

Members' Library Service Request Form

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Service Manager – Governance
Legal Services
East Lothian Council
John Muir House
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Dear Legal Services

OBJECTION ONE

I am writing to object to the recently published Musselburgh Flood Protection Scheme due to lack of transparency and the refusal of my FOI request.

My East Lothian Council FOI request was refused due to being manifestly unreasonable and excess charges. The council should be transparent and accountable. I have been denied full access to information necessary for me to make an informed decision on the scheme during the consultation and statutory objection process. This includes (but is not limited to) the modelling data which has never been released despite repeated requests by members of the community with the necessary expertise to offer a peer review assessment.

Procedural Matters

(i) "The Authority's review response dated 13 April 2022 stated that it partly upheld the application of exception 6(1)(b) cited in its original response as some [my emphasis] of the information you sought was publicly available online. You have not identified this specific claim as a ground for dissatisfaction in your application and I have discounted this from my investigation accordingly."

"some information was publicly available online". There is very little information that I requested in my FOI available online. The website the council has noted <https://www.musselburghfloodprotection.com/> is a design and project update site and does not contain detailed information on decision making.

I object to the council's decisions, their competency and motives. As such the council's decision would have been based on advice given by the consultants/consultees. Such advice would have been given over a period of time, in a number of correspondence and minutes of meetings. These, and other

information requested, are not available from the noted website and have never been provided.

Substantive Matters

(ii) the Authority stated it would cost too much to respond to your request in its entirety [that it was 'manifestly unreasonable' to do so] - you consider the charges set out are excessive and unreasonable (citing, for example, the need for a Grade 13 employee's involvement in processing your request); and

I refer to the law on charging under the EIRs set out in Regulation 8 -
"Under Regulation 8, public authorities 'may' charge fees for disclosing information, but any charges "shall not exceed a reasonable amount and in any event shall not exceed the costs to the authority of producing the information requested".

Extract from ELC's 'Request for Review Letter' detailing FOI charges -
"This is calculated on the basis that the requirement to produce information would fall on a number of council officers ranging in grades and would include the Project Manager for the Musselburgh Flood Protection Scheme whose time to produce relevant documentation pertaining to the request would amount to at least 21 hours (equivalent to three working days) at Grade 13 (£1,052.10) and the Service Manager Roads (Grade 13) who has also indicated this could take around 12 hours (£601.20) to compile.....would require an unreasonable diversion of staff effort from normal duties".

I believe this is unreasonable and ELC have given no explanation as to why the involvement of grade 13 employees is required here (rather than those on lower grades) at a cost of approx. £50 per hour. I therefore object to this response and question why does a FOI request require the skill of a Grade 13 employee to collate information? Why are their emails not accessible to lower grade staff who can simply cut and paste them into a document. That would surely be consistent with claimed-for ability to hold authorities spending public money to account. Are these unreasonable charges by ELC a deliberate attempt to dodge transparency and to try to dissuade me or restrict me from seeking to obtain this information?

Regarding the offer from East Lothian Council to meet with relevant officers to "narrow the scope of my request and try to identify the relevant information not currently publicly available on the website or interest" I do not believe this suggestion would meet a test of independent scrutiny and accountability.

(iii) you contend the Authority has intentionally misused the application of charges [which are permitted under the EIRs] in order to apply the 'manifestly unreasonable' exception (so as to deter information requests); you consider such would not be in-keeping with the aims of information law

I appreciate the request may be inconvenient and may stretch some resources but this would not be sufficient to deem the request manifestly unreasonable and I should not be denied on this basis.

Surely there is an onus on ELC (given the size of the authority) to prove that the diversion of resources or interference with normal operational functions is both substantial and unreasonable. Dealing with this request would not interrupt ELC normal activities and responsibilities in any significant way.

As a public body East Lothian Council should be open, transparent and accountable. The public should not be blocked, delayed or denied scrutiny of their procedures due to costs. I object as the cost estimates are unsatisfactory and I therefore doubt ELC's claim that the request was manifestly unreasonable. East Lothian Council is not acting within the spirit and intention of the Freedom of Information (Scotland) Act.

Public Interest

I have not seen evidence that ELC properly demonstrated that the public interest test has been sufficiently analysed in an impartial fashion before refusing my FOI.

I therefore object to this and have outlined below the reasons I believe it is in the wider interest of the public for this information to be disclosed.

- This is not merely for my own individual interest. There is a very weighty public interest in disclosure due to the number of people affected by the scheme – this will affect over 3000 properties
<https://www.musselburghfloodprotection.com/news/newsletters/>

A petition asking for a pause to the scheme was submitted to ELC
https://www.change.org/p/tell-east-lothian-council-to-pause-the-musselburgh-flood-protection-scheme?utm_content=cl_sharecopy_35596053_en-GB%3A9&recruiter=1189192930&recruited_by_id=ace769e0-8e5a-11eb-8fba-cbf16977dc82&utm_source=share_petition&utm_medium=copylink&utm_campaign=psf_combo_share_initial&share_bandit_exp=initial-35596053-en-GB
This was rejected by ELC on the basis it had "misinformation". And yet ELC are withholding information.

There is a facebook Musselburgh Flood Protection Action Group with 1600+ members seeking clarity and transparency in the scheme

<https://www.facebook.com/groups/1597822983900562/>

Disclosure would enhance scrutiny of decision making processes and thereby improve accountability and participation.

- There is a genuine need and concern for this information to be public. The design will have a significant economic, social & environmental impact. It is the widest, most extensive, significant, important project to affect Musselburgh with adverse consequences to the environment. Musselburgh is Scotland's oldest town on the River Forth with a longstanding connection to the sea. Estimated costs of project have escalated. The project will see concrete walls up to 1.8m high introduced along the river Esk and coastline. Bridges will be removed and four new bridges built. Trees will be destroyed. Grass river banks covered with concrete. Access to river and sea restricted. Construction compounds will cause significant disruption to the whole town for

many years <https://www.musselburghfloodprotection.com/consultation/public-consultation/public-exhibition-no-2-jun-2023/#Thank%20You>

There is public interest in fully understanding the reasons for ELC's decisions to build concrete walls over nature based solutions – it may even strengthen the community's confidence in ELC, clear up misconceptions and uphold standards of integrity. Local newspapers have also reported residents' frustration at lack of transparency

<https://www.eastlothiancourier.com/news/18184846.42million-flood-plan-musselburgh-revealed/> Ex councillor Currie said *“The preferred proposal of the cabinet needs and demands the fullest public scrutiny”*.

- Scheme costs have spiralled out of control. <https://theferret.scot/revealed-spiralling-cost-scotlands-flood-defences/#:~:text=Analysis%20by%20The%20Ferret%20has,in%20excess%20of%20%C2%A376%2C000>. Current estimates are as high as £132.5M (March 2024)

Disclosure would contribute to ensuring effective oversight and accountability of expenditure of public funds and the public obtain value for money. It would allow the public to fully scrutinise and understand how taxpayer money is being spent. It would serve the public interest in scrutinising the actions of an authority that is spending from the public purse.

- Nature and biodiversity will be lost – for example hundreds of trees will be removed <https://www.musselburghfloodprotection.com/consultation/public-consultation/public-exhibition-no-2-jun-2023/#You%20Said...%20We%20Delivered>

The environment needs to be protected and this scheme will have an adverse effect on the environment. The public need to have access to information to be able to take decisions or challenge them accordingly. Public authorities hold information on behalf of the public and this should be made available to the widest extent possible to ultimately contribute to a better environment.

- Ensuring the public has access to sufficient, complete, accurate information would contribute to an informed public debate on how to manage the sea and coastal risk to Musselburgh, a matter of serious public concern.
- The modelling data which underpins the whole scheme should be available for public scrutiny and independent assessment/critique. This data shows how the river system & sea behaves during flooding, identifies areas affected and assesses the risk of any flood scheme. This has a serious value to the public. In advancing the scheme the council relied on this information that is not publicly available. This was the “building block” for the whole development of the scheme and it would be of great assistance to the public to have transparency on why the design was chosen. There is no modelling data on the scheme website <https://www.musselburghfloodprotection.com/flood-risk/musselburgh-flood-risk/modelling/>
- Transparency in contracts – disclosure would ensure fair commercial competition. For example CH2M was awarded the contract for the Musselburgh Flood Scheme and bought out days later by Jacobs. Were there

any form of parent company assurances given? Access to information plays a critical role in ensuring openness and transparency.

