

**REPORT TO:** Petitions and Community Empowerment Review Committee

**MEETING DATE:** 20 March 2024

**BY:** Executive Director for Council Resources

**SUBJECT:** Petition PET0323 – Calling on East Lothian Council to remove Musselburgh Active Toun Routes 3 & 5 and proposed new Goose Green Bridge from the Musselburgh Flood Protection Scheme

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**1 PURPOSE**

1.1 To present petition PET0323 to the Petitions and Community Empowerment Review Committee for consideration. The petition is entitled ‘Remove Musselburgh Active Toun Routes 3 & 5 and proposed new Goose Green Bridge from the Musselburgh Flood Protection Scheme’.

1.2 The petition text reads:

Town and Country Planning (Scotland) Act 1997, Provision 38 states:

“Provision 38 - In determining any application, the planning authority shall take into account any representations relating to that application which are received by them before the expiry of any period prescribed under subsection of that section.”

Active Travel Paths are subject to the above provision and must be available for scrutiny by the townsfolk and the community as part of the planning application process, and the authority must take into account any representations relating to the proposals.

By contrast planning permission for the Musselburgh Flood Protection Scheme, and all related works that contribute to lowering of the flood level and the flood risk, are to be deemed as granted.

When coupling parts of the Musselburgh Active Toun (MAT) active travel paths with the flood scheme, namely parts of Routes 3 & 5 and the proposed new Goose Green Bridge, the coupled parts could fall under the provisions of the Flood Risk Management (Scotland) Act 2009 and deemed granted and the community and the townsfolk denied their rights (under Town and Country

Planning (Scotland) Act 1997) to scrutinise these parts of the MAT proposals as part of the planning process and submit representations.

No part of the proposed MAT active travel path routes should be coupled with the flood scheme or exempted from scrutiny under that proposal.

All proposed paths must be subject to planning regulations and available for scrutiny and representations.

East Lothian Council must not exclude any parts of the MAT active travel paths from the planning process by coupling them with the Musselburgh flood protection scheme, or any other process.

Please sign petition to remove Musselburgh Active Toun active travel paths Routes 3 & 5 & the proposed new Goose Green Bridge from the Musselburgh Flood Protection Scheme.

## **2 RECOMMENDATIONS**

- 2.1 That the Committee consider the petition and takes action as required.

## **3 BACKGROUND**

- 3.1 The principal petitioner is Janice Davis. Mrs Davis submitted the petition on 12 December 2023.
- 3.2 The petition was deemed to be competent and had 30 signatories.
- 3.3 Further details of the petition are contained in Appendix 1.
- 3.4 The petition can be viewed by contacting the Clerk to the Petitions and Community Empowerment Review Committee.

## **4 POLICY IMPLICATIONS**

- 4.1 There are no immediate policy implications arising from this report. Depending on the action required and agreed by the Committee, there may be policy implications relating to particular issues arising from competent petitions. These will be subject to a separate report to the relevant committee, as required.

## **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 – dependent on the action agreed by the Committee.
- 6.2 Personnel – dependent on the action agreed by the Committee.
- 6.3 Other – dependent on the action agreed by the Committee.

## **7 BACKGROUND PAPERS**

- 7.1 East Lothian Council Standing Orders – Appendix 1: Scheme of Administration – Petitions and Community Empowerment Review Committee.

Appendix 1: Summary of petition for consideration

Appendix 2: Report by the Executive Director for Place

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| <b>AUTHOR'S NAME</b> | Becky Crichton   |
| <b>DESIGNATION</b>   | Committees Officer/Clerk to the Petitions and Community Empowerment and Review Committee |
| <b>CONTACT INFO</b>  | rcrichton@eastlothian.gov.uk   |
| <b>DATE</b>          | 12 March 2024  |



## PETITION TO EAST LOTHIAN COUNCIL

|   |   |
|---|---|
| <b>Name of Principal Petitioner (and organisation if applicable)</b><br>(Block Caps)  | MRS JANICE DAVIS  |
| <b>Address of Principal Petitioner (inc Postcode)</b><br>(Block Caps)   | [REDACTED]  |
| <b>Contact telephone number of Principal Petitioner</b>   | [REDACTED]  |
| <b>Title of Petition</b>  | REMOVE MUSSELBURGH ACTIVE TOUN ROUTES 3, 5 AND PROPOSED NEW GOOSEGREEN BRIDGE FROM THE MUSSELBURGH FLOOD PROTECTION SCHEME              |
| <b>Petition text. We the undersigned call on East Lothian Council to..</b>  | Please see attached word document   |
| <b>What action have you taken and who have you contacted before submitting this petition and what was the result of this?</b> | I have attended the Musselburgh Flood Protection Exhibition in June 2023 to view the proposed scheme. I was unhappy with the proposals. |
| <b>Please provide more information about your petition</b>  | [REDACTED]  |
| <b>Signature of Principal Petitioner</b>  | [REDACTED]  |

**Your details will only be held by East Lothian Council and will not be used for any purposes other than in relation to this petition.**

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| For Office Use:     |  |
| Date Received:      | 12 December 2024                       |
| Receiving Officer:  | Clerk to the Petitions & CER Committee |
| Petition Reference: | PET0323                                |

All Petitions should be forwarded to: Clerk to the Petitions Committee, Legal & Democratic Services, East Lothian Council, John Muir House, Haddington EH31 3HA or handed in at Main Reception, John Muir House, Haddington

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*“Provision 38 - In determining any application, the planning authority shall take into account any representations relating to that application which are received by them before the expiry of any period prescribed under subsection of that section.”*

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No part of the proposed MAT active travel path routes should be coupled with the flood scheme or exempted from scrutiny under that proposal.

