

<b>COMMITTEE:</b>	East Lothian Council
<b>MEETING DATE:</b>	28 April 2026
<b>BY:</b>	Depute Chief Executive – Resources and Economy
<b>REPORT TITLE:</b>	Musselburgh Flood Protection Scheme – Update on Delivery Strategy & Next Steps
<b>REPORT STATUS:</b>	Public

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## **1 PURPOSE OF REPORT**

- 1.1 To present the Delivery Strategy for the Musselburgh Flood Protection Scheme (“the Scheme”), on the next steps and seek Council approval to progress.
- 1.2 To update Council on the implications of the recently confirmed cost-cap from COSLA and the Scottish Government for cycle 1 flood risk management schemes, including the Scheme; and
- 1.3 To provide an update on the Public Local Inquiry (“PLI”) being conducted by a Reporter under the Flood Risk Management (Scotland) Act 2009.

## **2 RECOMMENDATIONS**

It is recommended that Council:

- 2.1 Approves the Scheme’s Delivery Strategy and acknowledges that there continues to be a pathway to deliver the Scheme.
- 2.2 Notes that the project team will return to Council for approval prior to commencing any procurement of construction works.
- 2.3 Approves commencement of Stage 6 (Detailed Design) of the project, which will be advanced concurrently with Stage 5 (Statutory Approvals).
- 2.4 Notes the continuing uncertainty over the Scottish Government’s funding of the national flood risk management programme, and the proposed approach to mitigating this risk.
- 2.5 Notes the progress with the PLI.

### **3 BACKGROUND**

- 3.1 The proposed Scheme has been in development since 2016 and remains in Stage 5 (which is known as “Statutory Approvals”).

A report was presented to Council in February 2026 to provide an update on progress with the PLI and the next steps for the advancement of the Scheme. Work has continued since then to consider emerging risks to the delivery of the Scheme and how best to mitigate those.

#### **Overview of delivery constraints**

- 3.2 The Scottish Government and COSLA have been reviewing cycle 1 of the national flood protection scheme programme since 2022. This has resulted in a number of constraints being applied to schemes on the programme. The constraints, as they apply to the Scheme, are summarised as follows:

- (a) The requirements of recommendation 2 were met when the proposed Scheme was notified before the deadline of 31 March 2024;
- (b) The requirements of recommendation 3 (to have a signed construction contract in place by 31 March 2026) no longer apply to the Scheme because it is now subject to a PLI. Consequently, the requirements of recommendations 8 apply instead;
- (c) Recommendation 8 states that *“There is justification for an exemption to recommendation 3 under the limited circumstances of a need for a public local inquiry or local hearing ....”*. The extension to the 31 March 2026 deadline is equivalent to the time from the point the Council notified the Scottish Ministers of the preliminary decision, until the date that a final decision is taken by the Scottish Ministers; and
- (d) A cap on how much funding will be provided to some schemes on the cycle 1 programme has now been confirmed.

#### **Update on recommendation 8 delivery constraint**

- 3.3 In February 2026 it was reported to Council that the deadline associated with recommendation 8 will depend upon the duration of the PLI. Whilst this is unknown, it was originally estimated that, based on experience of similar projects, the Scheme’s PLI could last approximately 24 months. On that basis, the requirements of recommendation 8 would require the Council to have a signed construction contract in place by October 2029. To obtain the signed contract, the Detailed Design (which is undertaken during Project Stage 6 – “Detailed Design”) and the construction procurement exercise (which is undertaken during Project Stage 7 – “Construction Procurement”) would have to be completed first.

- 3.4 In section 3.6 of this report it is highlighted that it is now understood that the PLI may be around 14 months with an expected outcome in December 2026. This is a substantially shorter period than the previously assumed 24 months. The logic of this change in estimated date is detailed later in this report.
- 3.5 Irrespective of the duration of the PLI, the impact of recommendation 8 means that it is essential to commence the Detailed Design earlier than previously programmed and as soon as reasonably possible. If the requirements of recommendation 8 are not met, then the Scheme will be removed from cycle 1 of the national flood protection scheme programme and funding will be withdrawn.
- 3.6 Following an update by the Planning and Environmental Appeals Division (DPEA) to East Lothian Council on 13 February 2026 the project team have revised the expected duration of the PLI from 24 months to 14 months, notwithstanding the actual duration remains unknown and difficult to estimate. The project team will monitor the programme as the PLI progresses and continue to review the impact of this revised estimate. The project team will continue to mitigate these risks to ensure that the Scheme can continue to meet recommendation 8, and all other external constraints. Updates will continue to be provided and as appropriate further authority will be sought from Council.

