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| COMMITTEE: | East Lothian Council |
| MEETING DATE: | 17 February 2026 |
| BY: | Depute Chief Executive – Resources and Economy |
| REPORT TITLE: | Musselburgh Flood Protection Scheme – Update on Public Local Inquiry and Next Steps |
| REPORT STATUS: | Public |

1 PURPOSE OF REPORT

- 1.1 To update Council on the decision of the Scottish Ministers to call in the proposed Musselburgh Flood Protection Scheme (“the proposed Scheme”) for consideration as provided for under paragraph 6 of schedule 2 of the Flood Risk Management (Scotland) Act 2009 (“the Act”) and thereby cause a Public Local Inquiry (“PLI”) to be held. Furthermore, this report is to provide an update on the Council’s proposed approach to participating in that PLI.
- 1.2 To provide an update on the delivery strategy for the proposed Scheme, and the main constraints associated with it.
- 1.3 To provide an update on a recent national decision from January 2026 to impose a cost cap on the remaining Cycle 1 flood protection projects, including Musselburgh.
- 1.4 To present the emerging logic for commencing the detailed design of the proposed Scheme earlier than previously intended.

2 RECOMMENDATIONS

It is recommended that Council:

- 2.1 Notes the decision of the Scottish Ministers to call in the proposed Scheme and hold a PLI to enable an independent review of the proposed Scheme, and that at the end of this process, the Scottish Ministers will make the final decision on the Scheme as provided for under the Act.

- 2.2 Notes the proposed approach to develop a Scheme Delivery Strategy to support the future delivery of this complex project on the basis that the final decision by the Scottish Ministers is to approve the proposed Scheme without modifications.
- 2.3 Notes the requirement to commence early detailed design of the proposed Scheme to ensure the Scheme remains within Cycle 1 funding and associated timescales. Officers are continuing to further develop and refine proposals, and these details outlining proposed delivery strategies will be considered at a future Council meeting prior to any formal commencement of design work.
- 2.4 Notes the recent national position to introduce a funding cost cap for Cycle 1 schemes. The Project Team is currently reviewing the impact of this and how the scheme can be progressed under the new Cycle 1 financial constraints including through delivery of a phased approach to the scheme, with further details to be brought back to a future Council meeting.

3 BACKGROUND

- 3.1 The proposed Scheme has been in development since 2016 and remains in its Project Stage 5.
- 3.2 The proposed Scheme is being advanced under the Act and its regulations guidance and other legislation. Whilst statutory approval under the Act will facilitate Deemed Planning Permission, the project will also require numerous environmental consents before it can proceed to its construction phase. These other consents and licences continue to be developed as part of the ongoing Stage 5 workload.
- 3.3 The proposed Scheme is a major and complex civil engineering project, with associated large capital cost. Furthermore, the project overlaps with the Council's Musselburgh Active Toun project. This has resulted in the Council developing both projects within one holistic design environment. The Council also has a strategy to deliver both projects, if approved, through a combined construction works programme. This is in accordance with the Council's 'One Council' strategy and its approach to advancing the proposed Scheme with full consideration of the multiple benefits.
- 3.4 The proposed Scheme was notified in accordance with the Act in March 2024, and Council made a preliminary decision to approve the proposed Scheme without modifications in September 2025. That meeting also led to a Council request that the Scottish Ministers cause a PLI to be held, to ensure that an independent review of the proposals is achieved, thereby recognising the concerns of some objectors. The meeting also instructed the Project Team to seek to advance 54 proposed changes into the project design and delivery.

- 3.5 On 17 October 2025 the Council notified all objectors of the outcome of the preliminary decision.
- 3.6 On 24 October 2025 the Council notified the Scottish Ministers of the outcome of the preliminary decision and provided them with the associated package of information as required by the Act. The letter of notification is provided as **Appendix A** to this report.

The Scottish Government Decision

- 3.7 On 19 December 2025 the Scottish Ministers confirmed their decision to call in the proposed Scheme as provided for under paragraph 6 of schedule 2 of the Act. The letter of their decision is provided as **Appendix B** to this report.
- 3.8 The effect of this decision by the Scottish Ministers is to accept the request of Council through the approved Amendment of the September 2025 meeting. In their letter, the Scottish Ministers stated: "Given that there are a number of disputed facts in relation to the proposed Scheme, Ministers are of a view that a public local inquiry would provide an opportunity for fresh consideration of the proposed Scheme through an external, independent, process."
- 3.9 On 22 December 2025 Council issued a press release to confirm the decision of the Scottish Ministers, updated the Scheme's website and issued an update email to the Scheme's stakeholders. In January 2026 the Council updated the Scheme's public notice boards. These actions were to ensure that stakeholders and objectors to the proposed Scheme continue to be updated with the best available information by the Project Team.
- 3.10 The next step is for the Scottish Ministers to refer the proposed Scheme to the Planning and Environmental Appeals Division of the Scottish Government who will appoint a Reporter to hold the PLI.

