

## Members' Library Service Request Form

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**Subject:** (0227) Fwd: [REDACTED] Accidental Damages Costings

**Sent:** 22/04/2024, 12:43:11

**From:** [REDACTED]

**To:** Musselburgh Flood Protection Objections

**Categories:** [REDACTED]

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

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Begin forwarded message:

**From:** [REDACTED]

**Date:** 5 April 2024 at 12:47:34 BST

**To:** [mfpsobjections@eastlothian.gov.uk](mailto:mfpsobjections@eastlothian.gov.uk)

**Cc:** [REDACTED]

**Subject:** Accidental Damages Costings

FAO  
Carlo Grilli

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

05/04/2024

We are writing to you to register our objection of this project as we feel we cannot accurately assess the long term ELC financial implications of this work because we could not see anywhere the projected estimate costings of surveying vulnerable properties and meeting any subsequent damage to these properties during construction.

Our house will be impacted during [REDACTED] construction. Our house [REDACTED]

[REDACTED] We would insist that the ELC carried out a structural condition survey as we feel our house and drainage system would be susceptible to damage from the heavy plant movements and especially during the construction of concrete walls .

My wife and I enjoy the sea views from our house ,the wildlife , the ships, the regattas, the sail boats ,the rowing club etc and in dry weather sit on the Promenade benches meeting friends and family and playing on the beach with our grandchildren. This construction work will seriously damage our enjoyment of our environment [REDACTED]

Yours

[REDACTED]

**Subject:** (0228) [REDACTED] - Objection to Proposed Musselburgh Flood Prevention Scheme  
**Sent:** 22/04/2024, 12:47:55  
**From:** [REDACTED]  
**To:** Musselburgh Flood Protection Objections  
**Attachments:** [BIRDS - Template for Ornithology Objection to the Musselburgh Flood Scheme v01.docx](#)

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**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Please find attached my objections to this proposed scheme.  
Can you please acknowledge receipt.  
Best wishes.  
[REDACTED]

To

Legal Services

East Lothian Council

John Muir House

Haddington

EH41 3HA

From -

[REDACTED]

[REDACTED]

[REDACTED]

22.04.2024

Dear Sir/Madam,

I am writing to object to the recently published Musselburgh Flood Protection Scheme.

As a keen birder, I have been visiting the area covered by the proposed flood prevention scheme for [REDACTED] years.

I am concerned about the proposals, as they do not adequately protect or enhance this areas' international importance to bird life.

I object because the Environmental Impact Assessment (EIA) Report that East Lothian Council has commissioned does not meet the necessary requirements set out in EIA guidance and does not allow East Lothian Council to fulfil its biodiversity duties. Specifically:

Inadequacy of the EIA Report's Ornithology Baseline

The results presented in the EIA Report from surveys of shoreline and coastal birds (the 'through the tide counts') are insufficiently detailed to adequately assess the impacts of the Scheme on these species. This failure is especially important because the Scheme is adjacent to, or in places actually within, the Firth of Forth Special Protection Area (SPA), the Firth of Forth Ramsar Site, the Firth of Forth Site of Special Scientific Interest (SSSI), and the Outer Firth and the St. Andrews Bay Complex SPA. These are internationally and nationally important designated sites for birds, and any assessment of impacts on these designations require must be informed by comprehensive robust and appropriately detailed baseline data. The EIA Report does not present such data.

It is therefore essential that baseline bird survey data are properly presented, specifically that the distribution and abundance of qualifying features of the SSSI, SPAs and Ramsar site at least are mapped to species level and their abundance shown for each survey area (notably through the tide count survey areas), along with the key areas for roosting and foraging of those species. Without this information, the EIA lacks the necessary detail to enable consultees to judge whether or not the applicant's assessment of impacts from the Scheme is correct. Consultees

cannot therefore also judge whether proposed mitigation measures are adequate, or whether the identification of residual impacts on birds can be relied upon. For all these reasons, the baseline survey data in the EIA in its current form is not fit for purpose. It needs to be rectified by the submission of Further Environmental Information, and until that is carried out, I object to the Scheme on grounds of inadequate baseline bird data being provided in the EIA Report. As additional bird surveys are still being undertaken, the more detailed results requested can be published at the same time as these additional data (but all to the appropriate level of detail).

On top of this failure to present survey results to the required level of detail for such a sensitive area and for such important species, the desk study component of baseline data collection has also been inadequate. To accord with EIA guidance<sup>1</sup>, baseline bird data should comprise both survey results and relevant pre-existing data on bird species present, their national and local population trends, and insights into their relevant behaviour. The Firth of Forth has been the subject of intense ornithological study spanning several decades<sup>2</sup>, and it is reasonable to expect that this body of data would have been drawn upon for the EIA Report, not least given the sensitivity of the area and the need to design appropriate and effective mitigation measures for construction impacts and impacts over the 100 year operational life of the Scheme. The desk study data included in the EIA also fails to meet the requests from key stakeholders. Notably, for example, the East Lothian Biodiversity Office who requested in their Scoping Report (see ELC on 28th November 2023, EIA Appendix C3.2) that *'The field surveys should be informed by a data search from ... useful data (that) may be available from sources including the East Lothian Council Ranger Service, British Trust for Ornithology and Scottish Ornithologists' Club'*.

Starting with the Scottish Ornithologists' Club, the EIA fails to incorporate into its ornithology baseline any of the comprehensive pre-existing bird data that exists for the Scheme area, collected over several years by highly experienced local ornithologists, many with decades of expertise in the area's bird life. It would be expected, at the very least, that given EIA guidance<sup>3</sup> and to comply with the request from East Lothian Council's own Biodiversity officer that the EIA authors would have submitted a data request to the Local Bird Recorder of the Lothian Branch of the Scottish Ornithologists' Club (SOC) to obtain relevant bird records for the area impacted by the Scheme. This was not the case, and therefore the EIA ornithology baseline suffers by not having the detailed insights into species presence, abundance, distribution and behavioural patterns to adequately inform its assessment (including of cumulative impacts), mitigation design and proposals for enhancement. This is particularly the case for the assessments of impacts from the Scheme's construction compounds, the seawall improvement works, and the two sections of the Musselburgh Active Travel Network (ATN).

Moving on to obtaining desk study data from the British Trust for Ornithology (BTO), this key organisation administers a number of bird recording schemes, including the Wetland Bird Survey (WeBS), which cover this area. It is EIA good practice, as part of gathering desk study data for developments in coastal areas, to obtain and present WeBS results, alongside survey data. Bird surveys commissioned for EIAs are inevitably restricted to relatively short-term sample surveys, comprising snapshots of bird activity. The WeBS scheme and its predecessor have been running for decades and provide important long-term insights into species

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<sup>1</sup> See the Environmental Impact Assessment Handbook: Guidance for competent authorities, consultation bodies, and others involved in the Environmental Impact Assessment process in Scotland Version 5, April 2018. NatureScot and Historic Environment Scotland.

<sup>2</sup> E.g. Bryant, D. (1987) The Natural Environment of the Estuary and Firth of Forth. *Proceedings of the Royal Society of Edinburgh, Section B: Biological Sciences*, Volume 93, Issue 3-4, pp. 509 – 520 DOI: <https://doi.org/10.1017/S026972700006916>

<sup>3</sup> For example, see C.6.3 and Box C. 6. Practice .1. in the reference cited in Footnote 1.

composition and abundance of waders and wildfowl of key sites, and long-term population trends. In particular, for large designated sites like the Firth of Forth SSSI/SPA/Ramsar, WeBS data are also essential to place local bird populations (i.e. the birds present in the Scheme area) in their wider Firth of Forth context, so that impacts from the Scheme, and cumulatively with other projects, can be adequately assessed. Whilst it is noted that in Section 7.3.3 of the EIA it states that the desk based assessment included data responses from organisations including the BTO, detailed WeBS data are not provided. The reference to WeBS data is limited to total species counts (in the EIA Section 7.5.6.1 'Desk-study and preliminary ecological appraisal'). This states:-

*'Data obtained during the desk-based assessment identified the potential presence of the following protected species within the study area:*

- *Wintering wetland birds: the BTO Wetland Bird Survey (WeBS) data for the five-year period from 2013/14 to 2017/18 identified a total of 70 species of wetland birds (which includes unidentified and hybrid species) within the Eastfield to Musselburgh WeBS sector. Of these 70 species, 55 were recorded in the winter months during this period. The five-year mean peak count of wetland birds within the Eastfield to Musselburgh WeBS sector is 4,878 individuals, with a five-year winter mean peak recorded as 5,259 individuals (see Appendix B7.4 for details):*

Instead of these agglomerated count figures, the EIA Report should provide the species-specific WeBS data. Furthermore, and contrary to the Chapter's statement that details of WeBS data are provided in Appendix B7.4, there are no details provided on the WeBS data for the area in that Appendix. What is required for the EIA (and HRA) is a map of the WeBS count sector to compare with the survey areas used for the through the tide counts, and for the WeBS data to be tabulated by species, comparing abundance figures from the survey work. Neither are presented in the Biodiversity Chapter or any of the published EIA Report Appendices.

Lastly in relation to the WeBS data, the totals that are presented are out of date, being '*from 2013/14 to 2017/18*'. The desk study for the EIA should have obtained the most recent five-year dataset available, i.e. up to the 2022/2023 non-breeding season, to help inform the assessment.

The inclusion of detailed WeBS data is common practice in EIAs (and HRAs) for coastal developments, in particular where developments overlap or are in close proximity to internationally important sites designated for their bird interests. As already highlighted, without these details, it is not possible to contextualise or corroborate the survey data provided by the applicant. This and the wider omissions in desk study data need to be rectified by the submission of Further Environmental Information, and until that is carried out, I object to the Scheme on grounds of inadequate baseline bird data being provided in the EIA Report.

#### Baseline Survey Accuracy

The bird survey data on which the Scheme's EIA Report depends appears to contain apparent anomalies, with some species noted that either have only very rarely ever been seen recorded locally and other species which may be mis-identified. The inclusion of these records undermines confidence in the reliability of bird (and other) survey work carried out for the EIA Report, and also in the rigour of the quality assurance processes that have been applied during the collection, processing and writing up of data used in the EIA Report. Specific examples include records of Stone-curlew, Water Pipit, Twite breeding, "flyover" Wood Warbler, Whimbrel in November, a Kittiwake flying up the river Esk (Appendix 7.4). Based on over 60 years of data

held by the SOC, these records require verification. The almost daily coverage by experienced birdwatchers over the survey period also points to other anomalies, such as occasions when a large count of Velvet Scoters is reported in the EIA Report at a time when only a Common Scoter flock was present. Such questions on the reliability of the survey data are critical, given the conservation importance of qualifying features of the Firth of Forth SSSI, SPAs and Ramsar sites and Outer Forth and St Andrews Bay Complex SPA in such close proximity (and in some areas, overlapping) with the Scheme. It also underscores the importance of consultation with bodies such as the SOC and BTO to ensure that pre-existing data for the Scheme area are obtained, adequately used to aid data validation and quality assurance, and properly integrated into baseline data.

One further concern over the baseline survey surveys is the validity of the ‘through the tide counts’ which coincided with the construction activity for the new lagoons between 2021 to June 2023. Given that the EIA Report acknowledges that construction traffic along the seawall will cause disturbance to birds (including qualifying features of the Firth of Forth SSSI, SPA and Ramsar site), evidently the results from these surveys were not representative whilst the lagoon construction was on-going. NatureScot guidance on bird surveys clearly highlights the principle that surveys should not take place where there is disturbance that may change the abundance, distribution or behaviour of birds within the survey area<sup>4</sup>. This precaution has not been followed therefore, and it further undermines the reliance that can be placed on a significant proportion of bird survey data used in the EIA Report.

It is understood however, that bird surveys are still being carried out, I therefore object until these un-impacted additional bird survey results are published as part of the submission of Further Environmental Information and HRA.

#### Failure to Identify and Assess Habitat Loss from the Scheme

The EIA Report attempts to identify and quantify the loss of habitats from the Scheme, to assess the significance of these losses, the mitigation that will be required and the resulting residual impacts and their significance.

However, it completely fails to identify the main habitat impact from the Scheme, namely the loss of shoreline and inter-tidal habitats over its 100-year operational life. These losses will occur as a direct result of the Scheme’s construction of hard defence structures along the coast where these are currently absent or limited, through what is known as ‘coastal squeeze’. This impact needs to be fully identified and assessed in the EIA Report, in particular the Scheme’s proposed hybrid wall structures at Work Sections 6 and 7 (impacting 325m and 290m of coastline respectively) and its concrete walls along Work Sections 8 and 9 (impacting 393m and 132m of coastline respectively) (see Table 4-2 ‘Summary of Scheme by work section’ in Section 4.4.1 Scheme Layout Overview, and Figures Appendix A41j to A41l in Appendix A of the EIA Report). The existence of this operational impact is not even mentioned in the EIA Report Biodiversity Chapter, let alone assessed, with only the most cursory mention given in 7.5.9.3 ‘General trends’. The EIA Report therefore does not meet its own commitment (in Section 3.6.2 ‘Future baseline’) to complete ‘*Where appropriate, an appraisal of the future baseline without the Scheme ... where feasible to allow for consideration of the operational impacts of the Scheme over its 100-year design-life*’.

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<sup>4</sup> Although relating to bird surveys for wind farms, the importance of avoiding construction disturbance that may affect survey results is made clear in Section 2.1.1 and Box 1 in NatureScot (2017) Recommended bird survey methods to inform impact assessment of onshore wind farms. March 2017, Version 2.

This is of particular concern because these habitat losses will impact the qualifying features of the Firth of Forth SSSI, SPA or Ramsar Site (and the conservation objectives of the latter two designations).

The omission of this impact in the EIA Report must be rectified and the necessary modelling and full assessment of habitat loss from coastal squeeze be fully assessed and published as Further Environmental Information. The assessment of these habitat losses on the integrity of the Firth of Forth SPA and Ramsar Site must also be included in the HRA, to inform the compensation that will be required, if should a derogation case be accepted.

Given how important this impact is, it is also worth re-stating the Council's published Scheme objectives (EIA Report Chapter 4, Section 4.1 and Table B4 in Appendix B4) that include the following Environmental Objectives:-

- 1. That the Scheme will achieve as a minimum a neutral impact on the environment.*
- 2. To ensure that the Scheme includes appropriate catchment and natural flood management (NFM) measures.*
- 3. To ensure that the Scheme considers the impact of climate change and includes appropriate provisions to mitigate any impact.*
- 4. To ensure that the Scheme considers in full, and includes for any appropriate measures, to protect the Firth of Forth and its protected statuses.*

Clearly, these objectives cannot be achieved if the Scheme's impacts are not adequately identified, assessed, and mitigated and if mitigation or enhancement proposals (such as those in EIA Report Table 7.7) are not considered in terms of resilience to sea level rise and climate change.