#### **Update on funding cap delivery constraint**

- 3.7 In February 2026 it was reported to Council that, as part of the Scottish Government and COSLA's review of the national flood protection scheme programme, a cap on total grant funding was being proposed. The project team committed to provide further updates to Council on this constraint once clarity emerged. The following is therefore a summary of what is known:
- (a) A new financial cap is introduced to those projects within cycle 1 of the national flood protection scheme programme;
  - (b) The cap is only to be applied to flood protection schemes that do not have their construction works contracts signed as of the 31 March 2026. Such flood protection schemes would have to be exempt from recommendation 3 due to recommendation 8 applying and thus be involved in either a Local Hearing or a Public Local Inquiry. Only three flood protection schemes fall into this category: Musselburgh, Newton Stewart and South Kinross;
  - (c) The cap for Musselburgh will be £35.6M, with the Scottish Government providing 80% grant funding and the Council funding the remaining 20%;
  - (d) This capped amount is far below the estimated cost of the notified Scheme, which was £106M;

- (e) The proposal included an option to submit a business case to seek further funding; however, no details of this process have yet been provided. The project team would seek guidance and clarity from Council on the content and approval of the final business case before submission to the Scottish Government.
- (f) It is our intent to address this risk by setting out three scenarios:
1. Plan A would be to achieve full scheme delivery at circa £106M through a business case. The team though believe that this is unlikely given funding pressure.
  2. Plan B (the likely approach) would be to submit a business case (subject to review and approval from Council) to deliver the areas of greatest and immediate risk. This would cover the upper catchment interventions including the reservoir modifications on the South Esk, the debris management by Whitecraig, and the new physical defences along the river corridor at a total cost of circa £70M. The construction would be undertaken in phases, within the constraints of available funding.
  3. Plan C would be to deliver the scheme in smaller packages relative to the cap affordability and future grant funding opportunity. This generates significant risk though in that it would not cover immediate and present risk.
- (g) It is understood that if a flood protection scheme is not completed within cycle 1 (where the capped grant funding applies), and takes a phased construction approach, then those future construction phases may be eligible for future national grant funding flood protection scheme programmes.

### **Update on Scheme Programme**

- 3.8 The Scheme's programme sets out the activities required to develop the Scheme, the duration of those activities, and the interdependence between them. The programme is a live document which is subject to legal processes and external factors which may impose constraints on how the Scheme is delivered.
- 3.9 The programme is updated regularly by the project team to reflect the latest available information. Critical changes to programme are regularly reported to Project Board. An updated programme on the next steps has been provided in Appendix A to present the likely activities between now and the recommendation 8 deadline.
- 3.10 The approach to constructing the Scheme has yet to be finalised and is subject to the numerous constraints discussed earlier in this report. A Scheme Delivery Strategy has been developed to provide a framework for planning the next stages of the project. Further work is still required to fully identify and assess different options for phased construction if

that becomes necessary to comply with funding constraints. As a minimum, this work is expected to continue through the rest of 2026.

### **Development of the Scheme Delivery Strategy**

- 3.11 The Scheme's Delivery Strategy is provided as Appendix B. This is a live document that is subject to change as new information becomes available. It was programmed to be developed during Stage 6 but has been accelerated so that it can inform the decision to commence Stage 6 early.
- 3.12 The purpose of the Delivery Strategy is to consider programme, resources, and risks, and to develop an approach that gives the project the best chance of being delivered successfully.
- 3.13 At the outset of the project in 2017, it was anticipated that the Delivery Strategy would comprise several individual plans or strategies, as follows:
  - (a) The approach to final estimation of cost and time;
  - (b) The approach to construction delivery (including phased construction);
  - (c) The approach to construction procurement;
  - (d) The approach to land access and compensation;
  - (e) The approach to risk management (and definition of the contingency pot as part of the overall budget); and
  - (f) The approach to operation and maintenance of the Scheme once constructed.