Preparations for the PLI

- 3.11 Preparation for the PLI has commenced by Council.
- 3.12 It is anticipated that, once appointed, the Reporter will invite relevant objectors to participate in the PLI. The Reporter may then request position statements from the participating parties.
- 3.13 A list of foundation documents that the PLI will consider will likely be established. A pre-examination meeting will then be held to establish the subsequent process and the topics that inquiry sessions will focus on. Further written submissions may be requested and received at this stage.
- 3.14 The Reporter may also seek to obtain statements of agreement between the parties, to focus the inquiry sessions on the points which remain in dispute.

- 3.15 Prior to inquiry sessions commencing, a list of witnesses and supporting documents will be finalised. The inquiry sessions are then likely to take place in person. The venue for the inquiry sessions will depend upon the number of participating parties but is expected to be in or near Musselburgh. It is anticipated that the sessions will be open to the wider public and will be recorded for viewing online afterwards.
- 3.16 The steps above are illustrative, and a full understanding of the approach that the reporter will take will only become visible once appointed.
- 3.17 It is currently estimated that the PLI process is likely to take between 12 and 24 months. This would result in an estimated final decision being taken by the Scottish Ministers around October 2027. All times and activities associated with the PLI are subject to change, and further updates will be provided to Council once there is greater clarity. Other key points to note are as follows:
- (a) Scottish Ministers are expected to appoint a Reporter early in 2026;
 - (b) If the Reporter has immediate availability, preparatory activities are expected to take place before the summer and the inquiry sessions are expected to take place in the autumn; and
 - (c) Following the inquiry sessions, it is unknown how long the Reporter may take to prepare their report or how long the Scottish Ministers may take to consider the report prior to making a final decision on the Scheme.
- 3.18 The Project Board has overseen a review of personnel required for the PLI.
- 3.19 The Council's participation in the PLI will be led by Legal Services, supported by the Project Team. The Council has engaged the services of additional legal support from Anderson Strathern, and they are ongoing in appointing a King's Counsel. The specific requirements of the Project Team will not be known until a better understanding of the approach to be taken by the reporter is known.

Update on Delivery Constraints

- 3.20 This project is subject to various sources of risk and uncertainty. This is typical for any construction project and especially a complex civil engineering project that is delivering flood protection in a historic urban environment. Notwithstanding this, the following uncertainties are highlighted because they are considered atypical.
- 3.21 The Scottish Government and COSLA have been reviewing Cycle 1 of the National Flood Protection Scheme Programme since 2022. This has resulted in a number of constraints and timelines being applied to schemes currently within the Cycle 1 programme. A reminder of the key parameters set out in the paragraphs below.

- 3.22 As reported to Council in January 2024, one constraint (Recommendation 2) is that councils “must be able to provide evidence that a scheme had been notified no later than 31 March 2024 to remain eligible for funding under Cycle 1 of the programme”, and “that there will be no exception to this requirement”. The Council mitigated and then avoided this risk by notifying the proposed Scheme in March 2024 and thus in advance of the deadline.
- 3.23 As reported to Council in September 2025, another constraint (Recommendation 3) is that councils “must have the main construction works signed contract in place by the end of Quarter 4 2025/26” and that, “If a LA is not able to provide evidence the scheme has a tender in place then it will not be considered viable and automatically removed from Cycle 1 funding”. Whilst this constraint cannot be met, the proposed Scheme is exempt from it due to Recommendation 8.
- 3.24 Recommendation 8 states that “There is justification for an exemption to Recommendation 3 under the limited circumstances of a need for a public local inquiry or local hearing”. This recommendation took effect on 24 October 2025 when the Council notified the Scottish Ministers of the preliminary decision.
- 3.25 An extension of time provided by Recommendation 8 means that the deadline for the Scheme’s main construction works signed contract is now likely to be around October 2029. Whilst it is technically possible to meet this deadline, it presents a substantial risk to the project due to the size and complexity of the scheme, and the unknown timings and any subsequent recommendation arising from the PLI. Given this, officers are further exploring the need to commence early detailed design in parallel with the PLI and further detail will be brought back to a future Council meeting. It is recommended that this action is necessary to mitigate the risk to ensure that the programme can be delivered within the national timescales which has been agreed. This risk will be reviewed regularly, and further mitigation may be required. An illustration from the COSLA report is provided below showing how the time extension would work in principle.

| Activity | Date |
|--|-------------|
| Date notified to Scottish Ministers | 01/11/2025 |
| Date Recommendation 8 comes into effect for Council | 01/11/2025 |
| Date of Council being informed of the Scottish Ministers decision after a Public Local Inquiry or Local Hearing of 24 months | 01/11/2027 |
| Time lost = time recovered = extended Recommendation 3 date for Council | 01/11/2029 |

Note – The above table is an extract from COSLA Report and is for illustrative purposes only.