In addition to failing to include operational habitat loss, the habitat loss figures that are currently included for construction and operational impacts lack clarity and consistency across the Biodiversity Chapter and Appendices. For example, the extent of temporary lost habitat given in Section 7.6.2.1.1 'Firth of Forth SPA and Ramsar' is given as 'approximately 2.14 ha' but the habitat breakdown figures only add up to 1.711 ha. Similarly in Section 7.6.3.1.1 'Firth of Forth SPA and Ramsar', the permanent loss of habitat from the Firth of Forth SPA and Ramsar is given as 4.3 ha, but again the figures for the habitats lost amount to just over 1.46 ha. This lack of clarity and inconsistencies in the EIA Report make it difficult for consultees to clearly understand the scale or location of the Scheme's habitat impacts. It is important that these losses are clarified, including in the HRA prior to its finalisation, and if necessary, through the submission of Further Environmental Information.

#### Failure to Appropriately Identify Plans and Projects to Consider for the Cumulative Impact Assessment

Section 7.3.9 'Cumulative effects' of the EIA Report identifies that 'A review of developments in the local area as listed on the East Lothian and Midlothian Council planning portals was conducted. The assessment focused on developments of any size within the working areas and those over 1 ha in size up to 5 km from the working areas in Musselburgh and the reservoirs. In addition, Grangemouth Flood Protection Scheme (GFPS) was also considered as part of the assessment, as requested by NatureScot during consultation for GFPS'.

The cumulative assessment needs to encompass developments that have significant potential to impact key ecological receptors. The potential for cumulative/in combination impacts is determined by impact pathways, not by arbitrary thresholds such as development size or distance from the Scheme (neither of which have any regulatory basis or reflect CIEEM guidance)<sup>5</sup>. Movement of birds around the Firth of Forth SPA/Ramsar site have been relatively well studied, and this information should be referred to in order to help determine potential impact pathways, and thereby the plans and projects that need to be taken account of in the cumulative/in combination assessment. It is important that this impact/pathway/receptor approach is adopted in the HRA's 'in combination' assessment, if made available to consultees, otherwise through the submission of Further Environmental Information.

### Repeated Lack of Evidence to Substantiate the Findings of the Impact Assessment

In order to comply with EIA guidance, it is essential that the assessment of impacts is supported by appropriate evidence. However, the EIA Report consistently fails to provide evidence to back up the assessments made on construction and operational impacts of the Scheme on birds.

The rare instance when evidence and published peer reviewed information is referenced in support of the assessment of impacts is for kingfisher (see section 7.6.2.3.4). Kingfisher is only a species of regional importance, yet the EIA Report's assessments of impacts on internationally or nationally important bird species are repeatedly made without any reference to peer reviewed or other evidence, or even to standard NatureScot guidance (for example, in relation to disturbance, Goodship and Furness 2022<sup>6</sup>). A typical example of unsupported assertions is in Section 7.6.3.1.1 'Firth of Forth SPA and Ramsar', which states 'The remaining area to be lost within the SPA is comprised of habitat rarely used by qualifying species and therefore is considered unlikely to provide functional habitat'. There are no data presented to back up this assessment, since the EIA and its Appendices omit the necessary detail on the distribution and abundance of individual species.

This is a clear omission and weakness in the EIA Report, is contrary to guidance and good practice, and reduces the reliance that can be placed on the assessment or effectiveness of mitigation proposed. It also falls short of the robustness and detail of EIAs for other developments in the area<sup>7</sup>. Furthermore, East Lothian Council, who commissioned the EIA, has an actual duty to protect and enhance biodiversity. This duty cannot be adequately discharged without detailed baseline EIA (and HRA) bird data from which impacts on birds or other wildlife can be assessed, mitigation designed, and residual impacts identified.

It is also important to note that for the HRA the best available scientific evidence must be used, and the Council, given its Scheme objectives and biodiversity duties, must ensure that this is the case, being responsible for commissioning the EIA Report (and HRA).

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<sup>5</sup> Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. September 2018 Version 1.2 - Updated April 2022

<sup>6</sup> Goodship, N.M. and Furness, R.W. (2022) Disturbance Distances Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283.

<sup>7</sup> See, for example, the inter-tidal and near-shore bird data presented in Appendix 6C: Intertidal and Near-shore Bird Surveys of the Inch Cape Onshore Transmission Works EIA report (ICOL, 2018b) at [OnShore-EIA-Appendix-6C-1of-2.pdf \(inchcapewind.com\)](#) and [OnShore-EIA-Appendix-6C-3of-4.pdf \(inchcapewind.com\)](#). Others include the EIAs for [SSE Seagreen 1A](#) and for the Cockenzie Combined Cycle Gas Turbine Power Station application.

## Repeated and Unsubstantiated Downplaying of Conservation Importance and Impacts in the Assessment

There are repeated instances in the EIA Report's Biodiversity Chapter where assessments of impacts on birds downplay (i) the value of their habitats - because it is stated they are already subject to disturbance, or (ii) the significance of disturbance to birds - because it is stated they will move elsewhere within the SPA, or (iii) impacts being insignificant - because the area of impact is small. These assertions are consistently unsubstantiated by evidence (as already highlighted above) and are a style of assessment more typical of commercial developers seeking to justify damaging protected sites. These assertions are inappropriate in those circumstances, but are totally inappropriate for Councils, given the legal and policy obligations they are under to protect and enhance biodiversity, notably the Nature Conservation (Scotland) Act 2004 and National Planning Framework 4 (NPF4). Furthermore, no reference is made to the fact that many wildfowl and wader populations in the Firth of Forth have already suffered long-term declines as a result of development impacts, disturbance and habitat loss<sup>8</sup>, and that approximately one third of the Firth of Forth SPA/Ramsar's qualifying species are in unfavourable conservation status (Protected Nature Sites ([sepa.org.uk](http://sepa.org.uk)), accessed 19.04.2024). The Council's around the Firth of Forth, together with the Scottish Government, NatureScot, businesses and local communities, need to be working together to ensure qualifying features of the SSSI, SPA and Ramsar site return to favourable conservation status.

Examples of the unsubstantiated downplaying of conservation importance of habitats or species, and of impacts are, for example, in Table 7-5 Summary of Baseline Conditions and Evaluation of Importance of Ecological Features, which includes the statement that 'The sand dunes within the study area are narrow and disturbed; therefore, it is considered they do not meet the SSSI designation criteria'. In Section 7.6.2.1.1 'Firth of Forth SPA and Ramsar', another unsubstantiated statement is made, '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 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, however, no evidence to back up these assertions, on factors such as prey availability, carrying capacity, exposure to disturbance, or any of the other influences that need to be considered in order to robustly assess these impacts. The same applies in the assessments made in Sections 7.6.3.1.1 Firth of Forth SPA and Ramsar, 7.6.3.1.2 Outer Firth of Forth and St Andrews Bay Complex SPA, and 7.6.3.1.3 Firth of Forth SSSI. These are sites of international and national importance for conservation, already under significant multiple pressures, and it is essential that assessments of impacts are evidence-based and robustly reasoned. This is not the case currently, and this must be rectified. It is therefore essential that the Council (or Scottish Ministers) exercise the right to request further evidence, through Further Environmental Information and in the finalised HRA, in accordance with EIA guidance (see for example, NatureScot and Historic Environment Scotland (2018), referred to in Footnote 1, specifically Section D. 6), before confirming the Scheme.

## Disturbance to Birds During the Scheme's Operational Phase

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<sup>8</sup> e.g. McLusky, D., Bryant, D. and Elliott, M. (1992) The impact of land-claim on macrobenthos, fish and shorebirds on the Forth Estuary, eastern Scotland. *Aquatic Conservation: Marine and Freshwater Ecosystems* Volume 2, Issue 3, pp. 211-222, or Dwyer, R. (2010) Ecological and anthropogenic constraints on waterbirds of the Forth Estuary: population and behavioural responses to disturbance. *Environmental Science, Biology*.

Related to the point of objection above on lack of evidence to support the assessments on international and national designations (in Sections 7.6.3.1.1, 7.6.3.1.2 and 7.6.3.1.3), the EIA Report notes that:-

*'The improvements to the active traffic network (particularly along the seawall and at the proposed Goose Green Footbridge) may result in increased pedestrian and cyclist traffic, which may create increased operational disturbance to qualifying bird species'.*

Evidently the Council's EIA Report makes it clear that it is uncertain whether or not the ATN works will result in increased active travel, in which case how can the expenditure, additional risk of impacts on internationally and nationally important designated sites, and carbon footprint of constructing these two ATN 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 footpaths and cycle paths along these sections of the Scheme coastline).

That objection aside, these EIA Report sections contain no evidence to support the assessments made operational disturbance, and as such they are unsupported conjecture. This needs to be rectified (including in the HRA), firstly by inclusion of clear evidence-based and quantified prediction of the level of increased activity as a result of the ATN path and Goose Green Foot Bridge construction, compared to present levels<sup>9</sup>, and secondly by ensuring the assessment of disturbance impacts on each qualifying species of the SPAs, Ramsar and SSSI are made on the basis of these predicted operational levels of activity, and supported by an appropriate level of detail and evidence.

Until such time as these are provided, I object to the Scheme.

#### Impacts on Recreational Amenity Over the Construction Period, Specifically Birdwatching

Musselburgh is one of the most visited birdwatching sites in Scotland (based on the number of referrals to the Musselburgh entry on the SOC's 'Where to Watch Birds in Scotland' mobile app), 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, as noted in EIA Report Section 4.7.3 'Sequencing of construction work', the Scheme's construction phase could take a period of five to ten years, imposing long-term damage to the area's use and reputation as an ornithology visitor attraction.

#### The Decision to Date by East Lothian Council Not To Publish the Draft HRA

No access has been provided to the current draft HRA for the Scheme. It would be greatly appreciated if the HRA could be made available by the Council, not least because, it would provide those with detailed local knowledge of the area's birds to provide useful feedback. In addition, in the meantime, it is respectfully suggested that the Council make a request to the SOC for relevant pre-existing bird data, and also to BTO, for species level and up-to-date WeBS data, so both sets of information can be included in the HRA and used as evidence to contribute to a robust assessment of effects from the Scheme alone and in combination with other plans and projects.

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<sup>9</sup> Presumably these estimates are available from the business case for use of public money on the Musselburgh Active Travel Network.

Please acknowledge receipt of my letter of objection, in writing. Please also advise me of next steps, and timescales. Thank you very much.

Yours Faithfully

A solid black rectangular box used to redact the signature of the sender.

**Subject:** (0229) Objection to the current proposals for the flood protection scheme  
**Sent:** 22/04/2024, 12:56:38  
**From:** [REDACTED]  
**To:** Musselburgh Flood Protection Objections  
**Attachments:** [Flood protection objection letter.docx](#)

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For attention of the Service Manager of Governance and Legal,

Please find attached my formal objection letter to the current flood protection scheme proposal.  
Can you please confirm receipt of this letter.

Thank you,  
[REDACTED]

Service Manager

Governance, Legal Services

East Lothian Council

John Muir House

Haddington

EH41 3HA

22<sup>nd</sup> April 2024

To whom it may concern,

### **Objection to current flood prevention scheme**

I am a lifelong Musselburgh resident who will be directly impacted by the flood prevention scheme. I currently live at [REDACTED] in Musselburgh with my partner and children and intend to continue living in the area for the rest of my life.

I'm reaching out about the Musselburgh Flood Protection Scheme (MFPS) because it's something that's directly affecting me and my family as residents of Musselburgh. I understand the importance of addressing climate change and building resilience in our community, and I'm not against flood mitigation measures. However, I strongly oppose the current MFPS for several reasons.

Firstly, on a personal level, this scheme will greatly impact me, my family, and our access to the lovely green space at the heart of our town. It's not just about the short-term inconveniences; the long-term effects on the amenity of my home and surroundings are concerning. If the plan is to develop a scheme which will protect Musselburgh for the next 50 years or more serious consideration needs to be given to the aesthetic impact on the heart of our town as well as the impact on the wildlife who make the river their home. We need a scheme that will ensure the river is accessible and attractive to the residents of the area and creates a living natural environment. This could include ideas such as retractable defences or defences which can be augmented over time as the effects of climate change become clearer and more impactful; along with natural measures further up stream such as developing a natural flood plain.

Musselburgh is a beautiful place with its river, shore, and green spaces, all of which contribute to the well-being of residents and visitors. The proposed scheme, with its miles of walls and barriers, will restrict access to these natural resources and disrupt the ecosystem. The removal of mature trees, the obstruction of wildlife habitats, and the unnecessary replacement of existing bridges all point to a scheme that's out of touch with the community's needs and values.

Finally, I have strategic and financial objections to the MFPS. Flood protection is crucial, but decisions should be based on comprehensive reviews of all possible measures and their costs and benefits. It's concerning that there hasn't been enough consideration given to alternative, nature-based solutions. Additionally, the lack of upstream preventative measures and the inclusion of unnecessary elements like the Goosegreen bridge further highlight the scheme's flaws.

As a taxpayer and citizen, I urge East Lothian Council to reconsider its approval of the MFPS, and I call on the Scottish Government to ensure that public money is invested wisely and in the best interest of the community. I object to the current scheme as published and advertised, and I request acknowledgment of this letter of objection.

Thank you for your attention to this matter.

Your sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED] April 2024

Dear Mr. Grilli,

Along with others, I am writing as a frequent birding visitor to Musselburgh and wildlife surveyor to object to the recently published Musselburgh Flood Protection Scheme.

I object because the Environmental Impact Assessment (EIA) Report that East Lothian Council has commissioned does not meet the necessary requirements set out in EIA guidance and does not allow East Lothian Council to fulfil its biodiversity duties. Specifically:

Inadequacy of the EIA Report's Ornithology Baseline

The results presented in the EIA Report from surveys of shoreline and coastal birds (the 'through the tide counts') are insufficiently detailed to adequately assess the impacts of the Scheme on these species. This failure is especially important because the Scheme is adjacent to, or in places actually within, the Firth of Forth Special Protection Area (SPA), the Firth of Forth Ramsar Site, the Firth of Forth Site of Special Scientific Interest (SSSI), and the Outer Firth and the St. Andrews Bay Complex SPA. These are internationally and nationally important designated sites for birds, and any assessment of impacts on these designations require must be informed by comprehensive robust and appropriately detailed baseline data. The EIA Report does not present such data.

