

A report was submitted by the Executive Director for Place, presenting the updated Outline Design of the Musselburgh Flood Protection Scheme (the Scheme) to Council, and seeking Council approval of the commencement of Project Stage 5 ('Statutory Approvals') to allow the Scheme's design to advance.

The Service Manager for Roads, Alan Stubbs, presented the report, providing a summary of progress made to date on the Scheme (as outlined in Sections 3.1 and 3.2 of the report). He set out in detail the Scheme's design (set out in Sections 3.3 and 3.4 of the report) and the consultation undertaken to date. He advised that the cost of the Flood Protection Scheme was currently £53.9m, the cost of the work on the seawall was estimated to be £52.1m, and the cost of the Musselburgh Active Toun project was £26.5m: a combined cost of £132.5m. Mr Stubbs stressed that the Council was not being asked to make a final decision on the Scheme at this meeting, but by approving this report, the Council could proceed to the next stage of the process – the Statutory Approvals stage. He added that there would be further opportunities for the modifications to be made to the Scheme and for the Council to consider the financial viability of the Scheme.

Councillor Forrest asked a series of questions on a number of issues. On 'pinch points' on the River Esk, Jim Baxter of Jacobs explained that there were various areas that would flood sooner than others, and that the flood risk related to the Esk, Pinkie Burn and along the coast. Some areas were at risk of a 1 in 25-year flood event, others at risk of a 1 in 200-year event. As regards the incorporation of drainage into the Scheme, Mr Baxter advised that most of the drainage in the town was part of a combined system, with the Council being responsible for the gullies and Scottish Water being responsible for the sewers. He noted that during storms, the sewers become overwhelmed and can't take all the water from the drains, which causes the water to back up and go into the river or the out at the coast. He stated that this could not be addressed as part of the Scheme. However, it was proposed that surface water pumping stations would be included in the Scheme to prevent the sewers being overwhelmed.

On discussions with Midlothian Council concerning nature-based solutions within their area, Mr Stubbs confirmed that the Project Team had engaged with Midlothian Council and other stakeholders in the upper Esk catchment. Conor Price, Project Manager, assured Councillor Forrest that regular engagement with officers at Midlothian Council had taken place since 2019, and that, should the Council agree to proceed to the next stage, the relevant documentation would be made available to Midlothian Council. Regarding the use of reservoirs, Mr Baxter provided a detailed explanation on how reservoirs cope with excess water. He noted that the Edgelaw and Rosebery reservoirs are owned and operated by Scottish Water, and that the Project Team were proposing to change the overflow structure of the reservoirs and create a new weir.

Sederunt: Councillor Collins left the meeting.

Councillor Forrest asked for details of any other flood prevention work undertaken outwith the Scheme. Mr Stubbs advised that there was ongoing work on flood protection, particularly in relation to the maintenance of gullies. Tom Reid, Head of Infrastructure, added that temporary pumps were being installed at the new development in Craighall to tackle flooding there. Mr Price also made reference to the maintenance of weirs around Musselburgh, as well as the monitoring of other structures, such as bridges and training walls. As regards the town's bridges, Mr Stubbs informed him that the Electric Bridge would be for active travel pedestrian/cycle use only. Mr Baxter advised that the Roman, Rennie and Olivebank bridges would not be altered as part of the Scheme. He provided a detailed explanation on the consideration given to the impact of debris on the bridges, and of the inclusion of a debris trap

to mitigate against damage to bridges. Further information on this was included in the Environmental Impact Assessment (EIA).

Councillor Bennett asked questions in relation to project costs, potential loss of trees, and the heights of barriers. Mr Stubbs and Mr Price advised that it was not possible at this stage to confirm the final cost of the Scheme, but that further reports on this would come back to Council. Mr Stubbs noted that the Project Team had taken account of feedback on potential loss of trees and have changed the Outline Design based on this. For example, at Eskside West there would now be fewer trees lost given a change to the alignment of the defences and locating these further back from the river and closer to the road. On the height of walls, Mr Baxter explained that the proposals had previously assumed a sea level rise of 1.24m, but that this had now been reduced to 0.86m. He suggested that the walls could be designed in such a way that would allow them to be raised in height at a later date. However, the risks associated with this approach, including the cost, would have to be considered.