### **Commencement of the Detailed Design**

- 3.14 The Scheme is being advanced through the PRINCE2 Project Management System in nine discrete stages. Whilst each stage has been programmed to be delivered sequentially, PRINCE2 does not preclude the advancement of stages concurrently.
- 3.15 Stage 6 is the next stage for the project and consists of the following major activities:
  - (a) Development of the detailed design;
  - (b) Additional Surveys to support the detailed design, which may include further ground investigations, structural surveys, topographic surveys, archaeological surveys and public utilities surveys;
  - (c) Assessment of the need for diversion of public utilities affected by the Scheme;

- (d) Acquisition of consents and licences required to construct the Scheme;
  - (e) Consultation with relevant regulatory organisations, stakeholders and landowners on the detailed design;
  - (f) Development of the strategy for procuring the construction of the Scheme;
  - (g) Development of the Operational and Control Processes and Systems for the Scheme;
  - (h) Update to the Scheme Cost Estimates based on the emerging detailed design; and
  - (i) Preparation of the Stage 7 plan.
- 3.16 Under the Scheme's project governance, the Project Board is responsible for instructing the project team to commence a new stage of the project. Prior to issuing such an instruction, the Project Board sought approval from Cabinet in January 2020 to commence Stage 4, and from full Council in January 2024 to commence Stage 5.
- 3.17 The Project Board is, therefore, now seeking approval from Council to instruct the commencement of Stage 6. Whilst Stage 5 of the project is not yet complete, it is necessary to commence the detailed design early to mitigate the risk posed by the requirements of recommendation 8 as set out section 3.5 of this report. If approval is given by Council to commence Stage 6, the detailed design would begin around August 2026, which is the date provided by the Design Consultant in their programme and which allows for pulling together the necessary resources.
- 3.18 While the Stage 6 plan has yet to be finalised, it is summarised as follows:
- (a) The estimated duration of Stage 6 is approximately 24 months;
  - (b) The estimate cost of Stage 6 is approximately £6 million (which is for more than just the design work and includes all of the activities noted in Section 3.15 above);
  - (c) Within about 6 months of the start of the Detailed Design, the Delivery Strategy's approach to construction procurement and construction phasing will need to be finalised. This is necessary to avoid abortive work and ensure that construction procurement can commence in sufficient time to achieve the requirements of recommendation 8;
  - (d) Starting the detailed design early has minimal impact on the number of resources required to carry it out. Notwithstanding this, there will be less resiliency within the project team because key Council officers will be involved in both the PLI and the detailed design at the

same time. This resource implication is detailed in section 5.2 of this report.

- (e) The project team will prepare a Consultation Plan for the Detailed Design for review and approval by Project Board. The approach to consultation for the Detailed Design will be different from that undertaken for the Outline Design. The consultation will be tailored to provide information to Regulatory Organisations, Key Stakeholders and relevant Landowners / Occupiers. The consultation will not be seeking feedback on design decisions as the Detailed Design must be consistent with the proposed Scheme as notified in March 2024, as well as with the requirement of other consents and licences that are required to deliver the Scheme.
- (f) The project team will continue to seek to deliver the 54 proposed changes to the proposed Scheme as instructed by Council in September 2025.

### **Preparation for the PLI**

- 3.19 It has been confirmed that Paul Cackette CBE, LL.B (Hons), Dip LP, NP has been appointed to conduct the PLI and, thereafter, to report to the Scottish Ministers. A copy of the letter of appointment is provided in Appendix C.
- 3.20 The letter of appointment states that: *“The completed report to the Scottish Ministers should be submitted to the Head of Delivery [of the Scottish Government’s Department for Planning and Environmental Appeals (the “DPEA”)], in final form and ready for issue by 1 December 2026 to allow the target date of 4 December 2026 to be met.”* This presents the first indication of timescales for the PLI and may suggest a shorter duration than the project team had previously assumed.
- 3.21 Officers will continue to support and engage through the PLI, but if the final PLI report is submitted to the Scottish Ministers in December 2026, then the final decision may be taken as early as January 2027, some 9 months sooner than assumed. Council will continue to be kept fully updated on the outcome of this statutory process.
- 3.22 The Scottish Government’s funding eligibility criteria is directly linked to the date on which the Scottish Ministers take a final decision on the Scheme. To remain eligible for funding, the Council must have a signed construction contract in place by a specific date, equivalent to 31 March 2026 plus an extension equal to the time lost as a result of the PLI. If a final decision on the Scheme is taken in December 2026, the deadline for a signed construction contract will be February 2028. The implications of this are discussed later in this report.