It is therefore essential that baseline bird survey data are properly presented, specifically that the distribution and abundance of qualifying features of the SSSI, SPAs and Ramsar site at least are mapped to species level and their abundance shown for each survey area (notably through the tide count survey areas), along with the key areas for roosting and foraging of those species. Without this information, the EIA lacks the necessary detail to enable consultees to judge whether or not the applicant's assessment of impacts from the Scheme is correct. Consultees cannot therefore also judge whether proposed mitigation measures are adequate, or whether the identification of residual impacts on birds can be relied upon. For all these reasons, the baseline survey data in the EIA in its current form is not fit for purpose. It needs to be rectified by the submission of Further Environmental Information, and until that is carried out, I object to the Scheme on grounds of inadequate baseline bird data being provided in the EIA Report. As

additional bird surveys are still being undertaken, the more detailed results requested can be published at the same time as these additional data (but all to the appropriate level of detail).

On top of this failure to present survey results to the required level of detail for such a sensitive area and for such important species, the desk study component of baseline data collection has also been inadequate. To accord with EIA guidance<sup>1</sup>, baseline bird data should comprise both survey results and relevant pre-existing data on bird species present, their national and local population trends, and insights into their relevant behaviour. The Firth of Forth has been the subject of intense ornithological study spanning several decades<sup>2</sup>, and it is reasonable to expect that this body of data would have been drawn upon for the EIA Report, not least given the sensitivity of the area and the need to design appropriate and effective mitigation measures for construction impacts and impacts over the 100 year operational life of the Scheme. The desk study data included in the EIA also fails to meet the requests from key stakeholders. Notably, for example, the East Lothian Biodiversity Office who requested in their Scoping Report (see ELC on 28th November 2023, EIA Appendix C3.2) that *'The field surveys should be informed by a data search from ... useful data (that) may be available from sources including the East Lothian Council Ranger Service, British Trust for Ornithology and Scottish Ornithologists' Club'*.

Starting with the Scottish Ornithologists' Club, the EIA fails to incorporate into its ornithology baseline any of the comprehensive pre-existing bird data that exists for the Scheme area, collected over several years by highly experienced local ornithologists, many with decades of expertise in the area's bird life. It would be expected, at the very least, that given EIA guidance<sup>3</sup> and to comply with the request from East Lothian Council's own Biodiversity officer that the EIA authors would have submitted a data request to the Local Bird Recorder of the Lothian Branch of the Scottish Ornithologists' Club (SOC) to obtain relevant bird records for the area impacted by the Scheme. This was not the case, and therefore the EIA ornithology baseline suffers by not having the detailed insights into species presence, abundance, distribution and behavioural patterns to adequately inform its assessment (including of cumulative impacts), mitigation design and proposals for enhancement. This is particularly the case for the assessments of impacts from the Scheme's construction compounds, the seawall improvement works, and the two sections of the Musselburgh Active Travel Network (ATN).

Moving on to obtaining desk study data from the British Trust for Ornithology (BTO), this key organisation administers a number of bird recording schemes, including the Wetland Bird Survey (WeBS), which cover this area. It is EIA good practice, as part of gathering desk study data for developments in coastal areas, to obtain and present WeBS results, alongside survey data. Bird surveys commissioned for EIAs are inevitably restricted to relatively short-term sample surveys, comprising snapshots of bird activity. The WeBS scheme and its predecessor have been running for decades and provide important long-term insights into species composition and abundance of waders and wildfowl of key sites, and long-term population trends. In particular, for large designated sites like the Firth of Forth SSSI/SPA/Ramsar, WeBS data are also essential to place local bird populations (i.e. the birds present in the Scheme area) in their wider Firth of Forth context, so that impacts from the Scheme, and cumulatively with other projects, can be adequately assessed. Whilst it is noted that in Section 7.3.3 of the EIA it

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<sup>1</sup> See the Environmental Impact Assessment Handbook: Guidance for competent authorities, consultation bodies, and others involved in the Environmental Impact Assessment process in Scotland Version 5, April 2018. NatureScot and Historic Environment Scotland.

<sup>2</sup> E.g. Bryant, D. (1987) The Natural Environment of the Estuary and Firth of Forth. *Proceedings of the Royal Society of Edinburgh, Section B: Biological Sciences*, Volume 93, Issue 3-4, pp. 509 – 520 DOI: <https://doi.org/10.1017/S0269727000006916>

<sup>3</sup> For example, see C.6.3 and Box C. 6. Practice .1. in the reference cited in Footnote 1.

states that the desk based assessment included data responses from organisations including the BTO, detailed WeBS data are not provided. The reference to WeBS data is limited to total species counts (in the EIA Section 7.5.6.1 'Desk-study and preliminary ecological appraisal'). This states:-

*'Data obtained during the desk-based assessment identified the potential presence of the following protected species within the study area:*

- *Wintering wetland birds: the BTO Wetland Bird Survey (WeBS) data for the five-year period from 2013/14 to 2017/18 identified a total of 70 species of wetland birds (which includes unidentified and hybrid species) within the Eastfield to Musselburgh WeBS sector. Of these 70 species, 55 were recorded in the winter months during this period. The five-year mean peak count of wetland birds within the Eastfield to Musselburgh WeBS sector is 4,878 individuals, with a five-year winter mean peak recorded as 5,259 individuals (see Appendix B7.4 for details):*

Instead of these agglomerated count figures, the EIA Report should provide the species-specific WeBS data. Furthermore, and contrary to the Chapter's statement that details of WeBS data are provided in Appendix B7.4, there are no details provided on the WeBS data for the area in that Appendix. What is required for the EIA (and HRA) is a map of the WeBS count sector to compare with the survey areas used for the through the tide counts, and for the WeBS data to be tabulated by species, comparing abundance figures from the survey work. Neither are presented in the Biodiversity Chapter or any of the published EIA Report Appendices.

Lastly in relation to the WeBS data, the totals that are presented are out of date, being '*from 2013/14 to 2017/18*'. The desk study for the EIA should have obtained the most recent five-year dataset available, i.e. up to the 2022/2023 non-breeding season, to help inform the assessment.

The inclusion of detailed WeBS data is common practice in EIAs (and HRAs) for coastal developments, in particular where developments overlap or are in close proximity to internationally important sites designated for their bird interests. As already highlighted, without these details, it is not possible to contextualise or corroborate the survey data provided by the applicant. This and the wider omissions in desk study data need to be rectified by the submission of Further Environmental Information, and until that is carried out, I object to the Scheme on grounds of inadequate baseline bird data being provided in the EIA Report.

#### Baseline Survey Accuracy

The bird survey data on which the Scheme's EIA Report depends appears to contain apparent anomalies, with some species noted that either have only very rarely ever been recorded locally and other species which may be mis-identified. The inclusion of these records undermines confidence in the reliability of bird (and other) survey work carried out for the EIA Report, and also in the rigour of the quality assurance processes that have been applied during the collection, processing and writing up of data used in the EIA Report. Specific examples include records of Stone-curlew, Water Pipit, Twite breeding, "flyover" Wood Warbler, Whimbrel in November, a Kittiwake flying up the river Esk (Appendix 7.4). Based on over 60 years of data held by the SOC, these records require verification. The almost daily coverage by experienced birdwatchers over the survey period also points to other anomalies, such as occasions when a large count of Velvet Scoters is reported in the EIA Report at a time when only a Common Scoter flock was present. Such questions on the reliability of the survey data are critical, given the conservation importance of qualifying features of the Firth of Forth SSSI, SPAs and Ramsar sites and Outer Forth and St Andrews Bay Complex SPA in such close proximity (and in some areas,

overlapping) with the Scheme. It also underscores the importance of consultation with bodies such as the SOC and BTO to ensure that pre-existing data for the Scheme area are obtained, adequately used to aid data validation and quality assurance, and properly integrated into baseline data.

One further concern over the baseline survey surveys is the validity of the ‘through the tide counts’ which coincided with the construction activity for the new lagoons between 2021 to June 2023. Given that the EIA Report acknowledges that construction traffic along the seawall will cause disturbance to birds (including qualifying features of the Firth of Forth SSSI, SPA and Ramsar site), evidently the results from these surveys were not representative whilst the lagoon construction was on-going. NatureScot guidance on bird surveys clearly highlights the principle that surveys should not take place where there is disturbance that may change the abundance, distribution or behaviour of birds within the survey area<sup>4</sup>. This precaution has not been followed therefore, and it further undermines the reliance that can be placed on a significant proportion of bird survey data used in the EIA Report.

It is understood however, that bird surveys are still being carried out, I therefore object until these un-impacted additional bird survey results are published as part of the submission of Further Environmental Information and HRA.

#### Failure to Identify and Assess Habitat Loss from the Scheme

The EIA Report attempts to identify and quantify the loss of habitats from the Scheme, to assess the significance of these losses, the mitigation that will be required and the resulting residual impacts and their significance.

However, it completely fails to identify the main habitat impact from the Scheme, namely the loss of shoreline and inter-tidal habitats over its 100-year operational life. These losses will occur as a direct result of the Scheme’s construction of hard defence structures along the coast where these are currently absent or limited, through what is known as ‘coastal squeeze’. This impact needs to be fully identified and assessed in the EIA Report, in particular the Scheme’s proposed hybrid wall structures at Work Sections 6 and 7 (impacting 325m and 290m of coastline respectively) and its concrete walls along Work Sections 8 and 9 (impacting 393m and 132m of coastline respectively) (see Table 4-2 ‘Summary of Scheme by work section’ in Section 4.4.1 Scheme Layout Overview, and Figures Appendix A41j to A41l in Appendix A of the EIA Report). The existence of this operational impact is not even mentioned in the EIA Report Biodiversity Chapter, let alone assessed, with only the most cursory mention given in 7.5.9.3 ‘General trends’. The EIA Report therefore does not meet its own commitment (in Section 3.6.2 ‘Future baseline’) to complete ‘*Where appropriate, an appraisal of the future baseline without the Scheme ... where feasible to allow for consideration of the operational impacts of the Scheme over its 100-year design-life*’.

This is of particular concern because these habitat losses will impact the qualifying features of the Firth of Forth SSSI, SPA or Ramsar Site (and the conservation objectives of the latter two designations).

The omission of this impact in the EIA Report must be rectified and the necessary modelling and full assessment of habitat loss from coastal squeeze be fully assessed and published as Further

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<sup>4</sup> Although relating to bird surveys for wind farms, the importance of avoiding construction disturbance that may affect survey results is made clear in Section 2.1.1 and Box 1 in NatureScot (2017) Recommended bird survey methods to inform impact assessment of onshore wind farms. March 2017, Version 2.

Environmental Information. The assessment of these habitat losses on the integrity of the Firth of Forth SPA and Ramsar Site must also be included in the HRA, to inform the compensation that will be required, if should a derogation case be accepted.

Given how important this impact is, it is also worth re-stating the Council's published Scheme objectives (EIA Report Chapter 4, Section 4.1 and Table B4 in Appendix B4) that include the following Environmental Objectives:-

- 1. That the Scheme will achieve as a minimum a neutral impact on the environment.*
- 2. To ensure that the Scheme includes appropriate catchment and natural flood management (NFM) measures.*
- 3. To ensure that the Scheme considers the impact of climate change and includes appropriate provisions to mitigate any impact.*
- 4. To ensure that the Scheme considers in full, and includes for any appropriate measures, to protect the Firth of Forth and its protected statuses.*

Clearly, these objectives cannot be achieved if the Scheme's impacts are not adequately identified, assessed, and mitigated and if mitigation or enhancement proposals (such as those in EIA Report Table 7.7) are not considered in terms of resilience to sea level rise and climate change.

In addition to failing to include operational habitat loss, the habitat loss figures that are currently included for construction and operational impacts lack clarity and consistency across the Biodiversity Chapter and Appendices. For example, the extent of temporary lost habitat given in Section 7.6.2.1.1 'Firth of Forth SPA and Ramsar' is given as 'approximately 2.14 ha' but the habitat breakdown figures only add up to 1.711 ha. Similarly in Section 7.6.3.1.1 'Firth of Forth SPA and Ramsar', the permanent loss of habitat from the Firth of Forth SPA and Ramsar is given as 4.3 ha, but again the figures for the habitats lost amount to just over 1.46 ha. This lack of clarity and inconsistencies in the EIA Report make it difficult for consultees to clearly understand the scale or location of the Scheme's habitat impacts. It is important that these losses are clarified, including in the HRA prior to its finalisation, and if necessary, through the submission of Further Environmental Information.

#### Failure to Appropriately Identify Plans and Projects to Consider for the Cumulative Impact Assessment

Section 7.3.9 '*Cumulative effects*' of the EIA Report identifies that '*A review of developments in the local area as listed on the East Lothian and Midlothian Council planning portals was conducted. The assessment focused on developments of any size within the working areas and those over 1 ha in size up to 5 km from the working areas in Musselburgh and the reservoirs. In addition, Grangemouth Flood Protection Scheme (GFPS) was also considered as part of the assessment, as requested by NatureScot during consultation for GFPS*'.

The cumulative assessment needs to encompass developments that have significant potential to impact key ecological receptors. The potential for cumulative/in combination impacts is determined by impact pathways, not by arbitrary thresholds such as development size or distance from the Scheme (neither of which have any regulatory basis or reflect CIEEM

guidance)<sup>5</sup>. Movement of birds around the Firth of Forth SPA/Ramsar site have been relatively well studied, and this information should be referred to in order to help determine potential impact pathways, and thereby the plans and projects that need to be taken account of in the cumulative/in combination assessment. It is important that this impact/pathway/receptor approach is adopted in the HRA's 'in combination' assessment, if made available to consultees, otherwise through the submission of Further Environmental Information.

### Repeated Lack of Evidence to Substantiate the Findings of the Impact Assessment

In order to comply with EIA guidance, it is essential that the assessment of impacts is supported by appropriate evidence. However, the EIA Report consistently fails to provide evidence to back up the assessments made on construction and operational impacts of the Scheme on birds.

The rare instance when evidence and published peer reviewed information is referenced in support of the assessment of impacts is for kingfisher (see section 7.6.2.3.4). Kingfisher is only a species of regional importance, yet the EIA Report's assessments of impacts on internationally or nationally important bird species are repeatedly made without any reference to peer reviewed or other evidence, or even to standard NatureScot guidance (for example, in relation to disturbance, Goodship and Furness 2022<sup>6</sup>). A typical example of unsupported assertions is in Section 7.6.3.1.1 'Firth of Forth SPA and Ramsar', which states 'The remaining area to be lost within the SPA is comprised of habitat rarely used by qualifying species and therefore is considered unlikely to provide functional habitat'. There are no data presented to back up this assessment, since the EIA and its Appendices omit the necessary detail on the distribution and abundance of individual species.