- Information already available on the scheme website is limited and does not reveal the full picture therefore this increases the public interest in disclosure. There is also a bias involved in only being able to rely on this website for information. How can the public trust it's sufficient, complete, accurate and not misleading if they do not have access to all the information and not just that which has been "selectively" presented as the "full picture"? What is missing from publicly available websites is the basis of decision making within ELC. One example but presumably compounded by later decisions on 'The Scheme' is what were the reasons for agreeing the Preferred Scheme in January 2021 and its further iterations, what independent advice was available from statutory bodies, why is it not available to the public, how did the ELC at official and member level take this into account in their decision making – in other words what record is there available for the public of the details of the internal advice and of their decisions?

- Planning consent is deemed under Flood Scheme Act <https://www.musselburghfloodprotection.com/project/statutory-approval/>

therefore it is crucial the public can understand fully implications of the scheme as it will bypass the usual processes and there will not be the usual opportunity to object under planning laws. ELC should have no reason to hide their thinking from those whose interest they purport to work. This includes the recent confusion and obfuscation around active travel routes. Only on the 19th March 2024 was I informed via a councillor MAT was now apparently not part of the scheme. Yet wide paths, ramps and new bridges remain in the flood scheme drawings that DO NOT reduce flood risk. It is clear these are all influenced by MAT. All MAT proposals are deemed to be 'Developments' as defined by the Town and Country Planning (Scotland) Act 1997. This is undeniable, and failure to obtain planning permission for all MAT related elements would be tantamount to subverting the 1997 Act. ALL structures and routes of MAT should go via normal planning regulations. Narrowing of river increases flood risk. A new Goosegreen Bridge offers no flood reduction benefit. Furthermore, under the above noted definition under the 1997 Act, this bridge is without any doubt considered to be a 'Development' and not a replacement, and requires planning permission.

- In an attempt to remove the burden from ELC to get information from other organisations (ie Sustrans Scotland) I was re-directed back to East Lothian Council to do an FOI. If East Lothian Council then refuse is this not tantamount to censorship? *Extract from email from Sustrans, "Please note however, only the government and public sector bodies are subject to Freedom of Information (FOI) requests. Sustrans, as a registered charity, is not subject to the Freedom of Information Act. We recommend enquiring with East Lothian Council on this matter. You can request information from the East Lothian Council"*

- ELC have also advised residents when asking for information that an FOI is required *“As discussed with you at the Action Group meeting (by Alan Stubbs) – the issuing of data needs to travel through the Council’s FOI Team.”* Conor Price, Project Manager
 - Local Musselburgh Cllr McIntosh cites that the environment was “for us all”, that there should not be a “two tier” access to data and “these charges are clearly putting people off from pursuing inquiries and holding local authorities to account”.
- <https://theferret.scot/east-lothian-two-tier-access-to-environmental-data/>
- East Lothian Council has responded to just eight per cent of environmental information requests since it introduced a blanket policy of charging for information in 2019.
 - ELC was rapped by the Scottish Information Commissioner in 2020 for “wrongly processing” non-environmental information under EIR legislation, which resulted in a fee being issued incorrectly.
 - The Ferret spoke to a resident of Musselburgh . They said that ELC’s policy of charging had created a *“veil of secrecy around fairly standard information relating to the flood scheme”*.
 - Carole Ewart, convener of the Campaign for Freedom of Information in Scotland, condemned the blanket use of charging for environmental information requests and queried if there is a *“means testing”* process so people living in poverty can access environmental information. She said that charging for information could be a *“false economy”* as it costs to issue invoices and process payments. There was also *“reputational gain”* to be had in proactively providing information, she claimed. *“The statistics show that charging has repeatedly deterred the majority of requests and that should sound an alarm bell for the public interest in identifying, preventing and detecting local issues with the environment,”* she added.
 - Disclosure would enhance scrutiny and legality of decision-making processes. Example. Why have ELC chosen 1.8 m high walls in places? Why is there scenario 2 on river and yet scenario 4 on the coast? Who made these decisions? An FOI to Nature Scot disclosed vital information that had not been released by East Lothian Council regarding Nature Scot’s advice of heights of scheme defences.

Extra from Group Discussion on Climate Change Teams meeting on 31st Oct 2022 (Nature Scot/Dynamic Coast):

“A number of examples were noted (Musselburgh etc) where local authorities had chosen a high level of protection (1:200yr level of protection and then account for climate change using a single climate scenario, typically based on SEPA’s LUP guidance which is based on RCP8.5 95th%) without interrogating whether this is appropriate for the location, or considering the intervention as part of a comprehensive adaptation plan....

5. The concern is that such an approach may lead to over-engineered solutions that rely on benefits that may never be realised whilst incurring the

associated social, economic and environmental costs today. Often many of the adaptation actions were absent, simply relying on higher wall for flood protection. In essence, the proposals didn't / couldn't adapt with increasing risks, but jumped to address future long-term risks with today's interventions. Perhaps these relate to a sub-optimal interpretation of the guidance, or apparent perverse incentives where securing today's funding is preferential to attempting to securing multiple sets of future funding. So the guidance must be clear that, options need to be considered to credible maximum risks, but that plans don't need to address all of these now, ie our planned actions should be incremental and must be actioned at trigger points, rather than implementing solutions today for the next 1m of sea level rise."

OBJECTION 2

Process and due diligence

1. Did the original tender for the MFPS comply with Flood Risk Management Act (Scotland) 2009? ELC awarded project to CH2M/CH2M Hill in 2018. They were taken over by [REDACTED] very soon after. Where is evidence of scrutiny of tender process and did this follow procedure/due process?
2. On the 21st January 2020 the REDUCED East Lothian Cabinet Committee did not have the authority to approve the excess budget for the Musselburgh Flood Protection Preferred Scheme. The public has been misled. In arriving at the decision to approve the Musselburgh Flood Protection Preferred Scheme, the Council acted ultra vires by failing to comply with the Local Government (Scotland) Act 1973 for following reasons -
 - The Local Government (Scotland) Act 1973 requires every local authority to make arrangements for the proper administration of their financial affairs – the reduced Cabinet did not have the power to approve the budget.
 - On this basis there was a breach of trust between the council and their electorates.
 - By approving the preferred scheme I believe they prejudiced the emerging plan. The development proposed is substantial and its cumulative effect significant.
 - In taking decisions which involve the expenditure of public funds East Lothian Council had a duty to comply with applicable law as well as internal guidance or process which applies.
3. When approving the Preferred Scheme ELC had a duty to ensure that public funds were disbursed with due consideration to the suitability, effectiveness, prudence, quality and value to their decision. Have the council followed the Local Government in Scotland Act 2003 to secure 'Best Value'?
4. The process of environmental assessment ensures the environmental implications of decisions are taken into account before a decision is made. Where has it been proved this was considered early and openly in East Lothian's Council to approve the Preferred Scheme with appropriate consultation and comparison of different options?
5. Evidence council considered procurement or competition & trade considerations?