- 3.23 Anderson Strathern, who are now leading the PLI process on behalf of East Lothian Council, have engaged the services of James Findlay King's Counsel to represent the Council.
- 3.24 The Reporter issued a Letter of Notice of the PLI which is dated 13 March 2026, and which is provided in Appendix D.
- 3.25 The Letter of Notice invites both Relevant Objectors and those who submitted a Representation on the EIA to Opt-In to the formal PLI processes. The deadline for responding to the Reporter is 22 May 2026.

#### **Publication of Objections by DPEA**

- 3.26 In October 2025, the council notified the Scottish Ministers of the preliminary decision on the Scheme and, in accordance with the Act, provided copies of the Scheme documents and all valid objections to the Scottish Government.
- 3.27 In February 2026, the DPEA published all objections to the Scheme on their website at the following location:  
<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=128111>.
- 3.28 Following the DPEA's publication of these documents, a number of individual objectors complained to Council and a review was undertaken. The review determined that responsibility for the publication did not sit with council. Complaints were also made to the Scottish Government, and all relevant material was subsequently taken offline pending an urgent internal review. A copy of an email from the DPEA to 'DPEA Contacts' on this matter is provided in Appendix E.
- 3.29 Whilst the outcome of the review is not yet known, the letter indicates that it is appropriate for the names and addresses of relevant objectors to be published, but that some non-permissible personal data was also inadvertently released.

## **4 POLICY IMPLICATIONS**

- 4.1 The Scheme is an important element of the Council's approach to resilience and a means of adapting Musselburgh to the effects of climate change. The Scheme represents one of the largest flood protection schemes in Scotland, with in the order of 3,200 properties (which includes 2,600 residential properties, 350 businesses, and significant key infrastructure) being protected, and would be a major contributor to adapting to the effects of climate change including communities potentially affected in the event of a flood and the local and national economies including key strategic infrastructure: e.g. Scottish Water Assets; other public utility assets; the A1 Trunk Road; the Scottish Power Ash Lagoons etc.

- 4.2 The Scheme supports the East Lothian Council Plan 2022-2027 and the Council's Climate Change Strategy 2025-2030.
- 4.3 Aligning with the principle of Safeguarding our Future and Strategic Outcomes, under the Travel, Connectivity and Infrastructure section, the Scheme clearly delivers on the need to ensure that communities are protected from the impact of floods.

## **5 RESOURCE AND OTHER IMPLICATIONS**

### **5.1 Financial:**

- 5.1.1 The financial implications of the project / Scheme will be finalised in the future. This will be after approval of proposed Scheme design, and after the procurement exercise for the main works contract (or phased contracts – to be confirmed), in accordance with the processes associated with flood protection schemes advanced under the Scottish Government's cycle 1 flood protection scheme programme and its funding eligibility criteria. Costs associated with the scheme will be brought back to Council for approval.
- 5.1.2 Officers have been progressing with the design of the Scheme aligned to national legislation and national funding criteria. It is anticipated that the cost of this Scheme, if approved, will be met from a combination of:
- a) The Scheme remains a project identified within cycle 1 of the national flood protection scheme programme, and as such aligned to the national funding criteria which define that the Scottish Government will provide 80% of the eligible cost of the Scheme (within the recently revised COSLA recommendations).
  - b) The balance of funding will be met from a combination of capital funding provided by the council and maximising external funding streams to support the delivery of multiple benefits identified within the Scheme.
  - c) It is highlighted that, in accordance with the Scheme's PRINCE2 Project Management System, that at any point in the delivery of the project the Council is only liable for the costs authorised within the project stage that is open.
- 5.1.3 Further to the report to Council in February outlining the emerging cost cap, and now the confirmation that the cap is in place this scheme now

has a capped cost of £35.6M in cycle 1. At this point in time, it is too early to confirm the specific impact on the Scheme. The development of the detailed design and the delivery strategy are critical activities to feed into reporting back in full to Council on what parts of the Scheme may be delivered within this available budget of £35.6M.