This is a clear omission and weakness in the EIA Report, is contrary to guidance and good practice, and reduces the reliance that can be placed on the assessment or effectiveness of mitigation proposed. It also falls short of the robustness and detail of EIAs for other developments in the area<sup>7</sup>. Furthermore, East Lothian Council, who commissioned the EIA, has an actual duty to protect and enhance biodiversity. This duty cannot be adequately discharged without detailed baseline EIA (and HRA) bird data from which impacts on birds or other wildlife can be assessed, mitigation designed, and residual impacts identified.

It is also important to note that for the HRA the best available scientific evidence must be used, and the Council, given its Scheme objectives and biodiversity duties, must ensure that this is the case, being responsible for commissioning the EIA Report (and HRA).

### Repeated and Unsubstantiated Downplaying of Conservation Importance and Impacts in the Assessment

There are repeated instances in the EIA Report's Biodiversity Chapter where assessments of impacts on birds downplay (i) the value of their habitats - because it is stated they are already subject to disturbance, or (ii) the significance of disturbance to birds - because it is stated they

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<sup>5</sup> Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. September 2018 Version 1.2 - Updated April 2022

<sup>6</sup> Goodship, N.M. and Furness, R.W. (2022) Disturbance Distances Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283.

<sup>7</sup> See, for example, the inter-tidal and near-shore bird data presented in Appendix 6C: Intertidal and Near-shore Bird Surveys of the Inch Cape Onshore Transmission Works EIA report (ICOL, 2018b) at [OnShore-EIA-Appendix-6C-1of-2.pdf \(inchcapewind.com\)](#) and [OnShore-EIA-Appendix-6C-3of-4.pdf \(inchcapewind.com\)](#). Others include the EIAs for [SSE Seagreen 1A](#) and for the Cockenzie Combined Cycle Gas Turbine Power Station application.

will move elsewhere within the SPA, or (iii) impacts being insignificant - because the area of impact is small. These assertions are consistently unsubstantiated by evidence (as already highlighted above) and are a style of assessment more typical of commercial developers seeking to justify damaging protected sites. These assertions are inappropriate in those circumstances, but are totally inappropriate for Councils, given the legal and policy obligations they are under to protect and enhance biodiversity, notably the Nature Conservation (Scotland) Act 2004 and National Planning Framework 4 (NPF4). Furthermore, no reference is made to the fact that many wildfowl and wader populations in the Firth of Forth have already suffered long-term declines as a result of development impacts, disturbance and habitat loss<sup>8</sup>, and that approximately one third of the Firth of Forth SPA/Ramsar's qualifying species are in unfavourable conservation status (Protected Nature Sites ([sepa.org.uk](http://sepa.org.uk)), accessed 19.04.2024). The Council's around the Firth of Forth, together with the Scottish Government, NatureScot, businesses and local communities, need to be working together to ensure qualifying features of the SSSI, SPA and Ramsar site return to favourable conservation status.

Examples of the unsubstantiated downplaying of conservation importance of habitats or species, and of impacts are, for example, in Table 7-5 Summary of Baseline Conditions and Evaluation of Importance of Ecological Features, which includes the statement that 'The sand dunes within the study area are narrow and disturbed; therefore, it is considered they do not meet the SSSI designation criteria'. In Section 7.6.2.1.1 'Firth of Forth SPA and Ramsar', another unsubstantiated statement is made, '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 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, however, no evidence to back up these assertions, on factors such as prey availability, carrying capacity, exposure to disturbance, or any of the other influences that need to be considered in order to robustly assess these impacts. The same applies in the assessments made in Sections 7.6.3.1.1 Firth of Forth SPA and Ramsar, 7.6.3.1.2 Outer Firth of Forth and St Andrews Bay Complex SPA, and 7.6.3.1.3 Firth of Forth SSSI. These are sites of international and national importance for conservation, already under significant multiple pressures, and it is essential that assessments of impacts are evidence-based and robustly reasoned. This is not the case currently, and this must be rectified. It is therefore essential that the Council (or Scottish Ministers) exercise the right to request further evidence, through Further Environmental Information and in the finalised HRA, in accordance with EIA guidance (see for example, NatureScot and Historic Environment Scotland (2018), referred to in Footnote 1, specifically Section D. 6), before confirming the Scheme.

#### Disturbance to Birds During the Scheme's Operational Phase

Related to the point of objection above on lack of evidence to support the assessments on international and national designations (in Sections 7.6.3.1.1, 7.6.3.1.2 and 7. 6.3.1.3), the EIA Report notes that:-

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<sup>8</sup> e.g. McLusky, D., Bryant, D. and Elliott, M. (1992) The impact of land-claim on macrobenthos, fish and shorebirds on the Forth Estuary, eastern Scotland. *Aquatic Conservation: Marine and Freshwater Ecosystems* Volume 2, Issue 3, pp. 211-222, or Dwyer, R. (2010) Ecological and anthropogenic constraints on waterbirds of the Forth Estuary: population and behavioural responses to disturbance. *Environmental Science, Biology*.

*'The improvements to the active traffic network (particularly along the seawall and at the proposed Goose Green Footbridge) may result in increased pedestrian and cyclist traffic, which may create increased operational disturbance to qualifying bird species'.*

Evidently the Council's EIA Report makes it clear that it is uncertain whether or not the ATN works will result in increased active travel, in which case how can the expenditure, additional risk of impacts on internationally and nationally important designated sites, and carbon footprint of constructing these two ATN 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 footpaths and cycle paths along these sections of the Scheme coastline).

That objection aside, these EIA Report sections contain no evidence to support the assessments made operational disturbance, and as such they are unsupported conjecture. This needs to be rectified (including in the HRA), firstly by inclusion of clear evidence-based and quantified prediction of the level of increased activity as a result of the ATN path and Goose Green Foot Bridge construction, compared to present levels<sup>9</sup>, and secondly by ensuring the assessment of disturbance impacts on each qualifying species of the SPAs, Ramsar and SSSI are made on the basis of these predicted operational levels of activity, and supported by an appropriate level of detail and evidence.

Until such time as these are provided, I object to the Scheme.

#### Impacts on Recreational Amenity Over the Construction Period, Specifically Birdwatching

Musselburgh is one of the most visited birdwatching sites in Scotland (based on the number of referrals to the Musselburgh entry on the SOC's 'Where to Watch Birds in Scotland' mobile app), 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, as noted in EIA Report Section 4.7.3 'Sequencing of construction work', the Scheme's construction phase could take a period of five to ten years, imposing long-term damage to the area's use and reputation as an ornithology visitor attraction.

#### The Decision to Date by East Lothian Council Not To Publish the Draft HRA

No access has been provided to the current draft HRA for the Scheme. It would be greatly appreciated if the HRA could be made available by the Council, not least because, it would provide those with detailed local knowledge of the area's birds to provide useful feedback. In addition, in the meantime, it is respectfully suggested that the Council make a request to the SOC for relevant pre-existing bird data, and also to BTO, for species level and up-to-date WeBS data, so both sets of information can be included in the HRA and used as evidence to contribute to a robust assessment of effects from the Scheme alone and in combination with other plans and projects.

Please acknowledge receipt of my letter of objection, in writing. Please also advise me of next steps, and timescales. Thank you very much.

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<sup>9</sup> Presumably these estimates are available from the business case for use of public money on the Musselburgh Active Travel Network.

Yours Faithfully,

[REDACTED]

**From:** [REDACTED]  
**Sent:** 22 April 2024 13:16  
**To:** Musselburgh Flood Protection Objections  
**Subject:** (0231 [REDACTED]) Re: Objection to Musselburgh Flood Protection Scheme  
**Attachments:** Flood Objection Letter.pdf  
**Categories:** [REDACTED]

You don't often get email from [REDACTED]. [Learn why this is important](#)

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr Grilli,

I have not received confirmation of receipt of my email sent on Friday. Please find my objection letter attached. I would appreciate confirmation that you have received this. Thank you.

Yours sincerely,

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 19 April 2024 09:41  
**To:** mfpsobjections@eastlothian.gov.uk <mfpsobjections@eastlothian.gov.uk>  
**Subject:** Objection to Musselburgh Flood Protection Scheme

Dear Mr Grilli,

Please find attached a letter containing my objections to the proposed Musselburgh Flood Protection Scheme. A copy has also been sent by mail. I would appreciate confirmation of receipt of this email and its attachment. Thank you.

Yours sincerely,

[REDACTED]



acceptable level. I therefore object to the scheme as proposed on the basis that noise levels from construction will exceed acceptable levels.

#### Third Objection:

The EIA states that the acceptable vibration level for construction activities is 1.0PPV (mm/s). The EIA also states that the vibration level at [REDACTED] will be 1.94PPV (mm/s) [EIA Table 8.14], almost double the recommended vibration limit criteria. I therefore object to the scheme as proposed on the basis that vibration levels from construction will exceed acceptable levels.

#### Fourth Objection:

In the proposed scheme the replacement Shorthope Street Bridge has its eastern end approximately 30 meters upstream of the existing footbridge [Drawing no. 701909-JEC-S5-W24-XXX-DR-Z-0001]. I object to this new alignment on the basis that it does not contribute to a reduction in flood risk for the town and will have a negative effect on the majority of bridge users who are travelling from Shorthope Street to North High Street. The current alignment of the bridge directly links Shorthope Street and North High Street and the new bridge will lengthen journeys unnecessarily which will have a particularly negative effect on disabled bridge users, a factor which I have not seen given the necessary consideration in the published documentation. I therefore object to the scheme as proposed on the basis that the revised alignment of the Shorthope Street bridge is not appropriate.

#### Fifth Objection:

At the east end of the proposed replacement Shorthope Street Bridge there are two large access ramps, one upstream and one downstream. On the west end of the bridge there is only one access ramp [Drawing no. 701909-JEC-S5-W24-XXX-DR-Z-0001]. The upstream access ramp is built directly in front of our house, 14 Eskside East, and will therefore increase foot traffic [REDACTED]. It is entirely unnecessary for the bridge to have two ramps (as evidenced by the fact that there is only one ramp on the west side). This duplication also adds unnecessary additional cost to the construction of the bridge. I therefore object to the scheme as proposed on the basis that the upstream access ramp for the replacement Shorthope Street footbridge will have a negative impact [REDACTED] whilst adding nothing to the scheme's ability to protect against flooding.

#### Sixth Objection:

The Schedule of Scheme Operations section 4.24 paragraph WS24-01 states that at work section 24 the wall will be 'a minimum height of 1, and a maximum height of 1.7m above finished ground level'. Drawing no. 701909-JEC-S5-W24-XXX-DR-Z-0001 shows a cross section illustrating the 1m height at a point approximately midway between the 'Rennie Bridge' and the proposed new 'Shorthope Street Footbridge'. Despite asking the project team by email to confirm the design height of the wall [REDACTED] I have received no such confirmation. As such I object to the proposed scheme on the basis that I have not been provided with an accurate assessment [REDACTED].

#### Seventh Objection:

Throughout the design process the 'Musselburgh Active Toun' (MAT) project has been incorporated into the flood scheme, however with the proposed design this has now been removed and is included in the drawings as 'presumed'. Aspects of the design of the proposed scheme are specifically intended to incorporate the MAT project, despite the fact that these will add nothing to the ability of the scheme to provide flood protection. The removal of the MAT project from this approval project creates two hazards. Firstly, if the scheme is approved as proposed there will be undue pressure to approve the MAT project as currently proposed as the flood scheme has been designed to incorporate it.

Secondly, if the MAT project is not approved, or is altered, the ancillary works on the east side of the river will not tie into appropriate infrastructure. I therefore object to the scheme as currently proposed as the scheme design has been excessively influenced by the MAT project including, but not limited to, river narrowing and bridge design, rather than MAT being designed around the scheme. As it currently stands the ancillary works (footbridges and paths) as designed on the east side of the river are contingent on the approval of an independent project in order to function as designed rather than being a fully independent design.

#### Eighth objection:

The council are being asked to approve the scheme on the basis of the information published by the project team. This information include photomontage 'artist's impressions' of what the scheme will look like when built, however these impressions do not provide a true and fair representation of the technical drawings published by the team. For your reference I provide the following, non-exhaustive, list of discrepancies:

The published drawings of the new Shorthope Street bridge [701909-JEC-S5-W34-XXX-DR-Z-0001] show that this is substantially higher than the existing bridge, however the photomontage included in Appendix B9 of the EIA [view 8 and view 9] shows that the bridge will be no higher than the existing bridge. This is clearly a misrepresentation of what the proposed scheme would look like if built.

The published plan of construction from the Rennie Bridge to Shorthope Street bridge [701909-JEC-S5-W24-XXX-DR-Z-0001] clearly shows that the access ramp for the new Shorthope Street bridge will end in front of 14-16 Eskside East, however the photomontage of this area which shows the whole frontage of 14-16 Eskside East [EIA Appendix B9 Key View 10] shows no ramp. This is clearly a misrepresentation of what the proposed scheme would look like if built.

The photomontages included in the Design Statement of the Ivanhoe [figure 7], Shorthope St [figure 8], Electric [figure 9] and Goose Green [figure 10] bridges depict the bridges 'during design event' a design event is one which currently has less than a 0.5% AEP and will only reach this threshold in 2050. A design event is only expected to last for a few days at most. Depicting the bridges during a design event is highly misleading as for the vast majority of the time a design event will not be in occurrence, therefore these images cannot be said to provide a true and fair representation of how the bridges would look if constructed.

I therefore object to the scheme on the basis that some of the information provided to the public and the council for their approval does not provide a true and fair representation of the proposed scheme.

Ninth objection:

As mentioned above, I understand that that the footpath design on the East side of the river which is part of the MAT project has now been removed from the proposed scheme due to it not falling within the scope of the Flood Risk Management (Scotland) Act 2009 as it has no effect on the reduction of flood risk. For the sake of completeness, however, I would like to note here that I strongly object to the proposed path width at Eskside East. A 5m wide path is totally unnecessary, particularly considering that at this point Eskside East is a quiet access road, which is suitable for cyclist and pedestrian use. If the 5m wide path were constructed this would mean that the area [REDACTED] would go from being a mostly grassy area to over 50% paved, having a substantial negative effect on the amenity of the area by making it less attractive.

Tenth objection:

The FAQ on the flood scheme website states that, within Jacobs, design work is prepared by an originator, checked by an independent checker and the reviewed by a third independent team stating: 'rigorous quality control process ensure that no individual within the designer's team is allowed to check their own work'. I note that the Stage 4 Outline Design Statement was prepared by [REDACTED] and checked by [REDACTED], who is also named as the [REDACTED] r. The schedule of scheme operations version p01.1 was [REDACTED] by [REDACTED] ler, checked and [REDACTED] by [REDACTED] whilst subsequent versions were authored by [REDACTED] and checked and reviewed by [REDACTED]. Clearly [REDACTED] and [REDACTED] are not independent of each other as their roles as [REDACTED] and [REDACTED] are interchangeable and these documents have not been subject to independent review. I therefore object to the proposed scheme on the basis that Jacobs have not followed their own policies regarding independent review.