- 3.26 A recent decision has been taken at the end of January 2026 to implement a financial cap on the national funding to support the remaining Cycle 1 schemes which have not yet concluded. This will set a maximum cost cap for national funding at 300% of the estimated cost set in 2016, and which will result in a maximum level of national funding available for Musselburgh to be capped at £35.6m (80% of overall scheme cost). The national agreement has included parameters to suggest that should costs exceed this level, authorities could also consider options including the opportunity to self-fund, descope or phase the project. There is also agreement that in 'exceptional circumstances' where it would not be possible to deliver the scheme, to enable the development a business case for future consideration by COSLA and Scottish Government. Officers are actively reviewing the impact of these decisions on what and how the Scheme should be delivered. Once these details have been developed, this will be reported back to Council as early as possible on the recommended way forward. This will also now will centre upon a phased approach due to capping constraints.
- 3.27 Officers will also continue to work with COSLA, who have agreed to seek urgent clarity on the process, criteria and timescales for 'exceptional circumstance business cases' to allow schemes impacted by the cap such as Musselburgh to continue and find a route to delivery.
- 3.28 Given the significance and potential risks associated with the national funding cap and associated timing with accessing Cycle 1 funding, officers are proposing that this will also require the need to commence an earlier scheme delivery strategy. This strategy will establish how the construction works are intended to be advanced by the Council and when. This action can also explore delivery options that may need to be considered in response to any new constraints that emerge.
- 3.29 Whilst there are wider uncertainties relating to the proposed Scheme, these will collectively be considered in more detail through the proposed Scheme Delivery Strategy. Further details on the development of this strategy will be considered at a future Council meeting, prior to the formal commencement of further scheme design.

Update on Scheme Programme

- 3.30 In recent months, the Project Team have continued to work through the wide range of variables with Project Board and confirmed the assumptions that should be made in relation to each uncertainty. This allowed the Project Team to determine the best possible estimated programme of future activities, and thereby the overall proposed Scheme delivery.
- 3.31 A current Schematic Overview Programme is provided as **Appendix C** to this report. This remains a live document however it should be noted that actual timing of the PLI alongside the recent national financial cost cap will almost certainly affect the proposed Scheme Programme in the future.

3.32 Key dates currently reflected within the Scheme Programme are as follows:

- (a) The process within the Act of notifying the Scottish Ministers, that led to the PLI, is assumed to be of 24-month duration which commenced in October 2025 when notification of the preliminary decision was given;
- (b) That a final decision on the Scheme will be made by the Scottish Ministers around October 2027, and that Deemed Planning Permission will follow this;
- (c) That, it is currently assumed that the deadline for a main construction works signed contract will be October 2029, subject to the date that the final decision is taken by the Scottish Ministers. Much of the rest of the logic of the programme has therefore been developed in relation to this date – i.e. the detailed design and procurement of the main works must be complete before this date.
- (d) Given the scale and nature of the construction works and in relation to the cap, it is assumed that works will now have to be phased.
- (e) It is assumed that Advanced Works Contracts will be used to prepare for the main works. These will likely include public utility diversions; site clearance works; delivery of potential alternative traffic management works; potential demolition and/or other enabling works. As the name suggests, such works must be completed in advance of the Main Works to be effective. It is highlighted that not all locations will require Advanced Works, and that the scope of such a contract is not yet known;
- (f) That major public procurement exercises must be completed in advance of all construction works contracts being signed;
- (g) That the detailed design must be completed in advance of the Main Works Contract's procurement exercises commencing; and
- (h) That the best way for Council to advance this programme, and ensure compliance with Cycle 1 national funding and timing constraints is to commence the detailed design early.

3.33 The Scheme Programme is a live document and is considered to be the best projection of time for the proposed Scheme. The programme is subject to legal processes and external constraints which may impose further significant changes to the logic of the programme. The Project Team will continue to revise the Scheme Programme with the best available information and will continue to report on any updates to Project Board, the Council's Senior Leadership Team and Council.

3.34 The exact approach to delivery of the construction of the Scheme has yet to be determined. The development of the Scheme Delivery Strategy

is the next major step in this process. The Project Board will be in a more informed position once this is prepared.