The Stage 6 Detailed Design works costs will be covered 80% by Scottish Government funding and the remaining 20% being covered by the Council.

5.1.4 It is expected that there will be additional costs associated with the extension to the Scheme's Project Programme due to the assumed 14 additional months to complete the PLI: in particular, this references the cost of inflation to the overall Scheme costs over those 14 months. This cost has not yet been determined, and it is intended that this matter will be reviewed in full when the Scheme Costs are next revised in full. Equally, given the agreed cost cap, it is anticipated that any phased approach is likely to uplift the overall cost of the scheme and impact upon the capital planning used thus far to cover the Council's 20%.

## 5.2 Human Resources:

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

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

- (i) Potentially, representation from external independent witnesses engaged to support the council's positions.

### 5.3 Other (e.g. Legal/IT):

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

### 5.4 Risks:

5.4.1 A funding review of Cycle 1 of the National Flood Protection Scheme Programme has been undertaken jointly by COSLA and the Scottish Government. Following this review, additional constraints for funding eligibility have been imposed. The next deadline that is relevant to this proposed Scheme is that it must have its construction works contract in place, as defined by Recommendation 8. Through the report to Council in February 2026 we identified that this must happen by around October 2029. As detailed elsewhere in this report, it is now understood that the PLI may conclude at an earlier date therefore this requirement may now have to be complete by February 2028. This risk and the actions being taken to mitigate it are currently being explored – the new logic associated with dates only emerged in March 2026 as detailed elsewhere in this report.

5.4.2 National discussions remain ongoing given the challenging fiscal landscape, and in particular the level of national funding to support the growing costs of progressing wider flood protection schemes within national legislation. These discussions include the available funding, and established criteria to support Cycle 1 of the National Flood Protection Scheme Programme. Officers have been proactively engaged in these national discussions through both COSLA and the Scottish Government, and clearly these recent changes to national funding criteria will have a significant impact on the affordability of the overall proposed Scheme and how it is delivered. This risk and the actions being taken to mitigate it are detailed in full elsewhere in this report.

5.4.3 More widely, the current complex legislative process to progress flood protection schemes may place further costs and delays on the proposed Scheme and will impact on availability of both national and council funding, including funding to support the delivery of multiple benefits. As the PLI and detailed design progress, it will be important that Members

are updated on the associated funding and affordability of the proposed Scheme.

The length of the PLI is unknown and as such it is necessary to accelerate the detailed design in order to meet the COSLA requirements.

5.4.4 The early commencement of the detailed design, and thereby the commencement of Stage 6 within the newly imposed financial cap of £35.6M in cycle 1, presents new risks to the council which are detailed in full elsewhere in this report. This approach is, however, being taken to mitigate and avoid even bigger risks to the Council as noted below:

- (a) That if the detailed design is not started early that the Scheme will not be able to meet the requirements of Recommendation 8 and thus will be removed as a flood protection scheme on the national cycle 1 flood protection scheme programme.

## 6 INTEGRATED IMPACT ASSESSMENT

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

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

**or**

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

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

Subject	Impacts identified (Yes, No or N/A)
Storage/collection of personal data	N/A
Other	N/A

The project team is of the opinion that the IAA published in September 2025 remains valid as the council reports in the interim have been produced only with updates and no changes to the outline designs presented previously. It is anticipated that a refreshed IAA will be provided following the detailed design works commencing in Q3 of 2026.