Please acknowledge receipt of this letter. Copy to be sent by email/post.

Yours sincerely,

[REDACTED]

**Subject:** (0232) Objections to the Musselburgh Flood Protection Scheme

**Sent:** 22/04/2024, 13:47:22

**From:** [REDACTED]

**To:** Musselburgh Flood Protection Objections

**Follow Up Flag:**

Follow up

**Flag Status:**

Completed

**Categories:**

[REDACTED]

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**Objector:**

[REDACTED]

22.04.24

**To:**

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

Dear Sir

I am writing to object to the Musselburgh Flood Protection Scheme.

My home is shown on the SEPA map as being at Medium risk of river flooding and coastal flooding. I have lived in my property for over [REDACTED] years and walk daily by the river and along the shore.

I object to the published scheme because:

**Objection 1:**

I object to the modelling of the scheme being based on the worst -case scenario by selecting the use of the IPCC RCP8.5. Not only does this presume that there will be no reduction in emissions in the future but there is much professional criticism of the use of RCP8.5 and there are many studies which do not support this data and modelling.

**Objection 2:**

I object to East Lothian Council declaring a climate emergency and claiming they are working towards a net zero policy whilst at the same time selecting the RCP8.5 scenario to base their flood scheme upon, which scenario makes the assumption there will be no reduction in emissions.

**Objection 3:**

I object to the concrete covering of and the canalisation of the River Esk because it is ecologically destructive and creates a chance of increasing flood risk.

**Objection 4:**

I object to the commitment to a 100 year commitment to one line of defence only which directly contradicts the 'managed' and 'adaptive ' approach advised by the Scottish Government.

**Objection 5:**

I object to the timing of the statutory approval process being such that East Lothian Council's own Coastal Change Adaptation Plan is excluded from consideration. The lack of discussion of alternatives and independent technical scrutiny is not acceptable.

**Objection 6:**

I object to the scheme because the loss of 0.33 hectare of ancient woodland is unacceptable

**Objection 7:**

I object to the loss of mature trees and to the lack of clear and precise identification of exactly which trees are planned to be killed, which information is surely available to professional engineers and arborists with whom the Council have the means to consult.

**Objection 8:**

I object to the removal of trees since trees are well known to absorb water and are regularly used to manage and decrease flood risk. The Scottish Government has issued guidance urging landowners to use tree planting and existing trees as natural defences to limit flooding.

<https://forestry.gov.scot/news-releases/using-trees-to-combat-flooding-new-guidance>

**Objection 9:**

I object to the MFPS being designed as a concrete engineering solution when many examples from elsewhere in the UK and the rest of the world demonstrate that flood protection schemes which work with nature rather than attempting to control and oppose nature are cheaper and more effective as well as creating a much smaller carbon footprint.

**Objection 10:**

I object to the bias arising from the fact that the consultants have written their own Environmental Impact Assessment, thereby marking their own homework and denying the input of any independent assessment team.

**Objection 11:**

I object to the refusal to release modelling data which has been repeatedly requested by residents with the professional expertise to interpret and assess it.

**Objection 12:**

I object to the removal of Natural Flood Management measures from the scheme before the council vote in January 2024 and before the petition was heard. This was undemocratic and in breach of the Flood Act 2009.

**Objection 13:**

I object to the excluding of NFM in January 2024 also because it was decided before the publication of the Dynamic coast report regarding possible impact of future erosion of the coastline on flood prevention measures. It demonstrates a failure to heed official advice and a failure to deploy a range of measures including NFM.

**Objection 14:**

I object to the enormous volume of documentation, information and technical drawings being made available in a short time frame. It is a dereliction of the duty of the council to inform and consult with the public in an accessible, clear and timely manner, instead of using technical and scientific language unfamiliar to the majority of people, without any kind of breakdown or simplification.

**Objection 15:**

I object to and do not accept the councillors', council officers' and consultants' explanation of the separation of the Musselburgh Active Town project from the MFPS.

**Objection 16 :**

I object to the declaration that MAT is now removed from the scheme two days before the consultation process began. This sudden change creates an expectation that the public will be able to make informed choices about a greatly changed scheme design which nevertheless still contains the drawings with all the MAT elements. This is nonsensical. This puts the public in an extremely confusing position and is a dereliction of the duty of ELC to consult with accurate and clear information.

**Objection 17:**

I object to the fact that for many years now we have been told that MAT is an integral part of the scheme and its elements have been woven throughout the design, yet no one from the MAT team has attended Consultations or council meetings.

**Objection 18:**

I object to the absence of an explanation for why the walls are positioned so closely to the river's edge.

**Objection 19:**

I object to the new Goose Green bridge at the mouth of the River Esk. It does not provide flood protection and it is not a like-for-like replacement; it is an additional development. If MAT is not part of the MFPS, why is it still included?

**Objection 20:**

I object to these elements of the MAT project remaining in the design when we are told MAT has been removed. They require separate planning permission.

**Objection 21:**

I object to the absence of an explanation for the replacement of the Ivanhoe bridge (when a Jacobs report stated that its flood risk was 'negligible') or for why the new bridge is 5 metres wide if MAT is not part of the Scheme.

**Objection 22:**

I object to the damage that will be inflicted on my mental and physical health if my present environment of daily river and shore walks is taken from me. I consider it a breach of my human right to be in contact with the natural landscape surrounding my home.

**Objection 23:**

I object to my enjoyment of land being removed by the scheme and its operations.

**Objection 24:**

I object to the assertion by the project team that Musselburgh's landscape will undergo 'enhancement'. I am able to see with my own eyes a beautiful riverbank, wild plants and flowers, wild birds and animals. What we are being 'offered' is the destruction of this natural beauty with a scheme that literally paves the way for an under-maintained , urbanised concrete nightmare.

**Objection 25:**

I object to the admission by the council that there are no funding plans in place for the maintenance and upkeep of the schemes physical elements.

**Objection 26:**

I have an interest in the land affected by the scheme and scheme operations, including ,but not limited to construction and traffic.My understanding from the drawings is that there will be a compound [REDACTED] and another on my route to work which I walk or cycle. I walk along the coast daily for health and well being needs.The proposed coastal sea defence with limited access and any scheme compound and scheme works will directly impact my continued ability to do this and disturb my enjoyment of the land. If the scheme proceeds in its present form without amendments I expect to be compensated for the sustained damage as a consequence of exercising my powers under the Act, Section 83 (1).

Please communicate with me only by email or post and under no circumstances, in person or by telephone.Please acknowledge receipt of my letter of objection and please advise me of timescales and next steps.

Yours sincerely

[REDACTED]

**Subject:** (0233 NO ADDRESS) Fwd: Flood Protection Scheme Objection

**Sent:** 22/04/2024, 13:49:10

**From:** [REDACTED]

**To:** Musselburgh Flood Protection Objections

**Follow Up Flag:** Follow up

**Flag Status:** Completed

**Categories:** NO ADDRESS

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Dear Sir

I am writing to object to the recently published Musselburgh Flood Protection Scheme. I am a resident living in the vicinity of the proposed works to the river and the seashore.. As a resident I make regular use of the paths by the river, and the bridges to take me to Musselburgh. Fisherrow Links are a valuable space to me allowing me access to green spaces which are beneficial to [REDACTED] mental and physical health.

I object to the published scheme because:

#### **Cost**

The scheme is currently costed at £132m in total, including £53m for the flood protection part. I can find no details which indicate that these costs are final, and the chosen contractor has agreed contractual terms which prevent costs rising. This is a concern at a time when council services are being cut and in effect from the information available to me the council costs are unquantified.

From the information available to me I understand that £4m had been spent by December 2023 on design and consultations. This is a particular concern when we are consistently seeing a decreasing budget available for core Council services such as social care for the vulnerable and elderly within our community, essential community health and wellbeing amenities: libraries, leisure, and culture. Within Musselburgh we have already seen a significant impact with as an example, the closure of the Brunton Hall Theatre and the loss of the café within this building which was used by many due to its proximity to public transport and disabled parking.

I believe that the scheme in its current form highlights that the budget and spending priorities for East Lothian Council do not match the needs of East Lothian Residents and with the current uncapped costs places an unnecessary financial burden on East Lothian residents.

Having researched further and from council meetings online it appears that East Lothian Councillors have voted for the scheme to progress on a false premise that if funding is not secured in Cycle 1 then the opportunity will be lost, however, from the information available to me it would appear that funding will be available in Cycle 2 which Musselburgh will qualify for.

The Scottish Government & COSLA working group on flooding has recognised the model of uncapped funding (known as Cycle 1) allows project consultants/developers to expand flood schemes into much larger, and more costly, projects. The escalating costs of this project should be scrutinised and capped to prevent further inflation of project and costs. Musselburgh has been highlighted as the priority; however, recent reports suggest that the shore at Prestonpans to Port Seton is at greater risk and it is well documented that Haddington has a significant flood risk. I believe that East Lothian Councillors have made costs decisions based on, at best, incomplete information which does not make the best use of financial resources within East Lothian to protect the homes and businesses of areas which are considered more vulnerable than Musselburgh at this time.

One question which remains unanswered, and I cannot find any data for is the ongoing maintenance costs of this scheme. From the information available I can only presume these will be significant, however, there appears to be no future planning for this and as noted earlier core council services are being reduced and East Lothian Residents should not suffer further for a scheme with no clear sight of data on additional costs.

The loss of use of the Riverside, Seashore and Fisherrow Links which has a direct impact for many residents who are likely to claim compensation at further cost to the Council, including an impact on the value of bought houses In The scale of the works will severely impact my enjoyment of the area due to the noise, dirt and pollution exacerbated by the proposed use of Fisherrow Links as a work compound.

New Street is already heavily congested and well used by motorists, cyclists and walkers and at times it is difficult for cars to travel along this street. The addition of construction traffic including large lorries, will bring a huge amount of congestion to New Street (as well as other parts of Musselburgh) and cause a worrying environmental impact.

#### **Science/data**

The MFPS does not offer alternative scenarios. It is tied to a 1:200 year climate change event. Scottish Government guidance says that a range of scenarios should be included. I do not believe that East Lothian Council have been given a range of options to judge what is necessary protection leading to potentially incorrect judgements being made by paid and elected officials. The figures provided by SEPA are predictions but by no means a certainty, yet the current proposals appear to take the view that these figures are a certainty.

East Lothian Council has commissioned a report on the coast from Dynamic Coast, which has been reported on in the press ([Beach in East Lothian suffered five years of damage in two days during storm - Edinburgh Live](#)) highlights that the planned defences will not work as they are not designed to deal with coastal erosion. It is inconceivable that a decision was made in January without this report being available particularly as it highlights the shortcomings of the current proposals in particular regard to the seashore. There are several highly publicised nature-based solutions already in place within the Forth estuary yet none of these, to the best of my knowledge, seem to have been considered or included in the consultations prior to the current scheme being developed which I believe is a major failing of East Lothian Council in its entirety.

I am aware that many residents have asked to see the data underpinning the scientific calculations of the project team, but these requests have been ignored. This concerns me greatly and I would like to be made aware of the reason for this as it does not seem unreasonable for residents to have access to this key information to allow them to assess if they feel the scheme meets the needs of their hometown.

The project team say they have adjusted flood defence heights in response to local feedback. This amounts to fitting the science around the preferred outcome, rather than science/data leading to a properly calculated outcome. This makes no sense. I have spent considerable time reviewing the plans on the website and I remain unable to identify the height of the walls proposed, however, from discussions I am aware of it will be hard for someone of normal height, wheelchair users or children to see over the walls. Our local river is an important amenity for many and being deprived of the opportunity to enjoy this will have an impact on the physical and mental wellbeing of many of my neighbours and fellow residents who enjoy spending time here year-round.

Records show that the last major flood in Musselburgh was in 1948. Climate change may mean there is increased risk of flooding in future, but there are communities at much greater and more immediate risk. As I mentioned above Prestonpans, Cockenzie, Port Seton more locally and within Scotland Dumfries, Perthshire etc all seem to be at a greater risk. The damage suffered in North Berwick to the harbour more recently springs to mind as another example of why priorities should be reevaluated by East Lothian Council and the Scottish Government to ensure fiscal funds are spent where the need is greatest.

I understand that East Lothian Council were informed that Natural Flood Management (NFM) should be restricted to three interventions (use of 2 small reservoirs in the Pentlands, and a tree-catcher in Dalkeith Country Park). NFM could include an entire range of techniques to slow the flow of the river throughout the catchments, and to encourage the natural dune system along the coast. I believe it is a huge misjudgement that these were discounted at the start is wrong and the situation is made worse by the exclusion of NFM decided upon in October.

From my  
Kind Regards

[Redacted signature block containing contact information]



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**Subject:** (0234) Re: Objection to an aspect of the Musselburgh Flood Protection Scheme

**Sent:** 22/04/2024, 13:51:12

**From:** [REDACTED]

**To:** Musselburgh Flood Protection Objections

**Categories:** [REDACTED]

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To: Carlo Grilli

Service Manager – Governance 22 April 2024

Legal Services

East Lothian Council

John Muir House

Haddington

EH41 3HA

This is a copy of my Objection Letter hand delivered to your office

[mfpsobjections@eastlothian.gov.uk](mailto:mfpsobjections@eastlothian.gov.uk)

Dear Mr Grilli,

Regarding: Objections to the Musselburgh Flood Protection Scheme

I am writing to object to a lack of clarity in one FAQ regarding the Musselburgh Flood Protection Scheme.

Please see [FAQ - Musselburgh Flood Protection](#)

There is a lack of clarity in the following FAQ:

***How much allowance for climate change is included in the design?***

*"The Scheme's allowance for climate change has yet to be chosen by the Council. The allowance would mean assuming a percentage increase in the flow of the river or a specific height of sea level rise. A range of possible allowances, and the impact these would have on the Scheme's design, will be presented to the public for discussion during the consultation."*

If it is true that the "Scheme's allowance for climate change" has not yet been chosen by the Scheme's Notification stage, then the public and other stakeholders are writing their objections based on misleading or erroneous information.

Please also define the meaning of "allowance". It may be buried among the hundreds of documents running to many thousands of pages. Does it refer to the 0.5% AEP which is being applied?

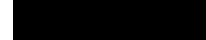
And presumably the 0.5% AEP is linked to the Climate Change 4.81m AOD that appears in the documents? Do these together constitute the "allowance"? Please clarify.

If the FAQ is out-of-date, please arrange for the correct information to be added to the FAQ section, and notify the public to this effect. Also, define which "allowance" has been chosen by the Council and add to the glossary of terms the definition of "allowance".