Councillor McIntosh voiced her concern about the potential impact of the Scheme on neighbouring beaches. After providing an explanation on different types of coastal defence, Mr Baxter advised that sea levels were not currently a risk, but that there was a flood risk to properties close to the coastline caused by wave overtopping and debris; an incremental approach would not address the risk of wave overtopping. He pointed out that coastal erosion had to be considered alongside the flood risk. He also noted that the drainage system along the coastline would be upgraded as part of the Scheme. Councillor McIntosh also asked about the feedback on the scenarios consulted on during the development of the Scheme. Mr Baxter reported that the public had objected to the height of defences along the riverside, so the Project Team had revisited this, taking account of the various climate change scenarios, and reduced the heights of the defences in the Outline Design. He noted that with a height of 1m, people would still be able to see over the walls.

Sederunt: Councillor Collins returned to the meeting during Councillor McIntosh's questions.

Councillor McLeod asked about the future of the project should the Council not approve the Outline Design at this meeting. Ms Stubbs stated that if the report was not approved, then the Council could not notify the project and therefore the Council would not be eligible for cycle 1 funding and would no longer be included in the flood protection programme. Officers' current understanding was that schemes which left cycle 1 would have the opportunity to become part of cycle 2, but Mr Stubbs advised that there were currently no plans for how cycle 2 would be funded. He advised that should the scheme drop out of 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. Mr Baxter reiterated that at this point the Council was not being asked to approve the Scheme, only to progress it to the next stage. He outlined the future stages of the process. Mr Price noted that the legislation and process was complex but assured Members that the Council's legal team would provide guidance at each point in the process.

The Provost asked about the funding of future modifications to flood defences should an adaptive approach be adopted. Mr Baxter confirmed that funding would be provided for the initial part of the Scheme, but if the Council decided at a later date to raise the height of the defences then it would have to meet the associated costs.

Responding to questions from Councillor Bruce, Mr Baxter provided an explanation of the options appraisals undertaken during the previous stage in the process, noting that consideration had been given to using demountable barriers, but that it would not be viable to use this type of barrier over large areas of land and it would require significant time and manpower to erect and dismantle the barriers. However, such barriers could be used on a smaller scale in certain areas. The design life and maintenance of such structures would also need to be taken into account. On Councillor Bruce's concerns about the cost of the Scheme, Mr Baxter advised that the capital costs would be funded by the Scottish Government (80%)

and the Council (20%), but that ongoing maintenance costs would be met by the Council. He suggested that a less expensive capital cost may result in greater ongoing maintenance costs to the Council, so it was in the Council's interest to invest in a more robust scheme. He added that future funding opportunities were unclear, and the Council should therefore make a decision based on current data. Mr Stubbs indicated that the cost of the Scheme was an important factor, and that the Council's contribution was agreed within the Council's capital budget. He also highlighted additional confirmed funding from Sustrans relating to the active travel scheme. Sarah Fortune, Executive Director for Council Resources, reassured Members that the Scheme would be progressed in accordance with Best Value and she was confident that it could be delivered within the agreed financial parameters. On potential increases in cost to the Council, Mr Baxter pointed out that no further design work would be carried out until the Scheme had been confirmed. Mr Price added that he expected Stage 5 to cost c.£500,000-750,000. Any further changes to the Scheme would then be reported back to Council.

Councillor Jardine asked about the impact of the Scheme on Midlothian's infrastructure, particularly in relation to reservoirs. Mr Stubbs confirmed that the Project Team had engaged with Midlothian Council, Scottish Water and relevant landowners, and that he had not been aware of any concerns, although discussions to date had been high-level. Mr Price added that both Edgelaw and Rosebery were man-made reservoirs and were the responsibility of Scottish Water. He provided detail on the operational range of the reservoirs, and proposed that under the Scheme a new operational regime would be imposed on them, with a lowering of the level of the reservoirs by 2m; further detail on this was included in the EIA. Councillor Jardine also asked for further detail on how the Scheme would fit with managing flood risk at a national level. Mr Stubbs explained that Musselburgh was included in the Forth Estuary Flood Risk Plan, developed by SEPA and other agencies. He further reported that the flood risk for Musselburgh had been identified by SEPA and that the Council had a duty to take action in this regard. He noted that the Scheme was one of 42 schemes eligible for cycle 1 funding, and that the Council had a legal obligation to take this forward.