- 3.35 Council will continue to consider the scheme design, and wider approvals, including cost, programme, risks and funding arrangements. Officers are committed to bringing back a further report as early as possible to confirm the next steps.

Development of the Scheme Delivery Strategy

- 3.36 As previously referenced, the overall approach to deliver the construction of the Scheme has yet to be finalised and will be approved once the project objectives evolve into an outline design. Similarly, until the statutory approval under the Act is achieved, the construction works cannot be delivered. Notwithstanding this, the project has always been planned in advance and is being managed through the PRINCE2 Project Management System to provide discrete stages and stage gateways where the Project Board are able to refine the assumptions and review the plan for the next stage. This step-by-step approach thus manages assumptions that are a function of an evolving design (developed in a consultative framework) and minimises the risk and financial exposure of the Council as the project is advanced.

- 3.37 The approach to advancing this project was determined by Project Board in 2017 and assumed that the Scheme Delivery Strategy would be developed during Project Stage 6. That approach identified a need for the following individual plans or strategies to be blended together to form one overarching Scheme Delivery Strategy:

- (a) The approach to final estimation of cost and time;
- (b) The approach to construction delivery which will now include phasing;
- (c) The approach to construction procurement;
- (d) The approach to land access and compensation;
- (e) The approach to risk management (and definition of the contingency pot as part of the overall budget); and
- (f) The approach of the Council to management and operation of the Scheme post completion.

- 3.38 A project delivery strategy is unique to each project. Officers recognise that invaluable local information collected through extensive consultation with the community and key stakeholders can be absorbed into the Scheme Delivery Strategy.

- 3.39 The Scheme is subject to various sources of risk and uncertainty. These are identified and managed by the Project Team through the Scheme's risk register. As the project moves into planning for the construction stage, the Project Team will review the risk register in conjunction with

the emerging Scheme Delivery Strategy. This will also include a monetisation of the risks.

- 3.40 Whilst officers are recommending the need to commence early detailed design to advance to Stage 6, there is a need to further develop the Scheme Delivery Strategy to allow an informed decision to be taken.
- 3.41 Officers will now progress with this work, and that the Strategy will be reported back to Council for further consideration.

Commencement of the Detailed Design

- 3.42 The detailed design of the proposed Scheme is the activity that provides sufficient engineering and construction detail for the contractor to tender for, and thereafter, build the Scheme. This detailed design must absorb any conditions imposed on it through Deemed Planning Permission. Similarly, it must absorb conditions imposed through other environmental consents and licences. Furthermore, the detailed design will require to consider the 54 changes to the proposed Scheme in accordance with the instruction of full Council through the September 2025 meeting. It will now also have to work within the COSLA determination and cap.
- 3.43 It is anticipated that the detailed design stage will take in the order of 20 months to complete.
- 3.44 In accordance with the existing approach to project delivery, the programme and the PRINCE2 Project Management System, the project stages are intended to be delivered sequentially with Stage 6 (Detailed Design) commencing after Stage 5 (Statutory Approvals) is complete. If this approach is maintained, then the Council will not meet the requirements of Recommendation 8. The Scheme will then be removed from Cycle 1 and Scottish Government funding will be withdrawn.
- 3.45 To avoid this, it is proposed that Stage 6 needs to commence early and run in parallel with Stage 5. At this time, sufficient planning to commence Stage 6 has not yet been undertaken and the Stage 6 Plan has not been prepared.
- 3.46 It is assumed that the outline Stage 6 Plan will be developed for consideration in the near future by Council.
- 3.47 It is currently understood that there will be no substantive change to the time required to deliver Stage 6: it is simply taking place at an earlier time. In a scenario where the proposed Scheme is modified, or other unexpected new conditions emerge from the ongoing Stage 5 statutory approvals processes then it is expected that a relatively small amount of additional time will be required for Stage 6.
- 3.48 It is anticipated that the cost to progress the scheme design will be met within the existing funding envelope and further details will come back to Council for determination before proceeding. The options are to progress with early Stage 6 detail design in full or to consider phasing the detail

design in sections that would deliver the entire scheme over a longer period when funding is available. The costs for both will differ as would the cost if the PLI requires any potential changes. It is highlighted that the Project Team do not consider that any potential change to the proposed Scheme can emerge that would be sufficiently different that would substantially invalidate the overall detailed design. A modification of such scale is not a modification but, rather a different scheme entirely. Such a situation would instead result in a 'rejected' scheme rather than a revision of the detailed design.