If you disagree with my objection please provide arguments supported with detailed evidence and references thereto, so that I can understand your reasons for rejecting my objections. Your reasons for rejecting will not be acceptable if they are of a general nature, such as telling me to read the documents.

I shall appreciate acknowledgement in writing that this Letter of Objection has been received.

Yours sincerely,

  
Address as above

Sent from [Outlook](#)

**Subject:** (0235) Musselburgh Flood Scheme Objection  
**Sent:** 22/04/2024, 13:54:48  
**From:** [REDACTED]  
**To:** Musselburgh Flood Protection Objections  
**Attachments:** [FLOOD SCHEME OBJECTION LETTER \[REDACTED\].docx](#)

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Dear Sir,

please find attached a copy of my letter objecting to the proposed flood scheme recently approved by ELC.

A copy should have been handed in to the council offices but to be sure it is received, I am sending a copy via email.

Please acknowledge receipt,

Regards

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
11/04/2024

Carlo Grilli  
Service Manager – Governance  
Legal Services  
East Lothian Council  
John Muir House  
Haddington  
EH41 3HA  
[REDACTED]

Dear Mr. Grilli,

I am writing to object to the recently published Musselburgh Flood Protection Scheme.

As a resident of [REDACTED], I am greatly affected by the scheme in various ways, due to my proximity to the river Esk. I use the Roman Bridge to access the town for shopping, I also walk and cycle along the paths to the lagoons and Fisherrow links for recreation. My property is indicated as at risk of flooding as shown in the credible worst case flood risk map produced by SEPA.

I object to the published scheme because of the direct impact the work will have on my immediate environment. This includes noise disturbance to wildfowl which will be overwintering and affect breeding in the spring, the removal of mature trees and habitat destruction, especially at the Goose Green and lagoons and at the Inveresk Mills end which provides habitat for Kingfishers and Otters, both of which are protected species. Aquatic and river wildlife will be significantly and adversely affected by pollution into the Esk when construction of the concrete walls and paths takes place. Wildlife affected will include all aquatic wildlife including Salmon, at the Inveresk weir. The loss of mature trees during a 'climate emergency' is unacceptable, as the proposed mitigation of re-planting will take 20 years or more to mature.

I also object to the scheme because I don't feel it has explored nature based solutions adequately. No consideration has been given to alternative solutions such as allowing the river to flood onto natural flood plains further up –river, or creating bends in the river to slow down river flow speeds and improving drainage in the town centre itself. The drains used to be cleared regularly, are now allowed to silt up in my street and surrounding area and subsequently run off into the river during heavy rainfall. Dealing with this issue as a mitigation of the flood risk has seemingly not

been taken into account as part of the existing flood prevention scheme. The level of flood-risk mitigation provided by this drainage could reduce the amount of construction required by the existing scheme.

The dune system could also be re-generated to provide a natural sea defence, using Marram grass and fencing off areas of vegetation to allow regeneration. Flood-risk mitigation by using natural solutions was not considered by East Lothian Council during the preparation of their flood plan and I object to a clear dereliction of duty in not considering mitigation measures which would address the climate and bio-diversity crisis in Musselburgh and Scotland as a whole.

I also object to the overall cost of the scheme. No breakdown of the costs of the scheme is available, four bridges are to be built but there is no indication of the costs of removing and replacing the existing bridge infrastructure with new bridges. Significant cost overruns have been a feature of recent developments and there appears no indication of how high the costs could rise during the scheme's construction, or what steps the council will take to meet any significant cost over-run.

I also object on the grounds that the carbon footprint of this plan is significant and damaging to the local and global environment along with increases in pollution which will affect residents, including myself, on health grounds. I also object to the ongoing maintenance required to the walls and bridges because this will impact local services and local and national government expenditure on other services in Musselburgh required by residents. I object to the fact no cap appears to have been placed on the costs of the scheme.

I object to the scheme because the town as a whole will suffer, due to the noise and disruption impacting on tourism and visitor numbers, discourage people moving to the town to live and/or work here. There will be a loss of inward investment into Musselburgh (unevaluated by the council) and house prices will be negatively impacted if the proposed scheme goes forward.

I also object to the scheme as it will have a detrimental impact on my own mental health, I greatly benefit from accessing the river and shore area. My family life and caring duties for my disabled daughter (also a resident of at my address) will be severely disrupted for five years or longer due to loss of access to the riverside and sea front as well as the play areas in the Haugh park and Fisherrow links.

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

Yours Faithfully,

██████████

**Subject:** (0236) Musselburgh Flood Scheme Objection Letter  
**Sent:** 22/04/2024, 13:56:26  
**From:** [REDACTED]  
**To:** Musselburgh Flood Protection Objections  
**Attachments:** [FLOOD SCHEME OBJECTION LETTER \[REDACTED\].docx](#)

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Dear Sir,

please find attached a copy of my letter objecting to the proposed flood scheme recently approved by ELC.

A copy should have been handed in to the council offices but to be sure it is received, I am sending a copy via email.

Please acknowledge receipt,

Regards

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
11/04/2024

Carlo Grilli  
Service Manager – Governance  
Legal Services  
East Lothian Council  
John Muir House  
Haddington  
EH41 3HA  
[cgrilli@eastlothian.gov.uk](mailto:cgrilli@eastlothian.gov.uk)

Dear Mr. Grilli

I am writing to object to the recently published Musselburgh Flood Protection Scheme.

I am a resident of [REDACTED] which falls within an area designated as at risk according to the flood risk map produce by SEPA.

I object to the published scheme on the following grounds:

1) Cost and Ongoing costs:over-budget risk not considered

The cost of the scheme is estimated to be around £100 million pounds with no guarantee costs will escalate greatly during the life-time of the project. Contemporary development projects have a history of running significantly over-budget during recent years, and no consideration of this risk or a proposed mitigation of the risk seems to have been prepared for.

2) Nature based flood solutions not considered.

I am deeply concerned that in making the decision to proceed with the proposed scheme,ELC chose to disregard any consideration of nature-based solutions prior to embarking on the scheme design. UK and Scottish governments have commitments to COP 26 agreements to prioritise nature-based solutions to engineering projects. This decision will impact on carbon emissions in Musselburgh and contribute to the global warming that causes flood risk in the first place. No reason was given by ELC for rejecting nature-based solutions.

### 3) Bio Diversity & EIA

The scheme was approved before the Environmental Impact Assessment Report was completed. This is a clear breach of planning best practice.

Nature Scotland recently published the Scottish Govt. Draft Planning Guidance on Biodiversity (November 2023) paper. This paper concludes; 'For national, major and EIA developments NPF4 Policy 3b requires applicants to demonstrate that biodiversity will be in the "demonstrably better state" required by Policy 3(b) and that the five criteria of Policy 3(b) have been met. These criteria are:

"the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;

a) Wherever feasible, nature-based solutions have been integrated and made best use of.

This is clearly not the case with the proposed scheme. The EIA report makes clear that the habitat for existing species, including protected species such as otter and kingfisher and the fish they depend on will be permanently removed, that the effect of any pollution would be long-term, negative and permanent. Mitigation proposed is clearly inadequate including risible measures such as operatives checking machinery for otters and covering trenches.

b) 'Significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and local community benefits of the biodiversity and/or nature networks have been considered.'

Nature Scotland or any other wildlife/natural body been consulted or had an opportunity to input into the scheme or modify the scheme.

This is reflected in the Fourth National Planning Framework (NPF4), which sets out new requirements for development to deliver positive effects, primarily under Policy 3.

This states that all development will contribute to the enhancement of biodiversity, including where relevant restoring degraded habitats.

The plan proposes some river restoration but this is of extremely limited scope and will not come close to replacing the volume of habitat lost to the scheme. Therefore, this plan does not enhance biodiversity to the same extent that is being lost nor restore degraded habitats.

The survey carried out by Jacobs holds that there is only one record of an otter within 5km of Musselburgh but I have myself seen an otter close to the weir, as well as water vole, heron (not mentioned in the report) and kingfisher. The report bases its conclusions on a desk-based survey of wildlife along the river Esk, this methodology is clearly flawed as the report states that only 1 record of Harbour seals at Morrison's Haven when I have myself seen half a dozen there on several visits. I question the adequacy of relying on desk surveys to estimate wildlife numbers along the corridor, a ground-based survey is clearly required.

The report claims that there are no examples of protected species living close to the project sites but my own evidence and anecdotal evidence from other residents suggest their model of indigenous fauna is incorrect and needs to be re-evaluated.

4) Disruption to family life

As a frequent user of the riverside and the parent of a daughter with additional support needs, the effective closure of sections of the river will have a major detrimental effect on our family life, reducing mine and my daughter's quality of life considerably and probably requiring us to travel outwith Musselburgh to walk and enjoy natural environs.

5) Graffiti/Aesthetics/Quality of architecture and contrasts with existing architecture and natural surroundings and permanent change to the material appearance of a historic town in a conservation area.

I am very much concerned with the potential for widespread graffiti on the proposed walls as well as increasing the potential for criminal assaults and general crime in isolated areas where the walls will provide seclusion for such behaviour.

Widespread graffiti on the walls would permanently degrade the living environment of the town, leading to reduced quality of life for me and all other residents. This would also impact on inward investment, house prices and the overall desirability of Musselburgh as a place to live and set up a business in.

The Roman Bridge is A listed structure and there is no indication that the walls won't encroach on this structure. A listed buildings should not be altered or amended in any way.

6) Rushed decision

The decision to proceed with the scheme was rushed and in removing consideration of nature based solutions, too hasty and too focussed on only engineering solutions. Thus the scheme, as proposed, did not fully engage with all the available flood management solutions.

7) Pollution and affect on health

I object on the grounds of pollution impacting on my health. The air quality in Musselburgh was already known to be among the worst in Scotland some

years back. It's unclear how much damage the work on the scheme will have on air quality on the town. Nor can I find any mitigation measure in place to reduce the impact on air quality. The damage to my health and the health of residents of Musselburgh needs to be taken into account.

- 8) Local economy, inward investment, house prices, residents leaving, lower job opportunities and business growth in future years than would otherwise be the case without the scheme going ahead.

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

Yours Faithfully,

██████████  
██████████  
██████████

**Subject:** (0237) Revised Version: Objection to the Musselburgh Flood Protection Scheme

**Sent:** 22/04/2024, 14:08:45

**From:** [REDACTED]

**To:** Musselburgh Flood Protection Objections

**Categories:** [REDACTED]

You don't often get email from [REDACTED]. [Learn why this is important](#)

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Please note this is an updated version of my Objection Letter of 19 April 2024. Please discard that letter.

To: Carlo Grilli

Service Manager – Governance 22 April 2024

Legal Services

East Lothian Council

John Muir House

Haddington

EH41 3HA

This is a copy of my Objection Letter hand delivered to your office

[mfpsobjections@eastlothian.gov.uk](mailto:mfpsobjections@eastlothian.gov.uk)

Dear Mr Grilli,

Regarding: Objections to the Musselburgh Flood Protection Scheme

I am a resident just west of the Edinburgh/Musselburgh boundary and as a tax payer I am writing to object on technical grounds to one aspect of the Musselburgh Flood Protection Scheme.

The new flood defence wall from 29 to 35 Edinburgh Road (see Section A below) should be constructed to the same specification as the new flood defence wall from Murdoch Green to the Back Sands Car Park (see Section B below).

I say this because the proposed wall along the former section has no supporting foot, but the wall along the latter section does.

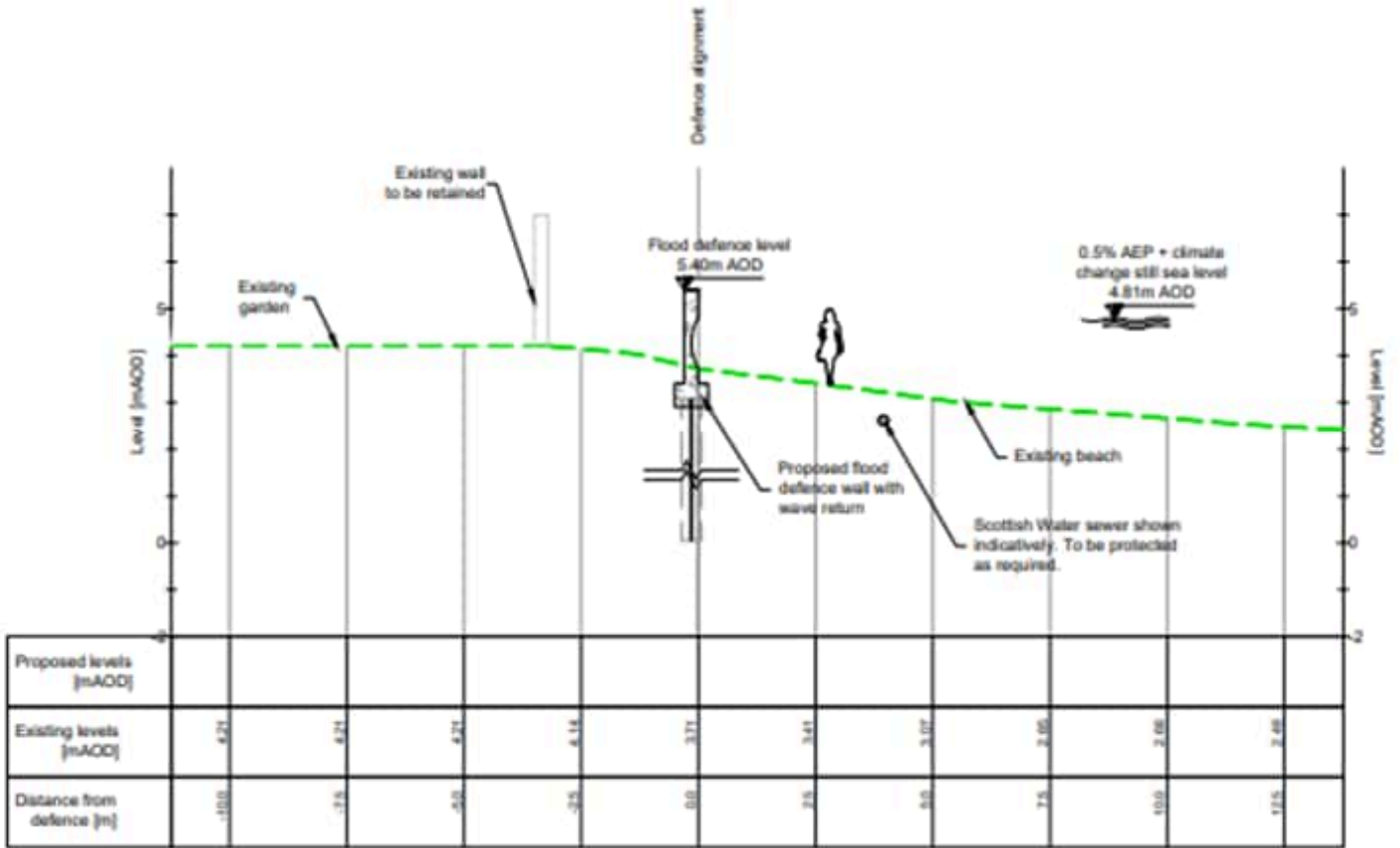
However, I see that the wall in Section A may have steel piles driven into the sand about 2.5m. Please confirm that this is the case or otherwise. If piling is needed, have you informed the owners of the houses that this will take place?