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

[https://www.eastlothian.gov.uk/info/210602/equality\\_and\\_diversity/12014/integrated\\_impact\\_assessments](https://www.eastlothian.gov.uk/info/210602/equality_and_diversity/12014/integrated_impact_assessments)

## **7 APPENDICES**

- 7.1 Appendix A – Programme
- 7.2 Appendix B – Delivery Strategy
- 7.3 Appendix C – Letter of appointment of Reporter
- 7.4 Appendix D – Letter re Notice of PLI
- 7.5 Appendix E – DPEA email

## **8 BACKGROUND PAPERS**

- 8.1 Report to Cabinet in May 2016 – approval of the Local Flood Risk Management Plan (Forth Estuary) which included a proposed flood protection scheme for Musselburgh.
- 8.2 Report to Cabinet in January 2020 – approval of the 'Preferred Scheme' concept to be advanced to an Outline Design.
- 8.3 Report to Council in August 2022 – approval of inclusion of the Ash Lagoons Seawall within the Scheme, and update to hydraulic model C.
- 8.4 Report to Council in October 2022 – approval of the project's assessment of Musselburgh's flood risk, and timeline for advancing the outline design.
- 8.5 Motion to Council in August 2023 – Note of Progress and Request for Information.

- 8.6 Report to Council in October 2023 – approval to advance Natural Flood Management (NFM) in the River Esk catchment independently of the Scheme and as part of the future Local Flood Risk Management Plan (LFRMP).
- 8.7 Appendices A-F, available in the Members’ Library, January 2024 Bulletin, Ref: 08/24 - Agendas, reports and minutes | East Lothian Council.
- 8.8 Report to Council January 2024 – approval of Musselburgh Flood Protection Scheme – Presentation of the Outline Design.
- 8.9 Members Library Report in September 2025 – Update on the Coastal Change Adaptation Process (CCAP).
- 8.10 Members Library Report in September 2025 – Update on the Esk Lothian Catchment Partnership (LECP).
- 8.11 Report to Council September 2025 – Musselburgh Flood Protection Scheme – Preliminary Decision on Proposed Scheme.
- 8.12 Report to Council February 2026 – Musselburgh Flood Protection Scheme – Update on PLI & Next Steps

## 9 AUTHOR AND APPROVAL DETAILS

### Report Author(s)

<b>Name</b>	Alan Stubbs
<b>Designation</b>	Project Executive – Musselburgh Flood Protection Scheme
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<b>Date</b>	