All proposed paths must be subject to planning regulations and available for scrutiny and representations.

East Lothian Council must not exclude any parts of the MAT active travel paths from the planning process by coupling them with the Musselburgh flood protection scheme, or any other process.

**Please sign petition to remove Musselburgh Active Toun active travel paths Routes 3 & 5 & the proposed new Goosesgreen Bridge from the Musselburgh Flood Protection Scheme.**



**REPORT TO:** Petitions and Community Empowerment Review Committee

**MEETING DATE:** 20 March 2024

**BY:** Executive Director for Place

**SUBJECT:** Petition to remove Musselburgh Active Toun active travel paths Routes 3 & 5 and the proposed new Goose Green Footbridge from the Musselburgh Flood Protection Scheme

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## **1 PURPOSE**

- 1.1 The purpose of this report is to respond to the Petition to remove Musselburgh Active Toun active travel paths Routes 3 & 5 and the proposed new Goose Green Bridge from the Musselburgh Flood Protection Scheme.

## **2 RECOMMENDATIONS**

- 2.1 To allow the Musselburgh Flood Protection Scheme (the Scheme) to continue to advance through its formal processes under the Flood Risk management (Scotland) Act 2009 as East Lothian Council authorised in January 2024.
- 2.2 To note that parts of the design of the proposed Scheme as presented to Council in January 2024 have been influenced by the objectives of the Musselburgh Active Toun (MAT) project, but that the proposed Scheme that is 'notified' in March 2024 will be the Scheme and not the MAT. That a process of objections will take place through which any person may object to any part of the proposed Scheme.
- 2.3 That if parts of the MAT Route 3 and/or Route 5 are not included in the proposed Scheme when 'notified' that then they are not part of the Scheme and thus the request of the petition is no longer applicable.

## **3. BACKGROUND**

- 3.1 On 21 January 2020, East Lothian's Cabinet agreed to seek multiple benefits by weaving in additional external funding from major infrastructure projects

such as the Musselburgh Sustainable travel plan, which has now evolved to Musselburgh Active Toun project.

- 3.2 On 23 August 2022 the Scheme presented a report of update to a full meeting of East Lothian Council. Council noted “the ability of the project to deliver multiple benefits to the town ... In particular the Musselburgh Active Toun project which is delivering new active travel pathways for the town.”
- 3.2 Where the Scheme and MAT projects share a footprint; where the infrastructure is part of the Scheme, the Scheme will take precedence in consenting, design and delivery.
- 3.3 This allows benefits to be realised by match funding through external grant fund opportunities and to consent, design and deliver once through one project rather than two individual projects. This saves the public purse.
- 3.4 The Scheme will require the replacement of the existing footbridges to achieve flood risk reduction outcomes, consequently it is proposed that the Goose Green Footbridge will be replaced under the Scheme.
- 3.5 If the Scheme is approved under the Flood Risk Management (Scotland) Act 2009 (the FRM) then it will be granted Deemed Planning Consent once it has been fully approved. The proposed Scheme will be ‘notified’ in accordance with Schedule 2 of the FRM before the end of March 2024.
- 3.6 During the meeting of full East Lothian Council on 23 January 2024, East Lothian Council:
  - a) “Confirms that the Outline Design of the Scheme is now developed sufficiently to allow the current stage of its development be concluded such that the design may now 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)”; and
  - b) “Instructs 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 the conclusion of the statutory ‘28-Day Objections Period’ set-out in the FRM and referred to in Section 3.2.”
- 3.7 The petition seeks to separate the Scheme from the MAT project. Considering the decision of Council is to move to formal consultation which includes the blended proposals of individual parts of the objectives of both projects, there is currently no opportunity to separate the MAT concepts from the proposed Schemes without Council stopping progress of the Scheme. A clear majority of support was given on the 23 January 2024 to progress the Scheme as is.
- 3.8 The formal ‘notification’ process under the FRM will allow for the submissions of objections to the proposed Scheme. The Scheme documents will detail what constitutes the Scheme and therefore it will be clear whether or not the parts of Routes 3 and 5 of the MAT are or are not included in the proposed Scheme. If they are then these proposals may be considered and objected to, if so desired. If they are not defined in the Scheme documents then they are not part of the proposed Scheme and the request of this petition is realised already. In such a situation these proposed pathways would require

some other, as yet undetermined approval process, therefore it is not yet possible to update this Committee on such a situation.

- 3.9 It is the recommendation of this report that the requests of the petition are not possible to deliver at this time, and furthermore that the petitioner and public as a whole have an entitlement to object to the Scheme through its processes under then FRM for a period of not less than 28 days which will commence before the end of March 2024.

#### **4 POLICY IMPLICATIONS**

- 4.1 None.

#### **5 BACKGROUND PAPERS**

- 5.1 Special East Lothian Council – 23 January 2024 – Musselburgh Flood Protection Scheme – Presentation of the Outline Design.
- 5.2 East Lothian Council – 23 August 2022 – Musselburgh Flood Protection – Update on Scheme Development.
- 5.3 Cabinet – 21 January 2020 – Musselburgh Flood Protection Scheme – Determination of Preferred Scheme.

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| <b>AUTHOR'S NAME</b> | Peter Forsyth                               |
| <b>DESIGNATION</b>   | Project Manager – Growth and Sustainability |
| <b>CONTACT INFO</b>  |   |
| <b>DATE</b>          | 12/3/24                                     |