And, can you guarantee that piling will not cause any structural damage to the walls of the properties on the sea-side. These walls are often part of the structure of the properties.

This economising, even with steel piles, would compromise the life-span of this short section of the new flood defence wall, given the sea already reaches the highest point of the sand along that section when there are high spring tides. A few storms could soon erode the sand down to the level of the base of the wall, or expose the piles to erosion due to sea water.

**Section A. New Flood Defence Wall from 29 to 35 Edinburgh Road.**

**PLAN**  
 SCALE (A1) 1:500  
 SCALE (A3) 1:1000



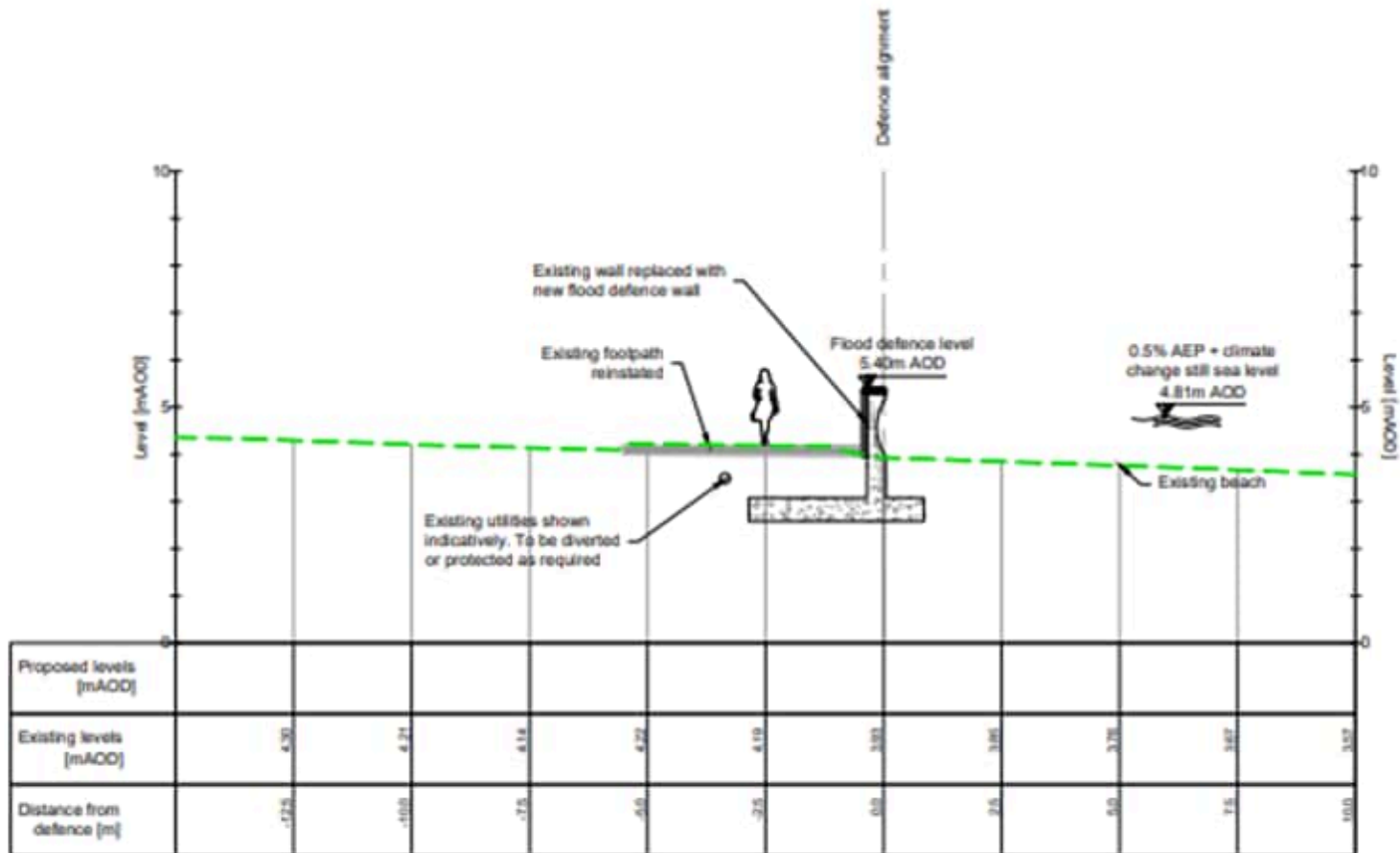
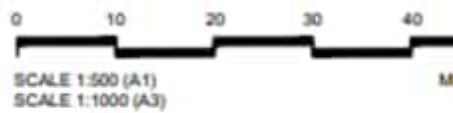
**CROSS-SECTION A-A**  
 SCALE (A1) 1:100  
 SCALE (A3) 1:200

Section B. New Flood Defence Wall from Murdoch Green to Back Sands Car Park.

# PLAN

ALE (A1) 1: 500

ALE (A3) 1:1000



If you disagree with my objection please provide arguments supported with detailed evidence and references thereto, so that I can examine your reasons for rejecting my objection. Your reasons for rejection will not be acceptable if they are of a general nature. This will only mean I reply to you asking for a more detailed response.

I shall appreciate acknowledgement in writing that this Letter of Objection has been received.

Yours sincerely,

  
See address above

Sent from [Outlook](#)

Carlo Grilli

Service Manager – Governance

Legal Services

East Lothian Council

John Muir House

Haddington

EH41 3HA

22/4/24

Dear Mr. Grilli,

I am writing to object to the recently published Musselburgh Flood Protection Scheme.

I regularly visit Musselburgh to birdwatch around the mouth of the Esk and the adjacent scrapes, including the excellent new set of pools that have been created. Like most birdwatchers, many from far afield, I come here because of the abundance of waders and seabirds that use this nationally important area to feed and rest. The pressures on these birds are immense, particularly in areas such as Musselburgh where there are high levels of disturbance from dogs and water sports. The river mouth and scrapes are a refuge from this disturbance and I believe the proposed flood protection scheme will have serious and long-term impacts on the birdlife in this area.

I object because the Environmental Impact Assessment (EIA) Report that East Lothian Council has commissioned does not meet the necessary requirements set out in EIA guidance and does not allow East Lothian Council to fulfil its biodiversity duties. Specifically:

#### Inadequacy of the EIA Report's Ornithology Baseline

The results presented in the EIA Report from surveys of shoreline and coastal birds (the 'through the tide counts') are insufficiently detailed to adequately assess the impacts of the Scheme on these species. This failure is especially important because the Scheme is adjacent to, or in places actually within, the Firth of Forth Special Protection Area (SPA), the Firth of Forth Ramsar Site, the Firth of Forth Site of Special Scientific Interest (SSSI), and the Outer Firth and the St. Andrews Bay Complex SPA. These are internationally and nationally important designated sites for birds, and any assessment of impacts on these designations require must be informed by comprehensive robust and appropriately detailed baseline data. The EIA Report does not present such data.

It is therefore essential that baseline bird survey data are properly presented, specifically that the distribution and abundance of qualifying features of the SSSI, SPAs and Ramsar site at least are mapped to species level and their abundance shown for each survey area (notably through the tide count survey areas), along with the key areas for roosting and foraging of those species. Without this information, the EIA lacks the necessary detail to enable consultees to judge whether or not the applicant's assessment of impacts from the Scheme is correct. Consultees

cannot therefore also judge whether proposed mitigation measures are adequate, or whether the identification of residual impacts on birds can be relied upon. For all these reasons, the baseline survey data in the EIA in its current form is not fit for purpose. It needs to be rectified by the submission of Further Environmental Information, and until that is carried out, I object to the Scheme on grounds of inadequate baseline bird data being provided in the EIA Report. As additional bird surveys are still being undertaken, the more detailed results requested can be published at the same time as these additional data (but all to the appropriate level of detail).

On top of this failure to present survey results to the required level of detail for such a sensitive area and for such important species, the desk study component of baseline data collection has also been inadequate. To accord with EIA guidance<sup>1</sup>, baseline bird data should comprise both survey results and relevant pre-existing data on bird species present, their national and local population trends, and insights into their relevant behaviour. The Firth of Forth has been the subject of intense ornithological study spanning several decades<sup>2</sup>, and it is reasonable to expect that this body of data would have been drawn upon for the EIA Report, not least given the sensitivity of the area and the need to design appropriate and effective mitigation measures for construction impacts and impacts over the 100 year operational life of the Scheme. The desk study data included in the EIA also fails to meet the requests from key stakeholders. Notably, for example, the East Lothian Biodiversity Office who requested in their Scoping Report (see ELC on 28th November 2023, EIA Appendix C3.2) that *'The field surveys should be informed by a data search from ... useful data (that) may be available from sources including the East Lothian Council Ranger Service, British Trust for Ornithology and Scottish Ornithologists' Club'*.

Starting with the Scottish Ornithologists' Club, the EIA fails to incorporate into its ornithology baseline any of the comprehensive pre-existing bird data that exists for the Scheme area, collected over several years by highly experienced local ornithologists, many with decades of expertise in the area's bird life. It would be expected, at the very least, that given EIA guidance<sup>3</sup> and to comply with the request from East Lothian Council's own Biodiversity officer that the EIA authors would have submitted a data request to the Local Bird Recorder of the Lothian Branch of the Scottish Ornithologists' Club (SOC) to obtain relevant bird records for the area impacted by the Scheme. This was not the case, and therefore the EIA ornithology baseline suffers by not having the detailed insights into species presence, abundance, distribution and behavioural patterns to adequately inform its assessment (including of cumulative impacts), mitigation design and proposals for enhancement. This is particularly the case for the assessments of impacts from the Scheme's construction compounds, the seawall improvement works, and the two sections of the Musselburgh Active Travel Network (ATN).

Moving on to obtaining desk study data from the British Trust for Ornithology (BTO), this key organisation administers a number of bird recording schemes, including the Wetland Bird Survey (WeBS), which cover this area. It is EIA good practice, as part of gathering desk study data for developments in coastal areas, to obtain and present WeBS results, alongside survey data. Bird surveys commissioned for EIAs are inevitably restricted to relatively short-term sample surveys, comprising snapshots of bird activity. The WeBS scheme and its predecessor have been running for decades and provide important long-term insights into species

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<sup>1</sup> See the Environmental Impact Assessment Handbook: Guidance for competent authorities, consultation bodies, and others involved in the Environmental Impact Assessment process in Scotland Version 5, April 2018. NatureScot and Historic Environment Scotland.

<sup>2</sup> E.g. Bryant, D. (1987) The Natural Environment of the Estuary and Firth of Forth. *Proceedings of the Royal Society of Edinburgh, Section B: Biological Sciences*, Volume 93, Issue 3-4, pp. 509 – 520 DOI: <https://doi.org/10.1017/S026972700006916>

<sup>3</sup> For example, see C.6.3 and Box C. 6. Practice .1. in the reference cited in Footnote 1.

composition and abundance of waders and wildfowl of key sites, and long-term population trends. In particular, for large designated sites like the Firth of Forth SSSI/SPA/Ramsar, WeBS data are also essential to place local bird populations (i.e. the birds present in the Scheme area) in their wider Firth of Forth context, so that impacts from the Scheme, and cumulatively with other projects, can be adequately assessed. Whilst it is noted that in Section 7.3.3 of the EIA it states that the desk based assessment included data responses from organisations including the BTO, detailed WeBS data are not provided. The reference to WeBS data is limited to total species counts (in the EIA Section 7.5.6.1 'Desk-study and preliminary ecological appraisal'). This states:-

*'Data obtained during the desk-based assessment identified the potential presence of the following protected species within the study area:*

- *Wintering wetland birds: the BTO Wetland Bird Survey (WeBS) data for the five-year period from 2013/14 to 2017/18 identified a total of 70 species of wetland birds (which includes unidentified and hybrid species) within the Eastfield to Musselburgh WeBS sector. Of these 70 species, 55 were recorded in the winter months during this period. The five-year mean peak count of wetland birds within the Eastfield to Musselburgh WeBS sector is 4,878 individuals, with a five-year winter mean peak recorded as 5,259 individuals (see Appendix B7.4 for details):*

Instead of these agglomerated count figures, the EIA Report should provide the species-specific WeBS data. Furthermore, and contrary to the Chapter's statement that details of WeBS data are provided in Appendix B7.4, there are no details provided on the WeBS data for the area in that Appendix. What is required for the EIA (and HRA) is a map of the WeBS count sector to compare with the survey areas used for the through the tide counts, and for the WeBS data to be tabulated by species, comparing abundance figures from the survey work. Neither are presented in the Biodiversity Chapter or any of the published EIA Report Appendices.

Lastly in relation to the WeBS data, the totals that are presented are out of date, being '*from 2013/14 to 2017/18*'. The desk study for the EIA should have obtained the most recent five-year dataset available, i.e. up to the 2022/2023 non-breeding season, to help inform the assessment.

The inclusion of detailed WeBS data is common practice in EIAs (and HRAs) for coastal developments, in particular where developments overlap or are in close proximity to internationally important sites designated for their bird interests. As already highlighted, without these details, it is not possible to contextualise or corroborate the survey data provided by the applicant. This and the wider omissions in desk study data need to be rectified by the submission of Further Environmental Information, and until that is carried out, I object to the Scheme on grounds of inadequate baseline bird data being provided in the EIA Report.

#### Baseline Survey Accuracy

The bird survey data on which the Scheme's EIA Report depends appears to contain apparent anomalies, with some species noted that either have only very rarely ever been recorded locally and other species which may be mis-identified. The inclusion of these records undermines confidence in the reliability of bird (and other) survey work carried out for the EIA Report, and also in the rigour of the quality assurance processes that have been applied during the collection, processing and writing up of data used in the EIA Report. Specific examples include records of Stone-curlew, Water Pipit, Twite breeding, "flyover" Wood Warbler, Whimbrel in November, a Kittiwake flying up the river Esk (Appendix 7.4). Based on over 60 years of data held by the SOC, these records require verification. The almost daily coverage by experienced

birdwatchers over the survey period also points to other anomalies, such as occasions when a large count of Velvet Scoters is reported in the EIA Report at a time when only a Common Scoter flock was present. Such questions on the reliability of the survey data are critical, given the conservation importance of qualifying features of the Firth of Forth SSSI, SPAs and Ramsar sites and Outer Forth and St Andrews Bay Complex SPA in such close proximity (and in some areas, overlapping) with the Scheme. It also underscores the importance of consultation with bodies such as the SOC and BTO to ensure that pre-existing data for the Scheme area are obtained, adequately used to aid data validation and quality assurance, and properly integrated into baseline data.