6. What evidence is there ELC considered the Climate Change (Scotland) Act 2009?
7. What appropriate governance is being followed regarding using any part of Fisherrow Links? Fisherrow was once a fishing community where the fisherman had rights to dry nets on the Links. Fisherrow Links is listed on the Council's common good asset register as 'inalienable' common good property. What steps have the council taken in light of the status of the Links and the proposed changes which are envisaged in the outline design? Section 104 requires the local authority to consult with the local community when it is planning to dispose of common good property, or change its use. This has not been done in relation to Fisherrow Links.
8. Bias - consultants have marked their own homework. Considering the absence of peer review of the Scheme, and further considering that the council have opted, erroneously in my view, not to install an independent assessing team within the planning department, it stands to reason that the consultants marking their own work raises many objectionable questions that have not been answered and must be answered.
9. Evidence of appraisal by SEPA has not been presented to residents.
10. Cost to the taxpayer. Escalating costs at a time when council have declared a financial crisis will put pressure on other services due to their 20% liability of all costs. No breakdown of costs has ever been presented to residents to justify the spiralling costs.
11. ████████ have presented different climate scenarios. Scenario 2 at river/scenario 4 at coast. The reasoning is unclear for this and undermines the claim the flood scheme is science led.
12. There is professional criticism of the use of RCP 8.5.
13. Lack of transparency over costs - we've never seen how the various projected costs are calculated broken down (including but not limited to social and environmental mitigation costs, design and construction supervision costs, compensation and land purchase costs)
14. No confirmation by Scottish Power to pay for Lagoon seawall despite Norman Hampshire saying that Scottish Power were funding sea wall during ELC online meeting. Who will pay for this?
15. Flood funding is fundamentally flawed. *"Current funding arrangements can change if Ministers schemes are started in line with green book as this is often a requirement to secure funding, schemes then subsequently do not have a requirement to continue to be managed against this....It was noted that 2016/17 was a very early stage to commit to these schemes with a 'blank cheque' as it allowed schemes to grow and grow, that was wrong."* (FOI - extract from scotgov flood risk working group minutes, May 2022).
16. There are perverse incentives to discriminate against Musselburgh's ability to secure NBS/NFM. *"Whilst the guidance more readily supports situations where new developments are being proposed (and where adaptation can be built in from the outset), there is a concern about how the CCA guidance will be interpreted for existing developments. A number of examples were noted (Musselburgh etc) where local authorities had chosen a high level of protection (1:200yr level of protection and then account for climate change using a single climate scenario, typically based on SEPA's LUP guidance which is based on*

RCP8.5 95th%) without interrogating whether this is appropriate for the location, or considering the intervention as part of a comprehensive adaptation plan.....The concern is that such an approach may lead to over-engineered solutions that rely on benefits that may never be realised whilst incurring the associated social, economic and environmental costs today. Often many of the adaptation actions were absent, simply relying on higher wall for flood protection. In essence, the proposals didn't / couldn't adapt with increasing risks, but jumped to address future long-term risks with today's interventions. Perhaps these relate to a sub-optimal interpretation of the guidance, or apparent perverse incentives where securing today's funding is preferential to attempting to securing multiple sets of future funding". (Nature Scot FOI page 33 (31st October 2022)

17. The Council should consider the outcome of the Scottish Government's Review of Flood Resilience Strategy before making final decisions on the Musselburgh Scheme
18. No independent assessment of the climate change parameters at June 23 exhibit
19. No landscape and visual assessment
20. No loss of tourism for duration of scheme has been quantified
21. No updated cost benefit ratio for 2024, the previous estimates are now incorrect
22. During January 2024 ELC meeting, [REDACTED] claimed that the MFPS would cease to exist if councillors did not approve the scheme. This was incorrect and deliberately misleading.

OBJECTION 3

Democratic Deficit

1. The council has not been objective as the promoter of the scheme. There is no counterbalance to the project team.
2. Lack of clarity and transparency on council meetings. Flood scheme briefings have not been minuted despite requests to councillors from the public.
3. The design was only placed in front of the community in June 2023. We were not then given the opportunity to see any apparently "revised" design before it was presented to council for approval.
4. No independent assessment of the climate change parameters at June exhibit
5. In any decision-making process a single choice is never the most appropriate basis on which to judge complex issues and take decisions that are the best financial, social and environmental value for the public money to be spent.
6. Failure to investigate or fully consider alternative natural flood management/nature based solutions. For example. In October 2023 ELC voted to remove natural flood management from the scheme, even although the scheme was not finalised and still subject to public consultation. Neither had the EIA been published. This vote was premature. The outline design was not to be put to council until early 2024. This vote was concerning in its disregard for due process and an attempt to quash local debate. Was this even legal? It makes a mockery of the Flood Act. (note - ELC Climate Change Strategy, approved by the Council in February 2023. At para 3.26, the report notes – *'Two risks have been identified to tackle the ecological emergency:*

there is limited funding for the technical work to inform nature restoration projects and limited staff resources to ensure biodiversity priorities are implemented across East Lothian. It is clear, therefore, that ELC simply doesn't have the technical or financial resources to carry out river restoration works. This surely makes it all the more imperative that the present scheme sufficiently includes natural flood management and nature based solutions before being signed off by the Council). Removal of natural flood management before council vote on scheme in January 2024, and before petition was heard, not only was undemocratic but more importantly in breach of the 2009 Act's requirements.

7. Our councillors' unanimous exclusion of Natural Flood Management, highlights a lack of willingness to deploy nature based solutions that go in the face of Dynamic Coasts' advice. It must be noted that our councillors cast their votes before having sight of Dynamic Coast's full assessment. They must now review this information and represent the motion for a second round of votes. Nature based solutions at coast should not be ruled out (as per Dynamic Coast report).
8. Removing scheme components (NFM/NBS) removed any possibility of Community having any open dialogue and collaboration with project team about scheme which is regarded as so important by at least 2500 of those living in the town.
9. Plenty of suggestions have been put to the consultants over the last years but ignored. Even commentaries by knowledgeable residents have never ever been replied to.
10. Why did [REDACTED] not undertake a thorough and wide-ranging assessment of the measures that could be put in place throughout the Esks' catchment? [REDACTED] could also have been approached for independent and authoritative advice on this.
11. Lack of transparency - queries to council referred to project team, project team refer to FOI which are chargeable.
12. Lack of transparency as questions taken "offline" during live streamed council meetings were never fully answered.
13. The report of the visit to the Eddleston project was based on Jacobs interpretation of their visit (bias?). Other Musselburgh residents, were also present as this was a joint visit. The consultants clearly do not believe in collaboration with constituents as they neither shared their report with us nor entered into discussion about the relevance of the findings to our town.

OBJECTION 4

Consult

1. The consultations have been a sham, a tick-box exercise, with no opportunity for the public to have any major influence on the scheme. The Brunton Hall consultations should not be considered engagement because they framed the project in a particular way and did not listen to opposing views.

2. Haven't shown the public true version of what walls will look like - using "small" people etc. People have had to go out and do own measurements. Only a fly through has been presented, not actual 3D image of whole scheme. It is therefore impossible for public to view scheme in its entirety.
3. No alternatives were given to public meetings post covid despite requests from members of the public concerned re covid (2022). It was discriminatory not allowing residents (with disabilities ie long covid) the opportunity to engage in public meetings
4. The council prevented the public's democratic right to object by not giving reasonable notice or alternative ways to attend.
5. In 2020, Project team - Alan Stubbs said at the Local Area Groups that the level of protection required was something that Musselburgh residents should discuss, and feed back to their councillors, who would then be able to make the appropriate decisions on the progress of the scheme. This was flawed - there is no consultation plan in place that would allow this discussion to happen. The project team instead present the worst-case scenario as the only one we need to prepare for – in breach of the 2019 Guidance to the 2009 Flood Risk Management Act, which makes clear that a range of scenarios should be presented, with honest admission of the uncertainties of each. Scenarios were only presented late 2022 and public never given opportunity to feedback. Indeed Councillors have been unable to assist in many queries.

On 29/11/22 via email Cllr Forrest stated, *"I have done my best to address your concerns but I am not qualified to answer your very specific and technical questions on this issue"*. Cllr Bennet said via email on 22/06/2023 *"Due to the volume of contacts I receive on a daily basis I would strongly suggest these questions go straight to the project team"*. Cllr Cassini said this via email (27/11/23) *"However, I do not have the power or the qualifications to make the decisions myself. I cannot answer technical enquires regarding capital funding, costs and subsidy schemes or building standards etc as those roles are delivered by qualified Officers."* I have been faced with continual obfuscation and frustration tactics by the Council (rejection of my FOI request) as well as the Council and my elected Councillors continually undermining their democratic accountability by delegating queries to the [REDACTED] project team.

6. There has been public intimidation. Conor Price came to my door to discuss the flood scheme with no prior warning nor agreement. This has also happened to other people in the town.
7. Conor Price also admitted in an email to a resident he monitors their social media. Why are taxpayer funds being used to pay for this?
8. Scaremongering - One 'photograph' in particular was designed specifically to spread fear and panic, showing cars floating down the High Street and St Peter's Church engulfed in water. It was dated 2022 as if it had already happened. Of course, it had not; it was what we now know to call fake news.