- 3.49 It is currently understood that the greatest risk to commencing the detailed design early is if, in due course, the Scottish Ministers make a decision to 'reject' the proposed Scheme. In this scenario the work undertaken on the detailed design is not required as the project is closed. The alternative, however, by waiting on the outcome of the PLI, is that the project will certainly fail to meet the funding deadline and be removed from Cycle 1 of the national programme as a result. This would, in effect, mean the cancellation of the Scheme in its entirety. There is no indication that the Scheme, if removed from Cycle 1, would be eligible for subsequent funding cycles. Starting the detailed design early is therefore the only reasonable route for the Scheme to continue to receive funding from the Scottish Government. As stated, this will be a decision for a future Council on when early detail design is commenced.

4 POLICY IMPLICATIONS

- 4.1 The Scheme is an important element of the Council's approach to resilience and a means of adapting Musselburgh to the effects of climate change. The Scheme represents one of the largest flood protection schemes in Scotland, with in the order of 3,200 properties (which includes 2,600 residential properties, 350 businesses, and significant key infrastructure) being protected, and would be a major contributor to adapting to the effects of climate change including communities potentially affected in the event of a flood and the local and national economies including key strategic infrastructure: e.g. Scottish Water Assets; other public utility assets; the A1 Trunk Road; the Scottish Power Ash Lagoons etc.
- 4.2 The Scheme supports the East Lothian Council Plan 2022-2027 and the Council's Climate Change Strategy 2025-2030.
- 4.3 Aligning with the principle of Safeguarding our Future and Strategic Outcomes, under the Travel, Connectivity and Infrastructure section, the Scheme clearly delivers on the need to ensure that communities are protected from the impact of floods.

5 RESOURCE AND OTHER IMPLICATIONS

5.1 Financial:

5.2 The financial implications of the project/Scheme will be finalised in the future. This will be after approval of proposed Scheme design, and after the procurement exercise for the main works contract (or phased contracts – to be confirmed), in accordance with the processes associated with flood protection schemes advanced under the Scottish Government's Cycle 1 Flood Protection Scheme Programme and its funding eligibility criteria.

5.3 Officers have been progressing with the design of the Scheme aligned to national legislation and national funding criteria. Previous cost estimates remain within the Council's approved capital budget, and the overall affordability of this will be subject to detailed procurement and confirmation of available resources. It is anticipated that the cost of this Scheme, if approved, will be met from a combination of:

- The Scheme remains a project identified within Cycle 1 of the national flood protection scheme programme, and as such aligned to the national funding criteria which define that the Scottish Government will provide 80% of the eligible cost of the Scheme (within the recently revised COSLA recommendations).
- 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.
- It is highlighted that, in accordance with the Scheme's PRINCE2 Project Management System, that at any point in the delivery of the project the Council is only liable for the costs authorised within the project stage that is open.

5.4 The recently approved national cost cap sets a maximum cap of 300% of the estimated cost set in 2016. For Musselburgh the maximum cap on national funding available in Cycle 1 is £35.6m.

5.5 The Scheme costs are intended to be fully reviewed at the earliest opportunity after the final decision has been taken by Scottish Ministers. This decision is expected around October 2027; therefore, it is considered that an update on Scheme cost can be provided to full Council around the first quarter of 2028.

5.6 It is expected that there will be additional costs associated with the extension to the Scheme's Project Programme due to the assumed twenty-four additional months to complete the PLI: in particular, this references the cost of inflation to the overall Scheme costs over those twenty-four months. This cost has not yet been determined, and it is intended that this matter will be reviewed in full when the Scheme costs are next revised in full. Equally, given the national agreement to implement a cap, any phased approach is likely to uplift the overall cost

of the Scheme and impact upon the capital planning used thus far to cover the Council's 20%. Furthermore, consideration will need to the ability to deliver the planned multiple benefits.

5.7 It is expected that there will be additional costs associated with the PLI: in particular the cost of resourcing the team that is required to participate in this process and which will include Council officers, support from the existing project management and design consultant teams, alongside the new external legal support services of Anderson Strathern and a King's Counsel. This cost has not yet been determined, and it is intended that this matter will be reviewed in full when the Scheme costs are next revised in full. It is currently understood that the cost of this activity will not be less than £1,000,000.

5.8 Human Resources:

5.9 The PLI is likely to have implications for the number of Council personnel and its consultants required to engage with the process, and the duration over which this activity would take place. The personnel that may be involved in the PLI are:

- (a) The Council's Service Manager – Governance;
- (b) The King's Counsel;
- (c) Representation from Anderson Strathern;
- (d) The Council's Head of Infrastructure;
- (e) The Scheme's Project Executive;
- (f) The Council Team Manager – Structures & Flooding;
- (g) The Scheme's project management team, Senior Project Manager from Turner & Townsend/CPE Consultancy;
- (f) The Scheme's Project Delivery Manager from Jacobs;
- (g) Various subject matter experts from Jacobs;
- (h) Potentially, various Council officers to support subject matter;
- (i) Potentially, representation from external independent witnesses engaged to support the Council's positions.