Councillor McFarlane asked about the views of local businesses and if any notes in support of the Scheme had been received by the Council. Mr Stubbs drew attention to a letter of support from the Asset Manager at Eskmills Business Campus that had been issued to Members, which stated that occupiers of that campus were in favour of the Scheme being progressed in order to safeguard the future of businesses and employment in the area. Mr Stubbs mentioned that the Project Team had also engaged with businesses within Musselburgh town centre, and that this engagement would continue. Mr Price added that no specific concerns had been raised to date by the Musselburgh Business Partnership.

In response to questions from Councillor Gilbert on the impact of flooding, particularly on the local economy and employment, Mr Baxter indicated that he would have to get more information on the direct impacts; however, the indirect costs associated with the wider economy had not been assessed during the development of the Scheme. He anticipated that the Scheme would be beneficial as it would protect businesses.

Councillor Collins commented that the community had concerns about the same company carrying out the consultation and providing the solution. She was also concerned about the cost of the Scheme rising further and asked for a financial guarantee to be put in place to reassure the community. Mr Stubbs stated that officers had gone through the Council's procurement process to appoint the consultant to work on behalf of the Council, and that this process was fully transparent. He reiterated that the Council's contribution to the Scheme could be met, and that as the design was refined, the financial element of it would be reviewed, with any changes being presented to Council for determination. Ms Fortune stressed that strong governance arrangements were in place and that the Council would be kept informed of any changes as regards cost implications. Mr Reid added that it may be 2-3 years before the final cost of the Scheme is confirmed, and that the Project Team would seek to minimise expense and to maximise other funding streams.

On a question from the Provost regarding best practice, Mr Price assured him that the experiences of similar projects undertaken in the past 20 years had been taken into account. He made reference to the commitment of additional external funding to reflect the expanded scope of the project and stressed that the original scope of the project should not be compared to the Outline Design presented to Council at this meeting.

Councillor Trotter asked about the implications for Musselburgh should the Scheme not go ahead. Mr Baxter predicted that a larger flood event than the one experienced in 1948 would see Eskside West and Eskside East flooded. He noted that although the height of the seawall was adequate to withstand a coastal flood event, he believed that its condition was such that it may only survive another 10-50 years, depending on the nature of the flood event. To the west of the Esk, there were no defences other than natural topography, which meant that it was at risk of wave overtopping. He noted that some of the existing defences, particularly at Goose Green Crescent and Loretto Newfield, were in very poor condition and would not withstand a significant flood event, and that further upstream the lower walls had been designed to resist erosion of the riverbank and would therefore not provide any degree of flood protection.

Responding to a number of questions from Councillor McGinn on the various types of flood defences available, Mr Stubbs confirmed that the use and extent of demountable flood barriers had been looked into during the development of the Outline Design of the Scheme, noting that the use of such defences had to be considered in tandem with available resources. Mr Price advised that the Project Team had engaged with the City of Edinburgh Council, particularly as regards Joppa and the Brunstane Burn, and that the natural stop point for flood defences was at the Magdalen Bridge. Anything beyond that point was within the City of Edinburgh's jurisdiction, and so there would be no overlap between the two council areas. On hybrid defences, Mr Baxter explained that this type of defence required a bigger footprint due to the earthworks involved, so it would only be appropriate in certain areas; for example, it could be used at Fisherrow where there was sufficient space, but not further west, where there were local amenities and gardens to take into consideration. Furthermore, the location of sewers had to be taken into account when constructing hybrid defences. He offered to provide further information on the potential impact of walls on neighbouring gardens on Edinburgh Road. Mr Baxter also covered proposals to increase biodiversity in various locations.

Councillor Menzies commented that there were concerns within the community about active travel plans and river restoration being included within the Scheme, and she asked about the benefits of including these aspects. Mr Stubbs reminded her that the Council had given the Project Team a mandate to look at multiple benefits, and that through the public consultation there had been favourable feedback regarding active travel and the proposed river restoration. If these aspects were not included in the Scheme, they would need to be considered at a later date, which would cause further disruption. He also noted that the active travel plans could be accommodated within the footprint of the Scheme and the Council would benefit from significant external capital funding by including it as part of the Scheme. He claimed that there was a lot of support for this project within the community. Mr Price added that although these projects did not have to be delivered together, it was beneficial to have all the components included within a single design, delivered through one procurement exercise and one contractor at the same time. He made reference to Hawick, where a number of components had been successfully brought together as part of the development of their flood protection scheme. He added that the benefits for the Musselburgh Scheme would be set out in a future report to Council. On the structure of the Project Board, Mr Price explained that this had been established by the Council in accordance with the principles of PRINCE2, and that this method provided a clear, stage-by-stage structure, with the Council only being exposed to the costs associated with the live stage.