9. Outcomes of all consultations have not been made public. ie Musselburgh Business Partnership. A questionnaire was sent out to c150 musselburgh businesses. This was used to "help shape the final scheme and the methods of construction". Where is this evidence? What questions were asked? Why have the public been denied this information?
10. Public consultation question asks "please indicate if you are in support of A flood protection scheme" to Musselburgh residents. From this project team deduced 94.4% were in favour of THE scheme. This is a real disparity & manipulation of the answer. Being in favour of A scheme is quite different to being in favour of THE scheme! Questionnaire answers have been manipulated to suit the project team narrative.
https://www.musselburghfloodprotection.com/wp-content/uploads/2022/02/Appendix-D_MFPS_Public-ex-No1_Report_v0.1.pdf
11. Majority of comments people are concerned about walls/views "Very concerned on the impact of walls on the landscape and the 'natural' environment as it is now." Feedback has been ignored. (page 54)
https://www.musselburghfloodprotection.com/wp-content/uploads/2022/02/Appendix-D_MFPS_Public-ex-No1_Report_v0.1.pdf
12. Public Exhibition No. 1 - 200 attended. 94% 'supported the flood scheme' (n=85). 85 people in a population of 19,000 (0.93% of the population) 'supported the scheme'. The summary report does not reproduce the question that generated this result - generally feedback questions have been heavily biased (Summary report - https://www.musselburghfloodprotection.com/wp-content/uploads/2022/02/Appendix-D_MFPS_Public-ex-No1_Report_v0.1.pdf)
13. Public were not given opportunity to vote of different types of defences - presented with one coastal wall option at June exhibition 2023 - which was designed BEFORE Dynamic Coast Assessment.
14. The volume of information, documents, images presented at the last minute has been overwhelming. The MFPS team must have realised that the public would fail to comprehend it all in the objection timeframe. This is a failure of your duty of care to ensure the information is comprehensible.
15. The public were not consulted on the Dynamic Coast report before the statutory objection period.

OBJECTION 5

Technical Modelling

1. There is no full river basin approach – this is part of the 2009 Act.
2. Failure to look at hydrological connectivity across the areas [REDACTED] have considered
3. 1:200 event is not legislative, it's advisory.

4. The Flood Risk Management (Scotland) Act 2009 does not stipulate a year which local authorities must select as a flood risk management design target. The consultants have stated the design target date of 2100 was instructed to them by their client, East Lothian Council, as part of their brief. Our councillors, as the Proposers of the scheme must provide evidence backed information and data that has directed them and persuaded them to select this particular date as part of their brief to the consultants, demonstrating its relevance and appropriateness in the context. There is an inherent problem in selecting year 2100 as our target date. It is simply too far in the future to predict for with the levels of certainty we seek. It must be reviewed. It can also be argued that the unreliability of predictions of such distant future events can itself become a risk arising from the scheme.
5. The modelling data has never been released (nor independently checked or validated) despite repeated requests by members of the community with the necessary expertise to offer a peer review assessment. I reject any assumptions I would not understand the modelling data.
6. Scottish Government are carrying out a review of flood resilience strategy. This should be published before approving MFPS. A sea wall is thus premature.
7. "Flood risk from the 0.5% AEP plus climate change event along the sea front is mostly as a result of wave overtopping" (p43) musselburghfloodprotection.com/wp-content/uploads/2022/02/Appendix-D_MFPS_Public-ex-No1_Report_v0.1.pdf Is therefore the immediate coastal risk from wave overtopping and not sea level rise? This risk has not been addressed in the scheme.
8. Nature scot said, (FOI, Coastal Change Adaptation Guidance – Group Discussion on Climate Change Teams meeting on 31st Oct 2022) *"A number of examples were noted (Musselburgh etc) where local authorities had chosen a high level of protection (1:200yr level of protection and then account for climate change using a single climate scenario, typically based on SEPA's LUP guidance which is based on RCP8.5 95th%) without interrogating whether this is appropriate for the location, or considering the intervention as part of a comprehensive adaptation plan....The concern is that such an approach may lead to over-engineered solutions that rely on benefits that may never be realised whilst incurring the associated social, economic and environmental costs today... So the guidance must be clear that, options need to be considered to credible maximum risks, but that plans don't need to address all of these now, ie our planned actions should be incremental and must be actioned at trigger points, rather than implementing solutions today for the next 1m of sea level rise..... There was an acceptance that the coast was different that other settings, and that a precautionary approach to adaptation planning was merited.....Alongside mitigation efforts, adaptation planning is essential at the coast, Coastal change adaptation plans should be precautionary. Given uncertainties a range of scenarios of future risks should be considered (incl. RCP 2.6 50%, RCP4.5? RCP6? RCP8.5 95% & H++). Not all of the climate risks need to be resolved today, but flexible approaches*

*should be planned for to manage these growing risks if and when they occur. This is achieved by defining and deploying incremental and locally relevant trigger points (base on levels/processes not timescales) which also include locally relevant considerations (coincident risks: river flooding, tidal range changes, extreme events etc). Acknowledge that the scenarios used for coastal change adaptation planning, may not be the same as those used for the design of flood risk schemes. Acknowledge the importance of local settings in the implementation of policies. **Are we clear enough, that options need to be considered to credible maximum risks, but that plans don't need to address these now, ie our planned actions must be actioned at trigger points, rather than implementing solutions today for the next 1m of sea level rise.***

Why are the Scottish government's experts being ignored?

9. ██████████ continued FOI, UKCP18 exploratory SL projections Date: 01 November 2022 "However, we may not need to adapt to 1m of sea level rise. The problem is that if we ask people design schemes to our LUP allowances there may not be feasible solutions for some communities (i.e. , and Musselburgh has limits to community acceptability and environmental constraints with designated sites), **and that we potentially overestimate the future benefits whereas the costs are definitely realised**". It is my understanding the future benefits of MFPS been overestimated.
10. All data, flood modelling and designs presented to the public are based on the assumption of a sea level rise of 86 cm, advised to SEPA by ██████████ and subsequently written into SEPA's requirements, which the overwhelming number of other studies do not support.
11. Are flood walls being built on SSSI beside Edinburgh Road? It is not clear on drawings.
12. Sea walls can and do fail. There should be a full assessment of all alternatives before agreeing on a coastal wall which will change Musselburgh forever. <https://www.wirralglobe.co.uk/news/24243816.call-investigation-west-kirby-sea-wall-spectacularly-fails/>
13. Natural Flood Risk Mgmt Study by Jacobs (2019) was limited and did not include the coast. A design based on walls should not have been presented in June 2023 without a full independent study of options including breakwater, mussel bed regeneration etc. Alternatives have not been tested.
14. There is a requirement in the 2019 Guidance to the 2009 Flood Risk Management Act to ensure flood risk is not exacerbated anywhere else. *Measures to avoid, control, manage and mitigate flood risk* should also not increase flood risk elsewhere. There has been no assessment of the impact or risk of MFPS on other coastal area ie Portobello.
15. Computer modelling is an imprecise science and it appears that the huge estimated for MFPS are based on an absolute worst case scenario for sea level rise and subsequent worst possible prediction of flooding.

16. Why was detailed research on Fisherrow coastline not carried out prior to June 2023?
17. It is extraordinary that the design scheme shows a wall along the back of the coast but no reference whatsoever to the type of Nature based Solutions that can and should be put in place along the back of the beach. These solutions are well known and well tried and tested around Britain. The public were presented a coastal wall scheme based on ZERO individualised evidence at Fisherrow. Why was a wall presented in June 2023, prior to Dynamic Coast report and that was not evidence based?
18. The harbour (where harbourmaster office is) is a weak point.
19. The current harbour wall is low. No wall is proposed here. This means any tidal surge would come over the wall and flood the town. Having a gap in the flood scheme would render the scheme ineffective and put homes at risk.
20. Council clean up of sewage .The issue of coastal erosion at the mouth of the Esk adjacent to the water treatment plant appears to have been profoundly influenced by the Council response to the delivery of sewage onto this area of beach as a result of a recent treatment plant incident. It was noted that a significant stretch of coastline affected by the sediment bulldozing is now characterised by a low cliffline defining the rear of the beach. It would seem from verbal accounts that significant volumes of beach sand were removed by bulldozer from this area – along a ca. 100-150 m stretch of beach. The removal of such large volumes of sand and gravel from this area of beach is likely to have increased rates of beach erosion and shoreline retreat in this area. If there was a significant loss of sediment from the beach the waves during winter in that area would have been able to cause accelerated erosion.
21. We have all seen the significant accumulation at the western end, to all intents and purpose the western part of the beach is stable and building up in some areas.
22. There is no evidence that the entire beach area is eroding.
23. Says in preferred Scheme P43 "06 New sea wall along entire coastline not economically viable, unacceptable impact on SPA, major social impacts and severance of beach front"

Why do we now have a sea wall and not full assessment of NBS?
24. No evidence why nature based solutions at coast ie beach recharge and breakwaters were dismissed so early in MFPS.
25. It is extraordinary that the design scheme shows a wall along the back of the coast but no reference whatsoever to the type of Nature based Solutions that can and should be put in place along the back of the beach.
26. These solutions are well known and well tried and tested around Britain.
27. When will the scheme for the coast be substantially revised to take on board the recommendations of current Dynamic Coast project ?