### Head of Service Approval

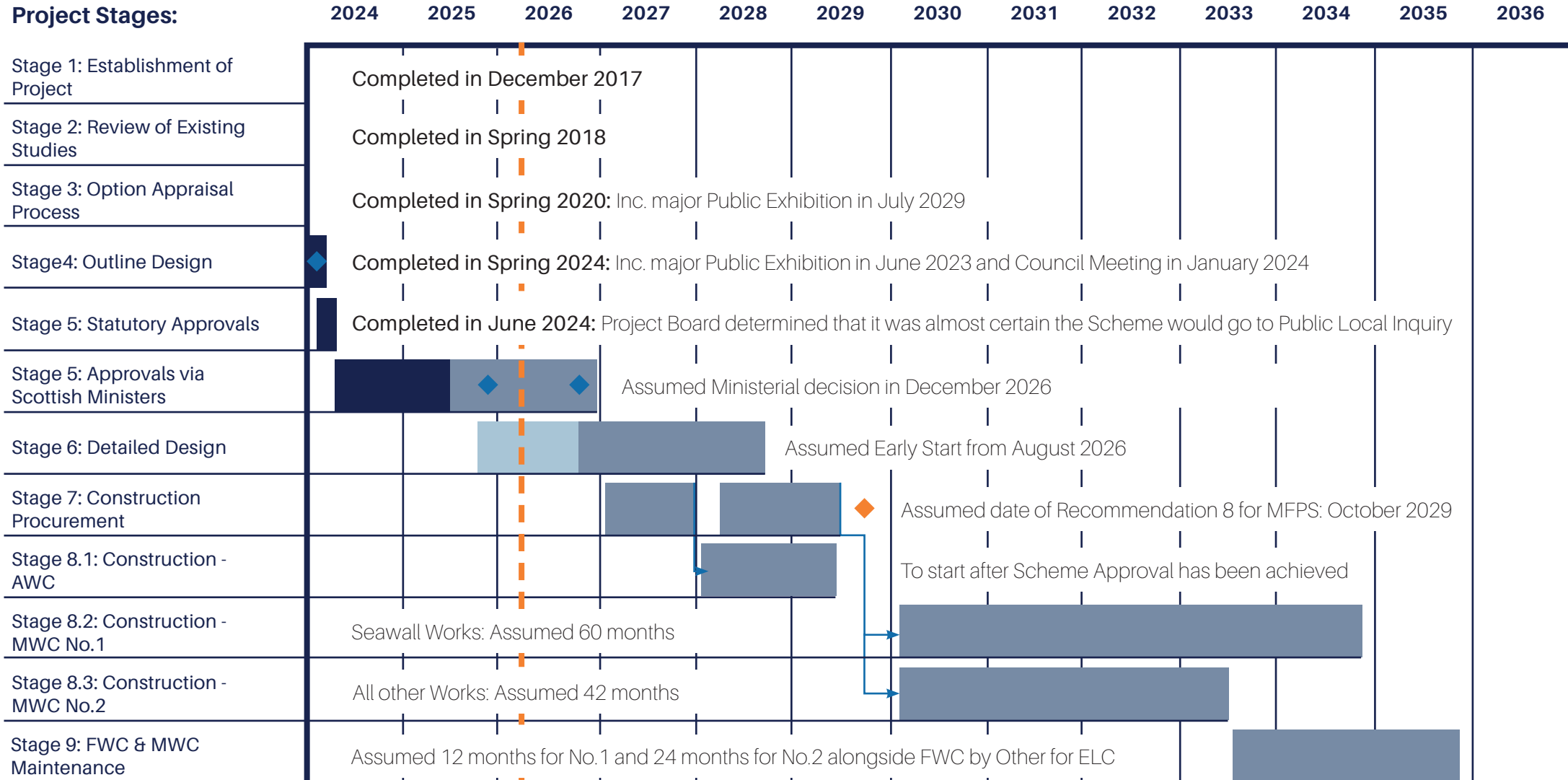
<b>Name</b>	Tom Reid
<b>Designation</b>	Head of Infrastructure
<b>Confirmation that IIA and other relevant checks (e.g. finance/legal) have been completed</b>	Confirmed
<b>Approval Date</b>	15 April 2026

# Schematic Programme by Project Stage



Revisions Date: 13/03/2026

## Schematic Scheme Programme - By PRINCE2 Stage



# Illustration of Delivery Strategy Pathway



Revisions Date: 09/04/2026

## Constraints deriving from the review of Cycle 1 of the National Flood Protection Programme

Recommendation 8	Funding Cap	Business Case	Phased Construction
This imposes a deadline on when the construction contract must be signed. The deadline depends upon the duration of the PLI, which is not known yet, but may be as early as February 2028.	This imposes a limit on how much funding the Scottish Government will provide for the Scheme. The Scheme's cap is £35.6M based on 80% from the Scottish Government and 20% from East Lothian Council.	The COSLA report indicates that, in exceptional circumstances, it may be possible to submit a Business Case for additional funding from the Scottish Government in excess of the funding cap.	The COSLA report indicates that phases of construction in excess of the funding cap could be put forward for consideration in subsequent funding cycles.

## Project Delivery Strategy

	Plan A	Plan B	Plan C
<b>Cycle 1</b>	Submit a Business Case to the Scottish Government for funding the entire Scheme (estimated at £106M) within Cycle 1.	Submit a Business Case to the Scottish Government for funding the parts of the Scheme on the River Esk corridor (estimated at £70M) within Cycle 1.	Deliver Phase 1 of the Scheme within the funding cap of £35.6M. Further work is required to determine which parts of the Scheme can be delivered within this cap.
<b>Beyond Cycle 1 (e.g. 2, 3)</b>	Funding to be sought through future funding cycles to deliver the remaining phases of the Scheme		

## Detailed Design

Detailed Design must be carried out before a construction contract can be procured. Designing the whole of the Scheme within Cycle 1 funding gives East Lothian Council greatest flexibility if the Scheme is to be constructed in phases and puts the council in a strong position when seeking funding for future construction phases as part of subsequent funding cycles.