5.10 Other (e.g. Legal/IT):

5.11 The PLI will extend the duration of the Scheme's approval under the Act. This process is legal in nature and being led by the Council's Legal Services. Until these processes are concluded it is considered that the Scheme will continue to require significant commitment from Legal Services and also remain exposed to significant legal risks.

5.12 Risks:

- 5.13 A funding review of Cycle 1 of the National Flood Protection Scheme Programme has been undertaken jointly by COSLA and the Scottish Government. Following this review, additional constraints for funding eligibility have been imposed. The next deadline that is relevant to this proposed Scheme is that it must have its construction works contract in place by around October 2029. This risk and the actions being taken to mitigate it are detailed in full elsewhere in this report.
- 5.14 Scottish Government and COSLA have written to East Lothian Council confirming this amendment of available funding. This has led to uncertainty on delivery of the full Scheme.
- 5.15 National discussions remain ongoing given the challenging fiscal landscape, and in particular the level of national funding to support the growing costs of progressing wider flood protection schemes within national legislation. Aligned to the most recent decision COSLA continue to seek urgent clarity on the process, criteria and timescales for exceptional circumstances business case. The conclusion to these discussions will be particularly important to provide assurance to those schemes who have been progressing with scheme design aligned to national guidance, such as Musselburgh, and hopefully will support and find a route to deliver the scheme.
- 5.16 Officers will continue to engage proactively within the national discussions including with COSLA and the Scottish Government. The recent changes to national funding criteria will have a significant impact on the affordability of the overall proposed Scheme and how it is delivered. This risk and the actions being taken to mitigate it are detailed in full elsewhere in this report.
- 5.17 More widely, the current complex legislative process to progress flood protection schemes may place further costs and delays on the proposed Scheme and will impact on availability of both national and council funding, including funding to support the delivery of multiple benefits. As the PLI and detailed design progress, it will be important that Members are updated on the associated funding and affordability of the proposed Scheme.
- 5.18 The length of the PLI is unknown and as such it is necessary to accelerate the detailed design in order to meet the national timescales.
- 5.19 The early commencement of the detailed design and thereby Stage 6 with the cap being imposed presents new risks to the Council; however, this approach is being taken to mitigate and avoid an even bigger risk. These risks and the actions being taken to mitigate them are detailed in full elsewhere in this report.

6 INTEGRATED IMPACT ASSESSMENT

6.1 *Select the statement that is appropriate to your report by placing an 'X' in the relevant box.*

An Integrated Impact Assessment screening process has been undertaken, and the subject of this report does not affect the wellbeing of the community or have a significant impact on: equality and human rights; tackling socio-economic disadvantages and poverty; climate change, the environment and sustainability; the Council's role as a corporate parent; or the storage/collection of personal data.

or

The subject of this report has been through the Integrated Impact Assessment process and impacts have been identified as follows:

| Subject | Impacts identified (Yes, No or N/A) |
|---|-------------------------------------|
| Equality and human rights | N/A |
| Socio-economic disadvantage/poverty | N/A |
| Climate change, the environment and sustainability | N/A |
| Corporate parenting and care-experienced young people | N/A |
| Storage/collection of personal data | N/A |
| Other | N/A |

The Integrated Impact Assessment relating to this report has been published and can be accessed via the Council's website:

https://www.eastlothian.gov.uk/info/210602/equality_and_diversity/12014/integrated_impact_assessments

7 APPENDICES

- 7.1 Appendix A – East Lothian Council notification of preliminary decision to Scottish Ministers.
- 7.2 Appendix B – Scottish Ministers' notification of PLI to East Lothian Council.
- 7.3 Appendix C – High Level Schematic of Scheme Programme.

- 7.4 Appendix D – COSLA Letter to Scottish Government, January 2026 (published in the Members’ Library (private), Ref: 13/26, Feb26 Bulletin): https://intranet.eastlothian.gov.uk/meetings/meeting/5677/members_library_service