28. Why have sand dunes been built into the sea and do not show any evidence why it was not built on the land side of the dune (Dunes Report by Jacobs)?
29. The assumption that an inland estuarine coastline in east lothian has equivalence to an Atlantic welsh coastline presumably for wave energy) is absurd. The Welsh coasts are different. (Dunes Report by Jacobs)
30. There are no near real time scenarios. Why are they even looking at 2100 when the world will have changed (Dunes Report by Jacobs)
31. Where is the substantial evidence that eliminates dunes from Musselburgh?
32. There is bias in Jacobs producing the dunes report – marking their own homework.
33. No assessment is provided of a beach nourishment process similar to that used at Portobello beach using sand extracted from below the low water mark off Fisherrow. Why was this not considered and evaluated as some have suggested on many occasions over the past three years.
34. No independent assessment of natural coastal management schemes, including beach nourishment, marram grass planting, temporary fencing of the micro dunes, provision of drift line natural debris been carried out pre wall design, why?
35. A wall is premature at the coast. Dynamic Coast report states beach could be lost due to seawall structure in 30-40 years - actions to manage flood risk should not contribute to increased coastal erosion. Sea walls lead to erosion. <https://www.surfrider.org/news/seawalls-are-stealing-our-sandy-beaches>
36. Wall foundations will not last for the predicted build of the walls
37. What is the evidence for a path along coast on top of scheme defence? Conor Price said there is "no requirement for this to go on top. This is simply how the design has evolved and assumed to be the best design solution at this time". Who made these assumptions?
38. Why have public NEVER been consulted on this assumption?
39. Why is this path so much wider than the current path?
40. The current path is perfectly fine. Fisherrow Prom path only replaced in 2022 and new Lagoons path only finished. Consultation by Active Toun said cycle paths were in reasonable condition.
41. Important to have independent modelling of river flow scenarios, including with/without existing bridges and with/without proposed new bridges
42. Why is the Ivanhoe Bridge being replaced? Says in preferred scheme report "P43. 2.14 – 2.16 Modify/replace Ivanhoe (Cotton Mills) Footbridge Negligible benefit (bridge not a major flood risk issue due to high soffit levels.....". This is further detailed in p53 "Options to raise or replace the bridge (Option 2.15 /

2.16) were rejected at an early stage in the appraisal process because the nearby Olive Bank Road bridge provides a greater degree of hydraulic influence through this stretch of the River Esk, therefore the impact of change at this bridge would be negated by the presence of Olive Bank Road bridge. Preferred Scheme Report Document No. It is recommended that raising the Ivanhoe footbridge is not a component of the preferred scheme. It is recommended that investigation into any change to the lateral and / or uplift forces acting on the structure, as a result of other preferred scheme components, is undertaken during Stage 4 Outline Design", Jacobs Preferred Scheme Report

43. What evidence is there for both a new Electric AND a new Goosegreen bridge? Earlier report says this would be replaced by one structure. Initially a single structure was discussed in Jacobs Report. P64. "The shortlisting process determined that removal (Options 4.06 and 4.08) or raising / replacement (4.07 and 4.09) of the structures should be investigated further, depending on whether the bridges had an influence on fluvial flood risk. For the purposes of the remaining sections of this report, the bridges are considered as a single structure, where removal / raising / replacement options would involve both bridges"
44. The electric bridge was previously owned by Scottish Power. This bridge was only built to transport equipment for power station. Cllr Forrest said on via email 27/1/22 "*There is only talk about this nothing else if the original plan had been followed Scottish power should have taken the bridge down when the power station was completed but currently it's all part of what might could or will happen at the end of the day we need to see what the consultation brings out*". Why did the council take ownership of this bridge (and subsequent costs to taxpayer) knowing it would have to be removed due to flood risk? Why were public not consulted? Is there therefore justification for building a new bridge?
45. Has an Asset Protection Agreement been carried out to ensure Scottish Power (and other relevant parties) with interest and apparatus are not impacted by the construction of scheme? Where is this evidenced?
46. There was never an original intention of replacing with TWO bridges. Who are the intended beneficiaries of two bridges? MAT?
47. Also effects of debris blockage between Rennie Bridge and Goose Green footbridge Initial review of the height of direct defences upstream of the Electric and Goose Green bridges with the structures in place show that the cope of wall or top of embankment crest would be significantly higher than the general socially acceptable maximum height of 1.4m for both cells 3 and 4. Removal of these structures reduces the potential height of direct defences by up to 900mm, bringing the defence heights closer to the socially acceptable criteria. But they are now HIGHER than acceptable maximum height "therefore removing these structures deduces the potential height" therefore that eliminates this argument

48. What happened to “cognisance of the potential social and environmental impacts”?
49. Nature based solutions were dismissed at outset? why? Preferred Scheme P86 “The greatest barrier to NFM inclusion within a preferred scheme is the difficulty in quantifying the flood risk and economic benefits whilst justifying the expense of implementation. It is therefore concluded that Natural Flood Management measures cannot be included as a component of the preferred scheme. “
50. The construction of walls will involve the removal of large, mature trees and use of heavy machinery including steelpile-driving equipment, close to houses. Piling works could cause significant vibrations, potentially damaging houses as well as causing disruption. There is no guarantee independent full surveys will be carried out beforehand.
51. The Council should consider the outcome of the Scottish Government’s Review of Flood Resilience Strategy before making final decisions on the Musselburgh Scheme
52. “The town of Musselburgh has a very significant flood risk due to its geographic location ..”. Oct 23 Report to Council by Jacobs. Using the term ‘very significant’ implies a quantitative evaluation that is not provided. SEPA refers to a 1:200 return period as a ‘medium likelihood’, while NatureScot has referred to the risk in Musselburgh as ‘significant’. It is suggested that consistent terminology is employed by flood risk management (FRM) professionals and that the definitions are clearly explained in a peer-reviewed document, for example by a professional society. The prefix ‘very’ needs to be used carefully so that the principle of relative risk is appreciated. For example, if the risk in Musselburgh is ‘very significant’, how is the risk in more vulnerable locations described?
53. “The scope of the project required Jacobs to consider natural, sustainable and catchment flood risk management options from the outset. An initial report was produced during Project Stage 2 (known as ‘the Review of Existing Studies’) and a further assessment was completed during Project Stage 3 (known as ‘The Options Appraisal Process’) supplemented this. These reports fed into the overall Options Appraisal Process in the ultimate determination of the ‘Preferred Scheme”’. Oct 23 Report to Council by Jacobs. Regarding Jacob’s reports on NFM referred to above, the conclusions on the limited role of NFM/NbS are not supported by the very preliminary research undertaken with incomplete models. A note pointing out the limitations was prepared by Professor Roger Crofts, Dr Simon Shackley and Dr Ian Pattison and submitted in June 2022. No response has been forthcoming,
54. It is highlighted that, based on our current understanding, these sustainable engineering measures will contribute more to reducing flood risk in Musselburgh, than if wholesale NFM measures were delivered across the c.330km² of the River Esk catchment. .” Oct 23 Report to Council by Jacobs. What is the evidence to support this statement? The Jacob’s NFM

reports stated that Roseberry and Edgeware reservoirs could contribute to storing 2% of the total volume of an 0.5% AEP event (1:200 year return period) for a height of 1m of additional water stored and this would reduce baseline flood depths by 40 – 80mm and reduce flood defence levels by up to 120mm. Or, if 3m additional storage was possible at both reservoirs, the total volume of water stored for a 0.5% AEP (1:200 year return period) would be 6.4% and a reduction in baseline flood depths of 100 – 250mm and a reduction in flood defence levels of up to 330mm. If this assessment from May 2020 is still the correct values, which assumption has been made in the statement above regarding whether 1m or 3m water height is adopted? Have the asset owners agreed to these measures being implemented and to what extent? And how do the 40 – 80mm or 100-250 mm reductions in baseline flood depths relate to the reduction in peak flow?