One further concern over the baseline survey surveys is the validity of the ‘through the tide counts’ which coincided with the construction activity for the new lagoons between 2021 to June 2023. Given that the EIA Report acknowledges that construction traffic along the seawall will cause disturbance to birds (including qualifying features of the Firth of Forth SSSI, SPA and Ramsar site), evidently the results from these surveys were not representative whilst the lagoon construction was on-going. NatureScot guidance on bird surveys clearly highlights the principle that surveys should not take place where there is disturbance that may change the abundance, distribution or behaviour of birds within the survey area<sup>4</sup>. This precaution has not been followed therefore, and it further undermines the reliance that can be placed on a significant proportion of bird survey data used in the EIA Report.

It is understood however, that bird surveys are still being carried out, I therefore object until these un-impacted additional bird survey results are published as part of the submission of Further Environmental Information and HRA.

#### Failure to Identify and Assess Habitat Loss from the Scheme

The EIA Report attempts to identify and quantify the loss of habitats from the Scheme, to assess the significance of these losses, the mitigation that will be required and the resulting residual impacts and their significance.

However, it completely fails to identify the main habitat impact from the Scheme, namely the loss of shoreline and inter-tidal habitats over its 100-year operational life. These losses will occur as a direct result of the Scheme’s construction of hard defence structures along the coast where these are currently absent or limited, through what is known as ‘coastal squeeze’. This impact needs to be fully identified and assessed in the EIA Report, in particular the Scheme’s proposed hybrid wall structures at Work Sections 6 and 7 (impacting 325m and 290m of coastline respectively) and its concrete walls along Work Sections 8 and 9 (impacting 393m and 132m of coastline respectively) (see Table 4-2 ‘Summary of Scheme by work section’ in Section 4.4.1 Scheme Layout Overview, and Figures Appendix A41j to A41l in Appendix A of the EIA Report). The existence of this operational impact is not even mentioned in the EIA Report Biodiversity Chapter, let alone assessed, with only the most cursory mention given in 7.5.9.3 ‘General trends’. The EIA Report therefore does not meet its own commitment (in Section 3.6.2 ‘Future baseline’) to complete ‘*Where appropriate, an appraisal of the future baseline without the Scheme ... where feasible to allow for consideration of the operational impacts of the Scheme over its 100-year design-life*’.

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<sup>4</sup> Although relating to bird surveys for wind farms, the importance of avoiding construction disturbance that may affect survey results is made clear in Section 2.1.1 and Box 1 in NatureScot (2017) Recommended bird survey methods to inform impact assessment of onshore wind farms. March 2017, Version 2.

This is of particular concern because these habitat losses will impact the qualifying features of the Firth of Forth SSSI, SPA or Ramsar Site (and the conservation objectives of the latter two designations).

The omission of this impact in the EIA Report must be rectified and the necessary modelling and full assessment of habitat loss from coastal squeeze be fully assessed and published as Further Environmental Information. The assessment of these habitat losses on the integrity of the Firth of Forth SPA and Ramsar Site must also be included in the HRA, to inform the compensation that will be required, if should a derogation case be accepted.

Given how important this impact is, it is also worth re-stating the Council's published Scheme objectives (EIA Report Chapter 4, Section 4.1 and Table B4 in Appendix B4) that include the following Environmental Objectives:-

- 1. That the Scheme will achieve as a minimum a neutral impact on the environment.*
- 2. To ensure that the Scheme includes appropriate catchment and natural flood management (NFM) measures.*
- 3. To ensure that the Scheme considers the impact of climate change and includes appropriate provisions to mitigate any impact.*
- 4. To ensure that the Scheme considers in full, and includes for any appropriate measures, to protect the Firth of Forth and its protected statuses.*

Clearly, these objectives cannot be achieved if the Scheme's impacts are not adequately identified, assessed, and mitigated and if mitigation or enhancement proposals (such as those in EIA Report Table 7.7) are not considered in terms of resilience to sea level rise and climate change.

In addition to failing to include operational habitat loss, the habitat loss figures that are currently included for construction and operational impacts lack clarity and consistency across the Biodiversity Chapter and Appendices. For example, the extent of temporary lost habitat given in Section 7.6.2.1.1 'Firth of Forth SPA and Ramsar' is given as 'approximately 2.14 ha' but the habitat breakdown figures only add up to 1.711 ha. Similarly in Section 7.6.3.1.1 'Firth of Forth SPA and Ramsar', the permanent loss of habitat from the Firth of Forth SPA and Ramsar is given as 4.3 ha, but again the figures for the habitats lost amount to just over 1.46 ha. This lack of clarity and inconsistencies in the EIA Report make it difficult for consultees to clearly understand the scale or location of the Scheme's habitat impacts. It is important that these losses are clarified, including in the HRA prior to its finalisation, and if necessary, through the submission of Further Environmental Information.

#### Failure to Appropriately Identify Plans and Projects to Consider for the Cumulative Impact Assessment

Section 7.3.9 'Cumulative effects' of the EIA Report identifies that 'A review of developments in the local area as listed on the East Lothian and Midlothian Council planning portals was conducted. The assessment focused on developments of any size within the working areas and those over 1 ha in size up to 5 km from the working areas in Musselburgh and the reservoirs. In addition, Grangemouth Flood Protection Scheme (GFPS) was also considered as part of the assessment, as requested by NatureScot during consultation for GFPS'.

The cumulative assessment needs to encompass developments that have significant potential to impact key ecological receptors. The potential for cumulative/in combination impacts is determined by impact pathways, not by arbitrary thresholds such as development size or distance from the Scheme (neither of which have any regulatory basis or reflect CIEEM guidance)<sup>5</sup>. Movement of birds around the Firth of Forth SPA/Ramsar site have been relatively well studied, and this information should be referred to in order to help determine potential impact pathways, and thereby the plans and projects that need to be taken account of in the cumulative/in combination assessment. It is important that this impact/pathway/receptor approach is adopted in the HRA's 'in combination' assessment, if made available to consultees, otherwise through the submission of Further Environmental Information.

### Repeated Lack of Evidence to Substantiate the Findings of the Impact Assessment

In order to comply with EIA guidance, it is essential that the assessment of impacts is supported by appropriate evidence. However, the EIA Report consistently fails to provide evidence to back up the assessments made on construction and operational impacts of the Scheme on birds.

The rare instance when evidence and published peer reviewed information is referenced in support of the assessment of impacts is for kingfisher (see section 7.6.2.3.4). Kingfisher is only a species of regional importance, yet the EIA Report's assessments of impacts on internationally or nationally important bird species are repeatedly made without any reference to peer reviewed or other evidence, or even to standard NatureScot guidance (for example, in relation to disturbance, Goodship and Furness 2022<sup>6</sup>). A typical example of unsupported assertions is in Section 7.6.3.1.1 'Firth of Forth SPA and Ramsar', which states 'The remaining area to be lost within the SPA is comprised of habitat rarely used by qualifying species and therefore is considered unlikely to provide functional habitat'. There are no data presented to back up this assessment, since the EIA and its Appendices omit the necessary detail on the distribution and abundance of individual species.

This is a clear omission and weakness in the EIA Report, is contrary to guidance and good practice, and reduces the reliance that can be placed on the assessment or effectiveness of mitigation proposed. It also falls short of the robustness and detail of EIAs for other developments in the area<sup>7</sup>. Furthermore, East Lothian Council, who commissioned the EIA, has an actual duty to protect and enhance biodiversity. This duty cannot be adequately discharged without detailed baseline EIA (and HRA) bird data from which impacts on birds or other wildlife can be assessed, mitigation designed, and residual impacts identified.

It is also important to note that for the HRA the best available scientific evidence must be used, and the Council, given its Scheme objectives and biodiversity duties, must ensure that this is the case, being responsible for commissioning the EIA Report (and HRA).

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<sup>5</sup> Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. September 2018 Version 1.2 - Updated April 2022

<sup>6</sup> Goodship, N.M. and Furness, R.W. (2022) Disturbance Distances Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283.

<sup>7</sup> See, for example, the inter-tidal and near-shore bird data presented in Appendix 6C: Intertidal and Near-shore Bird Surveys of the Inch Cape Onshore Transmission Works EIA report (ICOL, 2018b) at [OnShore-EIA-Appendix-6C-1of-2.pdf \(inchcapewind.com\)](#) and [OnShore-EIA-Appendix-6C-3of-4.pdf \(inchcapewind.com\)](#). Others include the EIAs for [SSE Seagreen 1A](#) and for the Cockenzie Combined Cycle Gas Turbine Power Station application.

## Repeated and Unsubstantiated Downplaying of Conservation Importance and Impacts in the Assessment

There are repeated instances in the EIA Report's Biodiversity Chapter where assessments of impacts on birds downplay (i) the value of their habitats - because it is stated they are already subject to disturbance, or (ii) the significance of disturbance to birds - because it is stated they will move elsewhere within the SPA, or (iii) impacts being insignificant - because the area of impact is small. These assertions are consistently unsubstantiated by evidence (as already highlighted above) and are a style of assessment more typical of commercial developers seeking to justify damaging protected sites. These assertions are inappropriate in those circumstances, but are totally inappropriate for Councils, given the legal and policy obligations they are under to protect and enhance biodiversity, notably the Nature Conservation (Scotland) Act 2004 and National Planning Framework 4 (NPF4). Furthermore, no reference is made to the fact that many wildfowl and wader populations in the Firth of Forth have already suffered long-term declines as a result of development impacts, disturbance and habitat loss<sup>8</sup>, and that approximately one third of the Firth of Forth SPA/Ramsar's qualifying species are in unfavourable conservation status (Protected Nature Sites ([sepa.org.uk](http://sepa.org.uk)), accessed 19.04.2024). The Council's around the Firth of Forth, together with the Scottish Government, NatureScot, businesses and local communities, need to be working together to ensure qualifying features of the SSSI, SPA and Ramsar site return to favourable conservation status.

Examples of the unsubstantiated downplaying of conservation importance of habitats or species, and of impacts are, for example, in Table 7-5 Summary of Baseline Conditions and Evaluation of Importance of Ecological Features, which includes the statement that 'The sand dunes within the study area are narrow and disturbed; therefore, it is considered they do not meet the SSSI designation criteria'. In Section 7.6.2.1.1 'Firth of Forth SPA and Ramsar', another unsubstantiated statement is made, '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 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, however, no evidence to back up these assertions, on factors such as prey availability, carrying capacity, exposure to disturbance, or any of the other influences that need to be considered in order to robustly assess these impacts. The same applies in the assessments made in Sections 7.6.3.1.1 Firth of Forth SPA and Ramsar, 7.6.3.1.2 Outer Firth of Forth and St Andrews Bay Complex SPA, and 7.6.3.1.3 Firth of Forth SSSI. These are sites of international and national importance for conservation, already under significant multiple pressures, and it is essential that assessments of impacts are evidence-based and robustly reasoned. This is not the case currently, and this must be rectified. It is therefore essential that the Council (or Scottish Ministers) exercise the right to request further evidence, through Further Environmental Information and in the finalised HRA, in accordance with EIA guidance (see for example, NatureScot and Historic Environment Scotland (2018), referred to in Footnote 1, specifically Section D. 6), before confirming the Scheme.

## Disturbance to Birds During the Scheme's Operational Phase

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<sup>8</sup> e.g. McLusky, D., Bryant, D. and Elliott, M. (1992) The impact of land-claim on macrobenthos, fish and shorebirds on the Forth Estuary, eastern Scotland. *Aquatic Conservation: Marine and Freshwater Ecosystems* Volume 2, Issue 3, pp. 211-222, or Dwyer, R. (2010) Ecological and anthropogenic constraints on waterbirds of the Forth Estuary: population and behavioural responses to disturbance. *Environmental Science, Biology*.

Related to the point of objection above on lack of evidence to support the assessments on international and national designations (in Sections 7.6.3.1.1, 7.6.3.1.2 and 7.6.3.1.3), the EIA Report notes that:-

*'The improvements to the active traffic network (particularly along the seawall and at the proposed Goose Green Footbridge) may result in increased pedestrian and cyclist traffic, which may create increased operational disturbance to qualifying bird species'.*

Evidently the Council's EIA Report makes it clear that it is uncertain whether or not the ATN works will result in increased active travel, in which case how can the expenditure, additional risk of impacts on internationally and nationally important designated sites, and carbon footprint of constructing these two ATN 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 footpaths and cycle paths along these sections of the Scheme coastline).

That objection aside, these EIA Report sections contain no evidence to support the assessments made operational disturbance, and as such they are unsupported conjecture. This needs to be rectified (including in the HRA), firstly by inclusion of clear evidence-based and quantified prediction of the level of increased activity as a result of the ATN path and Goose Green Foot Bridge construction, compared to present levels<sup>9</sup>, and secondly by ensuring the assessment of disturbance impacts on each qualifying species of the SPAs, Ramsar and SSSI are made on the basis of these predicted operational levels of activity, and supported by an appropriate level of detail and evidence.

Until such time as these are provided, I object to the Scheme.

#### Impacts on Recreational Amenity Over the Construction Period, Specifically Birdwatching

Musselburgh is one of the most visited birdwatching sites in Scotland (based on the number of referrals to the Musselburgh entry on the SOC's 'Where to Watch Birds in Scotland' mobile app), 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, as noted in EIA Report Section 4.7.3 'Sequencing of construction work', the Scheme's construction phase could take a period of five to ten years, imposing long-term damage to the area's use and reputation as an ornithology visitor attraction.

#### The Decision to Date by East Lothian Council Not To Publish the Draft HRA

No access has been provided to the current draft HRA for the Scheme. It would be greatly appreciated if the HRA could be made available by the Council, not least because, it would provide those with detailed local knowledge of the area's birds to provide useful feedback. In addition, in the meantime, it is respectfully suggested that the Council make a request to the SOC for relevant pre-existing bird data, and also to BTO, for species level and up-to-date WeBS data, so both sets of information can be included in the HRA and used as evidence to contribute to a robust assessment of effects from the Scheme alone and in combination with other plans and projects.

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<sup>9</sup> Presumably these estimates are available from the business case for use of public money on the Musselburgh Active Travel Network.

Please acknowledge receipt of my letter of objection, in writing. Please also advise me of next steps, and timescales. Thank you very much.

Yours Faithfully,

A solid black rectangular redaction box covering the signature area.