8 BACKGROUND PAPERS

- 8.1 Report to Cabinet in May 2016 – approval of the Local Flood Risk Management Plan (Forth Estuary) which included a proposed flood protection scheme for Musselburgh.
- 8.2 Report to Cabinet in January 2020 – approval of the ‘Preferred Scheme’ concept to be advanced to an Outline Design.
- 8.3 Report to full Council in August 2022 – approval of inclusion of the Ash Lagoons Seawall within the Scheme, and update to hydraulic model C.
- 8.4 Report to full Council in October 2022 – approval of the project’s assessment of Musselburgh’s flood risk, and timeline for advancing the outline design.
- 8.5 Motion to full Council in August 2023 – Note of Progress and Request for Information.
- 8.6 Report to full Council in October 2023 – approval to advance Natural Flood Management (NFM) in the River Esk catchment independently of the Scheme and as part of the future Local Flood Risk Management Plan (LFRMP).
- 8.7 Appendices A-F, available in the Members’ Library, January 2024 Bulletin, Ref: 08/24 - Agendas, reports and minutes | East Lothian Council.
- 8.8 Report to full Council January 2024 – approval of Musselburgh Flood Protection Scheme – Presentation of the Outline Design.
- 8.9 Members Library Report in September 2025 – Update on the Coastal Change Adaptation Process (CCAP).
- 8.10 Members Library Report in September 2025 – Update on the Esk Lothian Catchment Partnership (LECP).
- 8.11 Report to Full Council September 2025 – Musselburgh Flood Protection Scheme – Preliminary Decision on Proposed Scheme.

9 AUTHOR AND APPROVAL DETAILS

Report Author(s)

| | |
|--------------------|--|
| Name | Alan Stubbs |
| Designation | Project Executive – Musselburgh Flood Protection Scheme |
| Tel/Email | musselburghfps@eastlothian.gov.uk |
| Date | |

Head of Service Approval

| | |
|---|---|
| Name | Tom Reid/Sarah Fortune |
| Designation | Head of Infrastructure/Depute Chief Executive – Resources and Economy |
| Confirmation that IIA and other relevant checks (e.g. finance/legal) have been completed | Confirmed |
| Approval Date | 10 February 2026 |

Our Ref: CG/MFPS/251024
Your Ref: Scheme Preliminary Decision
Date: 17 October 2025

**MUSSELBURGH FLOOD PROTECTION SCHEME (“the Scheme”)
FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009 (“the Act”)**

For the attention of Anne Aitken

Dear Anne,

At its meeting of full Council on 30 September 2025, East Lothian Council took a preliminary decision to confirm the proposed Musselburgh Flood Protection Scheme with no modifications, pursuant to Paragraph 5 (1) (a) of Schedule 2 of the Act.

During that meeting a debate took place on the merits of a Public Local Inquiry (PLI) as a means of addressing one key theme of the objections which was that the processes through which the proposed Scheme had been developed did not have sufficient independent checking. It was agreed by that meeting of full Council that the Scottish Ministers should be asked to consider the proposed Scheme and thereby ensure that a PLI rather than a Local Hearing be held, and thereafter that the Scottish Ministers take the final decision on this proposed Scheme.

This letter is to give you, the Scottish Ministers, notice of that decision pursuant to Paragraph 5 (5) of Schedule 2 of the Act as at this time relevant objectors to whom Paragraph 5 (6) of Schedule 2 of the Act applies remain. It is also to give you notice of this specific request of East Lothian Council.

It is highlighted that the papers for this meeting of Council, including the detail on the proposed changes referenced later in this letter, are available to view on the council’s website, and at the following specific URL address: <https://www.eastlothian.gov.uk/meetings/meeting/17543/east-lothian-council>. A full video recording of that meeting is also available to view online at the following specific URL address: https://eastlothian.public-i.tv/core/portal/webcast_interactive/1014651.

Prior to the preliminary decision being made, the local authority considered 481 valid objections and 17 representations in respect of the proposed Scheme’s Environmental Impact Assessment (“the EIA”).

In accordance with the sub-paragraph points (a) to (d) of Paragraph 5 (5) of Schedule 2 of the Act the following documents are required to be provided to the Scottish Ministers:

- a) The scheme documents;
- b) A summary of the objections received by the local authority;
- c) A copy of those objections; and
- d) Copies of any other material considered by the local authority.

In accordance with this requirement these documents, alongside this covering letter, have been provided to the Scottish Ministers via the Objective Connect file transfer platform and through the Scottish Government's Flood Risk Management Team.

East Lothian Council requests that, pursuant to paragraph 6 (2) of Schedule 2 of the Act, the Scottish Ministers consider the proposed Scheme and, in doing so, cause a public local inquiry to be held. The basis for this request relates to:

- a) The nature of the objections made;
- b) The likely effect on the objectors of the Scheme being confirmed; and
- c) The extent to which the objections appear to raise issues of disputed fact.