55. Why was the use of Gladhouse reservoir, the largest body of water in the Lothians, for flood control discounted? The use of all of the reservoirs in the Moorfoot Scheme for flood control of the River Esk could seriously reduce, or even eliminate entirely, the need for flood barriers and other proposed works in Musselburgh. The capital cost of this would be minimal in relation to the works proposed in MFPS.
56. Unless Jacobs has done catchment-wide and extensive modelling of a wide range of NFM options and scenarios in the catchment than reported in 2020, it cannot be stated what is the potential reduction in peak flows for hydrological events of different frequencies. We know from research, including by the Environment Agency in England, that there is very uncertainty regarding the potential for reduction in peak flows from NFM, with a very wide range of estimates from 0% to 25% and a few outliers with larger values, and depending on the frequency and type of hydrological episode involved. In short, there needs to be evidence to substantiate the claim made above.
57. 3.18. “Detailed hydraulic and hydrological modelling of the NFM measures constructed on the Eddleston Water project has indicated a 5% reduction in peak flows at downstream receptors, thereby demonstrating their effectiveness against flood events on a catchment of 69km²”. Oct 23 Report to Council by Jacobs. The 5% reduction in peak flows must be referring to a particular frequency of flood event or hydrological extreme. What is that event?
58. Jacobs claim 90 minute difference in North/South Esk peaks, but this can be disproved
59. 3.25 “As detailed in Section 3.2 - 3.10 of this report, the Scheme has worked from its earliest state to deliver natural, sustainable, and catchment-based flood risk management measures to reduce the flood risk to the town of Musselburgh. The Scheme included substantial sustainable flood risk management measures within the ‘Preferred Scheme’ that was approved by ELC Cabinet in January 2020.” Oct 23 Report to Council by Jacobs. What is the evidence of a catchment-wide approach that involved detailed discussions with Midlothian Council from the ‘earliest state’ of the scheme?

- 60.3.29 "managed adaptive approach for Musselburgh". Oct 23 Report to Council by Jacobs. The meaning of adaptive management is still subject to technical discussions and this paragraph presents only one definition. Another definition is to avoid building hard defences for 2100 but rather to build sequentially, as the scientific uncertainties reduce and while sustainable materials and new flood prevention technologies are further developed. The key in this strategy is to build flexibly and using a modular approach, such that 20 to 30 yearly reviews are undertaken to ascertain whether defences needed to be further strengthened or otherwise modified. For example, managed realignment at the coast could be a credible option in 30 years time so the placing of defences could change
61. Since the reduction in peak flow attributable to NFM measures is not yet reliably quantifiable during design, NFM would be more suited to offsetting future increases in flood risk due to the effects of climate change rather than protecting against a defined present-day flood risk. This is because both the effectiveness of the NFM measures and the future flood risk attributable to the effects of climate change would be uncertain at the time of construction". (page 14 Eddleston Report). MFPS has assumed a given level of climate change in its Outline Design that comes with a specific % increase in the river flow level with no uncertainty bounds. In doing so, the uncertainties in the effects of climate change on flood risk are eliminated. Why are the uncertainties in one case (effectiveness of NFM) being highlighted as a reason not to include in the scheme and in the other case (climate change) they are eliminated and it is assumed (wrongly) that we can tick the 'include climate change' box?
62. MFPS are not following SEPA guidance. "Whilst the guidance more readily supports situations where new developments are being proposed (and where adaptation can be built in from the outset), there is a concern about how the CCA guidance will be interpreted for existing developments. A number of examples were noted (Musselburgh etc) where local authorities had chosen a high level of protection (1:200yr level of protection and then account for climate change using a single climate scenario, typically based on SEPA's LUP guidance which is based on RCP8.5 95th%) without interrogating whether this is appropriate for the location, or considering the intervention as part of a comprehensive adaptation plan".
63. Flood Risk Management Act (Scotland) 2009 only allows for funding for flood protection – place-making and river restoration are not funded, creating bias and expectations by public that may not be fulfilled.
64. Major cost of replacing bridges is unnecessary. Is this justified in relation to scale of flood risk. Bridges could be amended with 'sparlings'.
65. "An integrated catchment study will be carried out to support the surface water management plan process and improve knowledge and understanding of surface water flood risk and interactions with other sources of flooding e.g. with the sewer network, watercourses and the sea."

www2.sepa.org.uk/firmstrategies/pdf/pva/PVA_10_21_Full.pdf Where is the evidence this has been carried out?

66. "Jacobs was appointed by ELC in December 2017 to develop a flood protection scheme for Musselburgh to reduce flood risk from all sources of flooding." Oct 23 Report to Council by Jacobs. This is surely not correct, since flooding from drains is the responsibility of Scottish Water, not of ELC.
67. I acknowledge that surface water drainage is a shared issue between the flood protection scheme and Scottish Water. Nonetheless these outstanding surface water issues have not been addressed. These are likely to exacerbate existing flooding risk.

Introduction of mechanical and electrical equipment to deal with potential flood risks on the dry side of the defences, as a result of the designs of the proposals, will present new and additional means that heavily rely on human interface and involvement, thus another new layer of risk. We have witnessed pumps failing in Perth & Brechin. <https://www.thecourier.co.uk/fp/news/perth-kinross/4857551/storm-gerrit-perth-scottish-water-pumping-station-fault/>
<https://www.scotsman.com/news/people/scottish-council-confirms-some-pump-stations-did-not-work-automatically-during-brechin-floods-3927637>

68. There will be a concrete wall built along the River Esk on the east side of the River. This will mean there will be an access "corridor" as next to path there is existing wall at Loretto Newfield. We have seen major flooding from drains here last year. This could lead to loss of life if flood water gets trapped behind the wall. As a female I will feel very unsafe walking along this path hemmed in between two high walls.
69. There is no construction traffic management plan or environment management plan.
70. No images have been given of what the construction will look like which will impact accessibility, traffic.
71. Community concerns over problems with other flood alleviation schemes in other areas have failed to be addressed in MFPS. "Colin Shaw, from conservation group Save Our Lagan, said that the DfI had "questions to answer" following the flooding, saying he believed that the runoff from the new path and wall has contributed to the issue, along with the removal of the trees in the area" <https://www.belfastlive.co.uk/news/belfast-news/concern-over-flooding-flood-alleviation-25877353>
72. The number of properties likely to be affected keeps changing without any justification. Clarification on number of properties at risk is required. It started off at 2500 in 2019 (see MFPS website exhibition 2019). MFPS website now says 3,200. Sepa on Flood Risk management plan (under Musselburgh) says currently 2800 people. However, the EIA states 2037 residencies and 242 non-residential properties. Such gross differences in documents released at the same time raises questions about the veracity and integrity of any statements by the Council and its consultants.
73. The Scottish Government should pause all schemes until fully understand why Brechin failed to avoid same mistakes.

74. Detailed topographic maps are held by Jacobs, but these aren't being shared with the community so we can understand the lowest, most vulnerable points in the town
75. Property level protection is not evident in the flood risk planning for Musselburgh
76. The MFPS is deficient for not investigating or promoting property level protection to community and to councillors.
77. Demountable defences have not been fully explored, costed nor presented as an option
78. Why is there no cost benefit analysis of these compared with proposed scheme?