Councillor Yorkston asked for further details about the funding mechanism for the Scheme. Mr Price drew his attention to the Scheme programme, attached at Appendix 5 to the report,

which outlined how the funding would be delivered. Ms Fortune added that the funding would be paid by the Scottish Government to the Council on a monthly basis as part of the general capital grant, and that no short-term borrowing would be required for the project. On a question about the inclusion of reservoirs in the Scheme, Mr Baxter advised that Edgelaw and Rosebery reservoirs had never been used to supply homes; they had not had a useful function since the closure of the mills in Musselburgh, but had to be kept in perpetuity. Through discussions with Scottish Water, he confirmed that they would not allow Gladhouse Reservoir (which supplied water to homes) to be transferred to Council ownership, but that Edgelaw and Rosebery could be transferred.

In response to a series of questions from Councillor Hampshire, Mr Baxter drew attention to the design drawings, which covered all areas of the river and coastline; these drawings included amenity space and showed how the active travel routes would integrate with the flood defence structures. Mr Stubbs assured Councillor Hampshire that Council officers would work with the contractor to ensure that grassed areas were reinstated and improved. As regards protecting wildlife around the river, Mr Baxter noted that the structures would be designed in such a way that animals could climb up the sides, i.e. no vertical walls. Mr Price added that the Scheme provided an opportunity for river restoration and that there could be opportunities to do further work on the river corridor should additional external funding be secured. On the active travel proposals, Mr Stubbs spoke of the plans to develop strategic active travel networks, with the Musselburgh plans being key to this as external funding was available; it was the intention that the active travel routes would all be linked. Councillor Hampshire remarked that he hoped the two reservoirs would remain within the ownership and responsibility of Scottish Water. Mr Stubbs noted that negotiations with Scottish Water were at an early stage.

Councillor Dugdale asked about the potential impact of a flood event on the wellbeing of users of schools, nurseries and care homes, as well as local residents. Mr Baxter commented that this was difficult to quantify, noting that there were many benefits to reducing the flood risk. Mr Price spoke of increasing insurance costs associated with flood risk. He believed that the delivery of the Scheme would be sufficient to consider that properties were no longer at risk, and that those costs would then decrease. He cited Selkirk as an example, where insurance costs to residents had fallen by c.50% following the delivery of the flood scheme there. He added that the Scottish Flood Forum and Citizens Advice could provide advice to people in flood risk areas.

Sederunt: Councillor Gilbert left the meeting.

Councillor McIntosh expressed her disappointment that the full EIA had not been made available to Members in advance of the meeting, and asked Mr Baxter if he could provide further information on the expected carbon impact of delivering the Scheme. Mr Baxter advised that the EIA had been completed in December 2023 and that Jacobs was now considering the feedback received from Council officers; once the document was finalised it would be made available to Members and the public. He advised that there was a chapter in the EIA dedicated to air quality and climate change, which took account of the carbon impact of construction materials and transportation of those materials but cautioned that assumptions had to be made in this regard as no contractor had been appointed at this stage and it was not known where the materials would come from. However, he anticipated that there would be c.38,000 tonnes of carbon dioxide (or equivalent) emissions in total for the construction of the Scheme. He spoke of potential mitigation measures and the creation of a carbon management plan, stressing the importance of using carbon in a responsible way.

