

REPORT TO: MEMBERS' LIBRARY SERVICE

MEETING DATE: 18 October 2024

BY: Depute Chief Executive (Partnerships and Services for Communities)

SUBJECT: Musselburgh Flood Protection Scheme - Update on Scheme Notification Process Correspondence

1 PURPOSE

- 1.1 The purpose of this report is to update members on the correspondence received following the formal notification period and to set out the next steps.

2 RECOMMENDATIONS

- 2.1 Note content of report.

3 BACKGROUND

- 3.1 Musselburgh Flood Protection Scheme (the Scheme) was notified by East Lothian Council (the Council) on 22 March 2024 in accordance with the Flood Risk Management (Scotland) Act 2009 (the Act) and the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (as amended). The closing date for submission of objections to the Proposed Scheme and Representations in respect of the Environmental Impact Assessment (EIA) Report was 24 April 2024.
- 3.2 Following the closing date, the Council's Legal Services reviewed all correspondence received to determine those which constituted valid

objections under the Act and those which constituted representations in respect of the EIA Report under the Regulations. Where an email address was provided, an email acknowledgement was sent to the objector. Where no email address was provided, a postal acknowledgement was sent. Where multiple correspondence was received from a correspondent, a single acknowledgement was provided.

- 3.3 The Council received 757 items of correspondence in respect of the Scheme's publication.
- 3.4 140 of these pieces of correspondence were duplicates, either where: the correspondence was sent via post as well as email; the initial email did not include an attachment and was subsequently re-sent; or the address was provided subsequent to the initial correspondence.
- 3.5 Five of the pieces of correspondence were both a valid objection and a representation in respect of the EIA Report.
- 3.6 Five of the pieces of correspondence were submitted late but a reason for lateness was provided. The Council was satisfied with the reason given; therefore these five pieces of correspondence were accepted as late objections pursuant to Paragraph 3(4) of Schedule 2 to the Act.
- 3.7 55 were deemed to be invalid objections either because:
 - a) They did not contain an objection.
 - b) They were not made in writing.
 - c) No address was provided.
 - d) They were submitted late and no reason for lateness was provided.
- 3.8 A total of 13 representations in respect of the EIA Report were received.
- 3.9 In Paragraph 3(1) of Schedule 2 of the Act it states that: "Any person may object to a proposed flood protection scheme." Some objectors (i.e. persons who objected) submitted multiple items of correspondence, however the collated correspondence from a single objector represents one objection. Similarly, some objectors raised several points within their correspondence, but this still represents one objection from that objector.
- 3.10 In total the Council received 465 valid objections and 5 accepted late objections which gives a total of 470 objections.
- 3.11 Pursuant to Paragraph 5(4) of Schedule 2 to the Act, those people who in due course have their valid objection or late objection considered when the Council takes a Preliminary Decision will then be referred to as a

‘relevant objector’. Within this report, and at this time, it is intended to refer to those persons as ‘relevant objectors’ since the Council intends to consider their objection in pursuance of Paragraph 5(2) of Schedule 2 of the Act.

- 3.12 It is highlighted that the legal process is ongoing, and the numbers referenced in this report are a snapshot and may change until such time that a Preliminary Decision is taken on the Scheme.
- 3.13 Of the 470 relevant objectors, the following is an overview of the analytics associated with their stated property address:
- In the Limit of Construction = 1.
 - In the Limit of Land Affected = 131.
 - In the Limit of Flooding = 178.
 - In the Limit of Notification = 234.
 - In the EH21 Postcode = 372.
 - In East Lothian = 404.
 - Outwith East Lothian = 66 (2 outwith Scotland).
- 3.14 Musselburgh has a population of circa 21,700 as defined in the 2022 census and the percentage of relevant objectors to this population equates to less than 2%.
- 3.15 In preparing this report, all correspondence was assessed, and seventy-one distinct themes have been identified. In respect of each objection theme raised, Council officers have detailed the position of the Council in relation to each theme. This workload, prepared by the Council’s Legal Services with the support of the Scheme’s Land & Legal Working Group, was presented to the Scheme’s Project Board such that all relevant parts of the Council are clear that these are the positions of the Council to the themes raised through the formal correspondence received. A report that presents the themes and the Council position on each theme is contained within appendix B of this report.
- 3.16 A copy of all correspondence received through the Formal Consultation process for both the Scheme objections and the EIA representations are contained with appendix A1 to A18 of this report. The correspondence is redacted to ensure that all personal details associated with the person who submitted the correspondence are removed. This step is being taken in the interests of openness and accountability and ensures that everyone

who desires can view in full the correspondence submitted to the Council regarding the Proposed Scheme

- 3.17 East Lothian Council will also publish their position in respect of the objection themes on the Scheme's website, together with the redacted copies of the correspondence.
- 3.18 The Council has replied in writing to all of the relevant objectors, offering to meet with them if they wish. The purpose of the meeting is for the benefit of the objector; to allow them to seek clarification on the points they raised; and discuss their objections to explore whether they would be willing to withdraw their objection.
- 3.19 In due course a meeting of Full Council will be asked to consider any remaining objections and the EIA representations, and thereafter to take a preliminary decision. Such a decision will be to either: confirm the Scheme without modification; confirm the Scheme with modifications; or reject the Scheme. The Council will then notify the Scottish Ministers of their preliminary decision, and in response, the Scottish Ministers will advise the Council of the next steps to be taken. This may include holding a public local inquiry or a local hearing.
- 3.20 At this time, it is anticipated that the Council will seek to take a preliminary decision on the Scheme in early 2025. Beyond that, the timing and duration of the next steps have yet to be determined.

4 POLICY IMPLICATIONS

- 4.1 Supports East Lothian Council Climate Change strategy 2020-2025.
- 4.2 Supports East Lothian Council Plan 2022-2027.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – The financial implications of the Scheme will be finalised pending approval of scheme design and tender award.
- 6.2 The cost of this Scheme if approved will be met from a combination of:

- a) Scottish Government funding covering 80% of the eligible cost of the Flood Protection Scheme.
- b) The balance of funding will be met from a combination of Capital funding provided by the Council and maximising external funding streams to support the delivery of multiple benefits identified within the scheme.

6.3 Personnel – None

6.4 Other – None

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DATE	18 October 2024

Appendix A1 to A29

All correspondence received through the Formal Consultation (which has been redacted to protect individual identity)

Appendix B

Position of East Lothian Council on the themes identified within the Scheme Notification Correspondence