OBJECTION 6

Environment & Wellbeing

1. References to "enhancement of landscaping in Musselburgh" or similar are not just an affront to the people who can see with their own eyes what they have and the inferior landscapes the proposals offer, unquestionable gradually worsening through the years, with graffiti and lack of maintenance.
2. There is no maintenance plan or budget to remove graffiti.
3. Musselburgh has a long standing historic relationship with the river and sea. Coastal structure will result in loss of sea views. The scheme will sever the community from the river and the sea.
4. Loss of trees. The consultants are an experienced firm of engineers with knowledge and access to information. ELC likewise have the means to consult experts and arborist experts. To that end, an examination of the presentation information, points to conditions that would almost certainly lead to the death of trees, such as those very close proximity of heavy plant adjacent or over the roots of tree, and formation of swales at/under the roots of tree at Eskside East for example. Therefore both the consultants and the council know with undoubted certainty which trees are very likely to perish during the formation of the flood scheme. To not demonstrate that clearly to the public is both a denial of information and manipulation of the townsfolk's empathy for trees, giving the impression that many trees may be saved, where the opposite is true.
5. You cannot simply replant replacements which will operate as both a different habitat and ecological resource (the effects of which are unknown) and will also introduce a very different landscape perception/visual impact. Any supposedly replacement trees will take years to mature. Who will maintain planted trees?

6. There has been no third party independent analysis of the impact of the proposals on Musselburgh's long connections and affinity with the sea and river as an amenity for the townsfolk and others, as well as for the tourism industry, on which many local shops depend. Flood walls will destroy amenity and Musselburgh's long connection with river and sea.
7. Privacy issues due to walkways on top of defences are an unresolved issue. Design proposals for walkways on the top of the proposed embankments which will give users sight into homes. These designs need to be substantially modified to overcome these legitimate concerns.
8. I object that there is no guarantee Fisherrow Links will not become a compound during the construction phase.
9. I also object that there is no guarantee the Mountjoy Terrace road will not be used for heavy maintenance traffic during construct phase.
10. Have Nature Scot/Forestry Scotland been consulted specifically regarding trees being planted on Fisherrow Links - this is an invasive species.
11. Does the scheme meet ELC Net Zero goals? Biodiversity is integral to council, which has an aim to reach net zero and improve their biodiversity. The scheme will have a significant impact on ELC's ability to achieving this goal.
12. There is no assessment of the proposals against the Council's Environmental Policies
13. Page 9 - to be in accord with the FRM Strategy, the responsible authority should seek to ensure as part of the study that the action will not have an adverse effect on the integrity of the Firth of Forth Special Protection Area [PVA 10 21 Full \(sepa.org.uk\)](http://sepa.org.uk) Where has this been proven that it will not have an adverse effect?
14. What impact will the construction work and walls have on the towns peoples' enjoyment of historic Musselburgh Festivals ie the rideout? What access will horse and riders have to the beach for their Crusader Chase and for spectators?
15. At a time of increasing pressures on Musselburgh's growing population, the loss of amenity will affect physical and mental health as will pollution and traffic congestion resulting construction works. The impact of the extra, heavy works traffic on local transport (particularly bus services, on lines which are vital not only to locals but also to commuters) has not been assessed.
16. The adverse effects on the economy and the negative impact (direct and indirect) on human wellbeing, estimated to last for 5+? years, have not been costed.
17. "The Scheme will contribute towards the East Lothian Plan 2017-27, focusing on health and wellbeing, safety, transport connectivity, sustainability and protecting our environment." It should be recognised that the Scheme has already had a deleterious impact on health and wellbeing and risks having

deleterious impacts on sustainability, safety and environment in future. No amount of river restoration will make-up for all the possible negative impacts.

18. No Equalities Impact Assessment has been carried out.
19. The arguments against whole catchment area development have frequently touched upon multiple ownership of the lands in question and the unwillingness of some landowners to participate in safeguarding Musselburgh against floods. The poorest and most vulnerable are being discriminated against. Wealthy landowners should be implementing upstream natural flood management to reduce flow of water coming into the town. Instead people of a lower socioeconomic profile will be disadvantaged with a concrete wall flood scheme that sacrifices their access to nature.

Compensation

20. *"People depend on the environment around them for their physical and mental health, and general wellbeing"* (Flood Risk Management (Scotland) Act 2009. My human rights are undermined due to my present environment (river and coastal walks and views) being threatened which will affect my mental and physical health
21. My enjoyment of land will be affected by scheme and its operations. There will be a negative effect on my health due to pollution, noise and disruptions to traffic.
22. Compensation must be paid to any person who has sustained damage as a consequence of exercising certain powers under the Act (see section 82). Section 83(1) defines damage as the depreciation of the value of a person's interest in land or the disturbance of a person's enjoyment of land. 'Enjoyment of land' therefore needs to be considered. I object to the fact there is no evidence that the EIA (or the Council) have considered this in any detail.
23. I have an interest in the land affected by the scheme and scheme operations (including but not limited to noise and pollution from construction traffic) at Fisherrow Links, Fisherrow coast and the River Esk. I use this regularly for dog walking and exercise. My children use this for sports, football, pitch & putt, and in the past the playpark. I walk daily along the coastline and river for health benefits. A coastal sea defence with limited access and any scheme compound and scheme works will directly impact mine and my family's ability to continue to do so and disturb my enjoyment of the land and will affect my health and wellbeing and that of our family. I am deeply concerned that the Scheme will additionally diminish the value of my property and I expect to be compensated for the sustained damage as a consequence of exercising my powers under the Act, Section 83 (1).
24. Compensation can be justified specifically due to any structural damage to my property as a result of the engineering works in close proximity to my property

given that the construction of walls will involve the use of heavy machinery including steelpile-driving equipment. Piling works could cause significant vibrations, potentially damaging houses as well as causing disruption. There is no guarantee independent full surveys will be carried out beforehand and I object on that basis.

25. I request a full independent survey and valuation on my home is carried out prior to any work commencing.

OBJECTION 7

Musselburgh Active Travel

1. The apparent very last minute withdrawal of the Musselburgh Active Travel ("MAT") component to the Scheme fundamentally undermines the Scheme design as presented. I do not accept that I am unable to object to MAT due to this so called "withdrawal", I also do not accept it has been withdrawn as it is all over the MFPS designs and EIA.
2. There have been mixed messages from [REDACTED] and Mr Grilli regarding the inclusion/exclusion of MAT. The council have failed to properly and clearly notify stakeholders re MAT.
3. ELC should have no reason to hide their thinking from those whose interest they purport to work. This includes the recent confusion and obfuscation around active travel routes. Only on the 19th March 2024 was I informed via a councillor MAT are now apparently not part of the scheme. Yet wide paths, ramps and new bridges remain in the flood scheme drawings that DO NOT reduce flood risk.
4. This is evidence the MAT has heavily (and negatively) influenced the design and height of the proposed flood scheme.
5. I have been unable to separate MAT from the notified scheme.
6. It is evident the MFPS has built into it the design for the MAT, i.e. 5m wide cycle routes, position of the flood wall, inclusion of Ivanhoe bridge, design of the ramps, etc. Notification of the scheme should be withdrawn due to this fundamental error and the scheme re-notified with MAT fully removed from the designs.
7. Ramps to access bridges will result in lack of privacy to residents eg at Goosegreen
8. Raised active travel paths will result in lack of privacy to residents eg end of Mountjoy Terrace
9. Lack of evidenced consultation on MAT Routes 3 & 5.
10. Are ramps being built on SSSI at Fisherrow Links? There is no clarity on drawings. No images have been provided.
11. The path at Fisherrow Links is perfectly fine and does not require replacing. It is currently used by cyclists, pedestrians and wheeled users.