Opening the debate, Councillor McGuire noted that he had listened carefully to both sides of this debate and had welcomed the site visits to Selkirk and Hawick, which he felt provided excellent examples of cycleways, footpaths and sympathetic flood barriers and walls. However, he was concerned about the rising costs of the proposed Scheme and there being no guarantee about further cost increases. He was particularly concerned that the Council's

contribution may increase, which would put further strain on the Council's finances. He also noted that Members had not had an opportunity to assess the full environmental impact of the Scheme. He declared, therefore, that he would be supporting the petition to pause the Scheme to allow for further consultation with the Scottish Government and Sustrans, and with the Musselburgh community, so that a nature-based and financially viable solution could be developed. Councillor McGuire then proposed an amendment, to replace the recommendations as set out in Section 2.1 of the report with the following: It is recommended that East Lothian Council pauses the progress on the Musselburgh Flood Protection Scheme to allow for further engagement and consultation with the residents of Musselburgh and the Flood Protection Action Group, to work to reduce the costs of the project to the tax payer and East Lothian Council, and that a further report be brought back to Council after that engagement.

Councillor Findlay seconded the amendment.

Councillor Hampshire pointed out that the project as presented to Members had never cost £8.6m. He made reference to the extensive consultation and design process, and warned that if the Council did not proceed with the Scheme then the Scottish Government funding would not be available and it was likely that Musselburgh would flood in the future. He accepted that there were some concerns within the community about the Scheme, adding that adjustments could still be made. Councillor Hampshire also spoke about the impact of flooding on people's lives, and the Council's duty to protect communities. He referred to recent storm events and the likelihood that these would get more severe. He urged Members to support the Scheme in order to protect the community and businesses.

Councillor Menzies commented on the importance of all voices being heard, and she highlighted some of the concerns raised within the community, including the potential loss of trees, the introduction of walls, and the heights of walls. She accepted that nature-based solutions alone would not negate the flood risk and that these would have to be supplemented by man-made structures. She remarked that she had visited other places where man-made structures had been erected and which had had a positive impact. She also welcomed the proposals for wider, well-lit paths and better connectivity. Councillor Menzies noted that there were still several stages in the process which would provide further opportunities for concerns to be considered. She was not in agreement with pausing the Scheme.

Councillor McIntosh welcomed the opportunity to consider the petition but declared that she would not be supporting the amendment to pause and review the Scheme. She also welcomed the opportunity to visit other areas where flood protection systems had been implemented. However, she had concerns about the proposals for the Musselburgh coastline and she did not feel comfortable about making a decision without first considering the EIA. She felt, therefore, that she had not had sufficient time to consider the Scheme fully, due to the Scottish Government's funding deadline, and stated that she would not be supporting the report recommendations.

Councillor Ritchie thanked members of the community, particularly young people, for participating in the consultation process. She was of the view that the Council had to approve this phase of the Scheme, noting that there would be further opportunities for the community to comment. She was keen to see nature-based solutions included in the Scheme but accepted that they alone would not be effective.

Councillor Bruce voiced his concern about the scope of the project and about the costs involved. He felt that the Council appeared to be in a rush to get Scottish Government funding now because the future funding situation was uncertain. He advised that he would be supporting the amendment to pause the Scheme.

With reference to recent storm events, Councillor McGinn indicated that he was concerned about the impact of extreme weather on the coastline and communities, and that doing nothing

was not an option for the Council. He welcomed the input of the community on this matter, stressing that there would be further opportunities to work with the Project Team. He was supportive of the officer recommendations.

The Provost reminded Members that the flood risk had been identified by SEPA and the Scottish Government, and that the Scheme would be largely funded by the Scottish Government. He also noted that the Council had agreed to the multiple benefits approach. In response to comments made by Councillor Menzies, the Provost advised that he had considered the approach by the lead petitioner, Dr Wright, to be given an opportunity to address the Council but that he had refused this request given that the minutes and webcast of the Petitions and Community Empowerment Review Committee were available; further, that many other individuals and groups who had views on the matter would not have had that same opportunity. The Provost reiterated that there would be further opportunities to hear views prior to the final Scheme being presented to the Council for approval. He acknowledged the concerns raised about the cost of the Scheme but believed that the proposals would provide real benefits for the Musselburgh community. He would therefore be supporting the officer recommendations.

Councillor Akhtar referred to the considerable public engagement that had already taken place and encouraged the community to continue engaging. She was not in favour of pausing the Scheme, as without the Scottish Government funding the Scheme would not go ahead.

Councillor Allan urged Members to listen to the advice of the experts and to approve the report recommendations.

The Provost moved to the roll call vote on the amendment, as proposed by Councillor McGuire and seconded by Councillor Findlay.