On Friday 17th October 2025 the council wrote to all relevant objector to notify them of the preliminary decision in accordance with Paragraph 5 (5) 3 of Schedule 2 of the Act. Within that correspondence we thanked each objector for the information they had provided via the process and informed them of the proposed changes that East Lothian Council intends to make to the proposed Scheme. The specific text of that paragraph is provided here for your visibility:

"We would like to thank you directly for the information received through your formal correspondence and highlight that although a preliminary decision was taken with no "modifications", the following main developments have taken place:

- (i) That Council agreed a recommendation during its meeting on 30 September 2025 that the project team, working in consultation with the planning authority, should seek to deliver the 54 proposed changes; and*
- (ii) That Council agreed to ask Scottish Ministers to consider the proposed Scheme, which will involve a PLI to be held and thereafter the Scottish Ministers taking the final decision.*

At this point if you wish for your valid objection to be considered by the Scottish Ministers then you are not required to do anything and I can confirm that all information, including your correspondence, considered by the meeting of full Council on 30 September 2025 will be provided to the Scottish Ministers as detailed in this letter.

If, however, you are now satisfied with the proposed Scheme that was considered by the meeting of full Council, and/or you consider that the 54 changes to that proposed Scheme adequately address your concerns, then there remains an opportunity for you to withdraw your objection. If you wish to withdraw then you must provide this notice in writing to: Service Manager – Governance, Legal Services, East Lothian Council, John Muir House, Haddington, EH41 3HA; or via the email address: mfpsobjections@eastlothian.gov.uk

On behalf of council, I look forward to receiving your response to this notice in writing or email to musselburghfps@eastlothian.gov.uk and hope that you will agree that the objectors to this proposed Scheme should have the opportunity to express their concerns via a PLI. We look forward to hearing back from you at the earliest.

Yours faithfully



CARLO GRILLI

**Service Manager – Governance
Legal Services**

Carlo Grilli
Service Manager
Governance Legal Service
John Muir House Haddington
East Lothian
EH41 3HA

18 December 2025

Dear Carlo

Musselburgh Flood Protection Scheme - Flood Risk Management (Scotland) Act 2009

Thank you for your letter received on 24th October 2025, giving notice to Scottish Ministers that the Council has made a preliminary decision to confirm the proposed Scheme without modification.

Having considered all the documentation provided by the Council, I can confirm that Scottish Ministers have decided to call in the Scheme for consideration as provided for under paragraph 6 of Schedule 2 of the Flood Risk Management (Scotland) Act 2009 (“the Act”). Given that there are a number of disputed facts in relation to the proposed scheme, Ministers are of the view that a public local inquiry would provide an opportunity for fresh consideration of the proposed scheme through an external, independent process.

Under the Act Scottish Ministers must now cause a local inquiry to be held unless all objections made by relevant objectors are withdrawn and we will be in touch with you regarding arrangements for taking this forward in due course.

Yours sincerely

Flood Risk Management Team
Water Management Strategy and Policy Unit
Environmental Quality and Resilience Division

Schematic Programme by Project Stage:

Revision Date: 09/01/2026

SCHEMATIC SCHEME PROGRAMME – BY PRINCE2 STAGE

| PROJECT STAGES: | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | 2036 |
|--------------------------------|---|------|------|------|------|------|------|------|------|------|------|------|------|
| 1 - Establishment of Project | COMPLETED IN DECEMBER 2017 | | | | | | | | | | | | |
| 2 - Review Existing Studies | COMPLETED IN SPRING 2018 | | | | | | | | | | | | |
| 3 - Option Appraisal Process | COMPLETED IN SPRING 2020 - Inc. major Public Exhibition (PE) in July 2019 | | | | | | | | | | | | |
| 4 - Outline Design | COMPLETED IN SPRING 2024 - Inc. major PE in June 2023 and Council Meeting in January 2024 | | | | | | | | | | | | |
| 5 - Statutory Approvals | COMPLETED IN JUNE 2024 - Project Board determined that it was almost certain the Scheme would go to PLI | | | | | | | | | | | | |
| 5 - Approvals via Ministers | Assumed 24 Month PLI & Scottish Ministers approval in Oct. 2027 | | | | | | | | | | | | |
| 6 - Detailed Design | Consider from Aug. Project Board Assumed Early Start from summer 2026 | | | | | | | | | | | | |
| 7 - Construction Procurement | Assumed date of Recommendation 8 for MFPS = October 2029 | | | | | | | | | | | | |
| 8.1 - Construction - AWC | To start after Scheme Approval has been achieved | | | | | | | | | | | | |
| 8.2 - Construction - MWC No. 1 | Seawall Works - Assumed 60 Months | | | | | | | | | | | | |
| 8.3 - Construction - MWC No. 2 | All other Works - Assumed 42 Months | | | | | | | | | | | | |
| 9 - FWC & MWC Maintenance | Assumed 12 Months for No. 1 & 24 Months for No. 2 alongside FWC by Other for ELC | | | | | | | | | | | | |