12. Cycling groups currently use New St to access the Electric Bridge and head east and will not use a new active travel path at Fisherrow Coast. They prefer to go the most direct route.
13. The proposed walkways on the top of the proposed embankments are not justified, and for amenity, public safety, privacy and damage limitation reasons should be removed from the Scheme.
14. The river has been narrowed to create active travel paths. Narrowing of the river is counter to river restoration and can increase flood risk.
15. Comparing Sustrans objectives and standards, and Active Travel Paths' in general, there can be no doubt that much of the Flood Protection Scheme pays heed and is informed by MAT. The consultants, the council's legal services' and infrastructure departments denials of this intrinsic relationship between MAT and the Scheme is flawed and has no basis, as the presentation put before the town manifest to the link. This is clearly demonstrated in the Design Statement published by the Consultants. It has heavily influenced design of flood scheme negatively.
16. All MAT proposals are deemed to be 'Developments' as defined by the Town and Country Planning (Scotland) Act 1997. This is undeniable, and failure to obtain planning permission for all MAT related elements would be tantamount to subverting the 1997 Act. ALL structures and routes of MAT should go via normal planning regulations.
17. There is the potential for the loss of public rights to comment on a development that should require planning permission and subverts the 1997 Act
18. A new Goosegreen Bridge offers no flood reduction benefit and is a waste of taxpayer cash. Furthermore, under the above noted definition under the 1997 Act, this bridge is without any doubt considered to be a 'Development' and not a replacement, and requires planning permission.
19. Any proposal for a new Goosegreen Bridge must also be formally evaluated by NatureScot under the Habitats and Species Regulations for its impact on the SSSI.
20. It is totally unnecessary to construct a new crossing of the river at the coast as is proposed with new Goosegreen Bridge, especially given a crossing exists where the Electric Bridge is at present. Walkers and cyclists can easily travel up from the coastal path alongside Newfield to cross on the existing bridges. This journey literally takes minutes.
21. Mr Grilli has acknowledged that the MFPS will likely incur higher costs because of its inclusion of MAT design features, costs that do not REDUCE flood risk therefore should not be included in a Flood Prevention Scheme as per the Act.
22. The need for all of these schemes and the financial cost to the public purse has not been justified. There are plenty of options for walkers of all types and ages and cyclists to undertake active travel in , around and through Musselburgh at present without difficulty.
23. There has never been a breakdown of MAT costs. Who will pay for all MAT costs (including "structure" and "routes") and what are these costs?

Lastly I would like to object to the lack of clarity regarding the statutory objection process. It is very unclear how the council will review the objections. There has been no public announcement despite the fact that the statutory objection period closes in 2 days. I object to the consultants taking the lead on the objections if this is the practice ELC intend to use. It is unacceptable if they act as both judge and jury on the scheme. This is the third time I have submitted my objections as I have not received any confirmation they have been received by East Lothian Council which is completely unacceptable. I object that there has been no clear defined acknowledgement of my objections.

OBJECTION 8

EIA

1. The results presented in the EIA report from surveys of shoreline and coastal birds are not detailed enough to provide assessment of the impact of the scheme on the internationally and nationally designated sites around Musselburgh. One would not be able to judge if mitigation measures are adequate without this data. The desk study part of the baseline data collection has also been inadequate. You need both survey results and relevant pre-existing data on bird species present, and their national and local population trends, and insights into relevant behaviour. The desk study in the EIA report also fails to include useful data from the East Lothian Council Ranger service, the British Trust for ornithology (BTO) and the Scottish ornithologist's club (SOC) The EIA gives the agglomerate count figures of birds but should give species specific data. Also their data is out of date. They should have used the most recent data available up to 2022/2023 instead of 2013 to 2017.
2. There are also concerns about the accuracy of the baseline survey. It contains anomalies about the species of birds observed which makes one question the accuracy of all their information. Also counting was done when the lagoons were under construction activity in 2021 to 2023 which was not representative, and according to Nature Scot bird surveys should not take place where there is disturbance that could affect the abundance, distribution or behaviour of birds within the survey area. Surveys are still being carried out and the result of these should be waited for. The EIA report attempts to identify and quantify loss of habitats from the scheme but it does not identify the main habitat impact of the scheme namely the loss of shoreline and intertidal habitats over its 100 year operational life.
3. Hard defence structures along the coast create 'coastal squeeze'. This impact is not even mentioned in the EIA report biodiversity chapter, let alone assessed. EIA does not meet its own commitment to give an appraisal of the future baseline without the scheme in order to assess the possible effects of the scheme if it goes ahead. Habitat loss from 'coastal squeeze' must be assessed properly. Not to do this goes against the council scheme objectives that 'the scheme will achieve as a minimum a neutral impact on the environment' and also that it will 'protect the Firth of Forth and its protected statuses'. ELC has an actual duty to protect and enhance biodiversity which cannot be fulfilled in this

case without the necessary detailed bird data to assess the impact of the scheme and design mitigation.

4. There is repeated downplaying of Conservation importance in the EIA report, without any evidence for why this might be acceptable. There is no mention of the fact that many waders and waterfowl in the Firth of Forth have already suffered long term decline due to development impacts. Another example of this downplaying is the unsubstantiated claim that 'the area temporarily lost during construction constitutes a narrow linear area adjacent to the coastline which experiences high levels of disturbance from public use. This area is not considered to be an important habitat for qualifying interests of the Firth of Forth designated sites in comparison to the large expanse of sand flats along the coastline and the lagoons at Levenhall links'. There is no evidence to back up these assertions on factors such as prey availability or exposure to disturbance or any of the other influences that need to be considered in order to assess these impacts.
5. The EIA report notes that 'the improvements to the active traffic network particularly along the seawall and the proposed Goosegreen bridge may result in increased pedestrian and cyclist traffic which may create increased operational disturbance to qualifying bird species' The report makes it clear that it's uncertain whether the cycle paths will result in increased active travel in which case how can the expenditure, the additional risk of impacts on internationally and nationally designated bird sites, and the carbon footprint of constructing these two elements of the scheme, be justified without strong independent evidence that there will be sufficient active travel benefits. These two elements need to be removed from the scheme not least as there are already foot and cycle paths along the relevant sections of the scheme coastline.
6. Finally consider the impacts on recreational amenity over the construction period, specifically for birdwatching. Musselburgh is one of the most visited birdwatching sites in Scotland enjoyed by hundreds of visitors every year. This tourism and amenity value of the scheme area for birdwatching is not given recognition in the EIA report and as a result there is insufficient attention given to mitigating disruption to this activity. This is significant because the schemes construction phase could take a period of 5 to 10 years, imposing long-term damage to the area's use and reputation as an ornithology visitor attraction.

Under no circumstances must communication be in person. I insist all communication with me going forward should be via email or by post.

I would like a response to all my points detailed above.

Please acknowledge receipt of my letter of objection via email as mentioned. Please advise me of next steps, and timescales.

Yours Faithfully,

A solid black rectangular box redacting the signature of the sender.

EAST LoTHIAN COUNCIL
RECEIVED

24 APR 2024

LEGAL & PROCUREMENT

Carlo Grilli
Service Manager - Governance
Legal Services
East Lothian Council
John Muir House
EH41 3HA

Address

Address

Date: 10th April 2024

mfpsobjections@eastlothian.gov.uk

Dear Mr Grilli,

I am writing to lodge my objections to the Musselburgh Flood Protection Scheme.

I object to the hard engineering and lack of Nature Based Solutions except for one leaky dam and two modifications to two reservoirs.

I object to the thousands of tonnes of CO2 which will be released into the atmosphere during the build.

I object to the way the Project Team are disregarding our wildlife along the river, the beaches and the estuary. The foundations for the walls will effectively kill off the riverbed.

I object to 5 years of disruption to the town.

I object to the totally unnecessary Musselburgh Active Travel along Eskside East

I object to the lack of transparency both from the Project Team, the council and the Councillors. The consultation boards are difficult to understand, and emails and letters have often been ignored, while a request for information regarding feedback under the F.O.I. Law was answered with a demand for over £600.

Please acknowledge receipt of my letter of objection in writing. Please advise me of next steps and timescales.

Yours faithfully

Signed

Printed

CC

Carlo Grilli
Service Manager - Governance
Legal Services
East Lothian Council
John Muir House
EH41 3HA


Date: 10th April 2024

mfpsobjections@eastlothian.gov.uk

Dear Mr Grilli,

This my objection letter to the Musselburgh Flood Protection Scheme:

I object to the Flood Scheme being twinned with the totally unnecessary Musselburgh Active Travel. Some parts of the MAT remain entwined with the Flood Scheme which have no bearing on flood protection.

I object to millions of taxpayers' money being used for this plan when there are cheaper, more environmentally friendly solutions that could be used.

I object to this amount of money being spent when services are being cut, drains need to be renewed and pot holes in roads repaired etc.

I object four bridges being demolished and rebuilt 5 metres wide with massive ramps, ruining more green spaces.

I object to the damage this scheme will cause to the town and the environment.

I object to the disruption, for 5 years, it will cause to residents and businesses in the town while the construction is carried out.

Please acknowledge receipt of my letter of objection in writing. Please advise me of next steps and timescales.

Yours faithfully

Signed 

Printed 

CC 