For (4): Councillors Bruce, Collins, Findlay, McGuire
Against (16): Councillors Akhtar, Allan, Bennett, Dugdale, Forrest, Hampshire, Jardine, McFarlane, McGinn, McIntosh, McLeod, McMillan, Menzies, Ritchie, Trotter, Yorkston

Abstentions (0)

The amendment therefore fell.

The Provost then moved to the roll call vote on the recommendations as set out in the report:

For (15): Councillors Akhtar, Allan, Bennett, Dugdale, Forrest, Hampshire, Jardine, McFarlane, McGinn, McLeod, McMillan, Menzies, Ritchie, Trotter, Yorkston

Against (5): Councillors Bruce, Collins, Findlay, McGuire, McIntosh

Abstentions (0)

Decision

The Council agreed:

- i. to note the considerable work which has been done by the project team to complete the Outline Design and Environmental Impact Assessment (EIA) following the public exhibition in June 2023;
- ii. to note the considerable work done to advance the Outline Design through an extensive consultation process with regulatory organisations, key stakeholders, community groups, businesses and the people of Musselburgh since the Preferred Scheme was approved by a meeting of the Cabinet in January 2020;

- iii. to note that feedback received through the consultation process has been incorporated into the Outline Design, where doing so was considered appropriate for the design and/or compatible with the Council's capacity to operate and maintain the Scheme once constructed;
- iv. to confirm that the Outline Design of the Scheme is now developed sufficiently to allow the current stage of its development to be concluded so the design can be formally presented to the Scheme's stakeholders and the public through the formal consultation processes of the Flood Risk Management (Scotland) Act 2009 (the FRM);
- v. to approve the commencement of the next stage of the project (Project Stage 5, which is named 'Statutory Approvals') in accordance with the Scheme's PRINCE2 Project Management System, including the formal 'notification' of the Scheme under the FRM based on the Outline Design as presented in the Council report;
- vi. to note that approval to undertake formal 'notification' of the Scheme during Project Stage 5 of the project does not constitute legal confirmation of the Scheme itself, which remains subject to conclusion of the statutory process set out in the FRM and its associated regulations;
- vii. to note the revised estimated cost of £53.9 million for the Scheme, which is an updated estimate compared to the £43.5 million reported to Council in October 2022, and that the increase in cost is primarily due to the increased quality of the Scheme further to the consultation process alongside inflation costs in the period, and that this remains an estimate and that this estimate is expected to increase before final delivery is confirmed in the future;
- viii. to note the revised estimated cost of £52.1 million for the works to the Ash Lagoons Seawall to make it part of the Scheme, which is an updated estimate compared to the £52.4 million reported to Council in October 2022, and that this remains an estimate and that this estimate is expected to increase before final delivery is confirmed in the future;
- ix. to note the revised estimated cost of £26.5 million for investment in active travel in Musselburgh, which is an updated estimate compared to the £122,000 reported to Council in October 2022, and that this huge increase in costs is due to only the first part of the 100% Sustrans funding having been presented in that last report, and that this remains an estimate and that this estimate is expected to increase before final delivery is confirmed in the future;
- x. to note that together these three projects achieve the objectives of Council to deliver multiple benefits and that together they comprise a combined capital investment in Musselburgh of £132.5 million, and that this remains an estimate and that this estimate is expected to increase before final delivery is confirmed in the future;
- xi. to note that for the first time, and primarily for the purposes of Scheme approval under the legislation, that the works to the Ash Lagoons Seawall are now being formally designated as flood protection scheme operations;
- xii. to note that these cost estimates are all Net Present Value costs and have been developed in accordance with the appropriate estimation techniques for infrastructural project under the HM Treasury Greenbook and other appropriate guidance. Further that the use of Optimism Bias continues to be used on the construction works estimates and that a rate of 45% has generally been used within the numbers presented in this report;

- xiii. to note that there remain significant risks associated with the delivery of the Scheme and its constituent multiple benefits projects; however, it is highlighted that this report does not constitute a final decision to deliver these projects. An update on these risks will continue to be provided within each future report to Council before Council takes a final decision; and
- xiv. to instruct the project team to return to Council at a future date for either a 'Decision' or a 'Preliminary Decision' on the Scheme, as defined in the FRM, following conclusion of the statutory '28-Day Objections Period' set out in the FRM and referred to in Section 3.2 of the report.

DRAFT

Signed

Provost John McMillan
Convener of the Council