## Appendix C

### MUSSELBURGH FLOOD PROTECTION SCHEME at MUSSELBURGH FLOOD PROTECTION SCHEME MUSSELBURGH EH21 7BL

Our ref: FPS-210-1

Planning Authority ref: CG/MFPS/251024

#### LETTER OF APPOINTMENT

Paul Cackette CBE, LL.B (Hons), Dip LP, NP you are appointed to report to the Scottish Ministers, in accordance with the provisions of the Flood Risk Management (S) Act 2009 and the Regulations made under that Act (or having the same effect). You are not being engaged as an employee and your appointment does not attract any statutory protection available to employees.

The completed report to the Scottish Ministers should be submitted to the Head of Delivery, in final form and ready for issue by 1 December 2026 to allow the target date of 4 December 2026 to be met. Any other date must be agreed with them. You will be paid for your work on the case according to the schedule of fees. You will also be reimbursed for appropriate travel and subsistence expenses providing these are supported by receipts as necessary. The Schedule which forms part of this letter of appointment details terms and conditions relevant to your appointment and should be read prior to accepting this appointment

This appointment is subject to any recall of jurisdiction or the appointment of another person to determine the appeal. In either case you will be notified.

Please retain a copy of this appointment for your records. If you are not able to accept this appointment, it would be helpful to us if you could explain why at your earliest opportunity.

*Martyn Connolly MCMI*

Head of Delivery

Enc : Schedule to Letter of Appointment

Telephone: 0131 244 6927  
E-mail: [hazel.bailey@gov.scot](mailto:hazel.bailey@gov.scot)

East Lothian Council  
Sent By E-mail

Our ref: FPS-210-1  
Planning Authority ref:CG/MFPS/251024

13 March 2026

Dear To whom it may concern

### **FLOOD PREVENTION SCHEME: MUSSELBURGH FLOOD PROTECTION SCHEME MUSSELBURGH EH21 7BL**

I am writing to you with reference to the proposed Musselburgh Flood Protection Scheme promoted by East Lothian Council. This letter is addressed to the Council and to the objectors to the Scheme as notified to me.

The Scheme proceeds under the Flood Risk Management (Scotland) Act 2009 and the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010. Under paragraphs 5(5) and 6(2) of schedule 2 to that Act, Scottish Ministers have decided themselves (rather than the Council) to determine the matter of whether the Scheme should be confirmed or refused (including, if confirmed, whether or not with modifications).

A Reporter, Mr Paul Cackette CBE, LLB (Hons) Dip LP NP, has been appointed to carry out the examination and hold a Public Local Inquiry (or other form of oral procedure, on the basis as set out below) with respect to the objections to the Scheme. He will then report his findings and recommendations to Scottish Ministers to inform that determination by them.

I am assisting the Reporter with the necessary administrative arrangements in relation to the Scheme. All communications relating to the examination of the Scheme should be sent to me, using my email (or postal) address.

#### **Contact details**

For any recipient who is receiving this letter by post, I would be grateful if you could advise me of an email address for communication with you, if possible. This will speed up communication on relevant matters relating to your interest.

Any changes in email addresses (or changes in contact details or arrangements/preferences for contact) by any party in the course of the examination should be advised to me.

If you have, or intend to seek, legal or other advice in this process, please let me know and pass this letter to those advisors without delay.

If you are an objector but no longer wish to maintain your objection (or at any time in this examination wish to withdraw that objection), please let me know as soon as you are able. I can then update my records to ensure that your position (as no longer maintaining an outstanding objection, to be considered by the Reporter) is accurately recorded. Unless I hear to that effect, the Reporter will proceed on the basis that you wish to maintain your objection.

### **Scottish Government Guidance on examinations into Flood Prevention Schemes**

The intention of the Reporter is that the Flood Risk Management (Scotland) Act 2009 Local Authority Functions under Part 4 – Guidance will apply, along with the above Act and Regulations. A link to that [guidance](#) is attached. Your attention is drawn to the terms of that Guidance, to assist your understanding of the process in the examination to be held. See in particular paragraph 2.22 in respect of the examination and the procedure to follow after this examination. See also the flow chart at Appendix A of that Guidance on the legal process.

The Guidance explains the position in respect of compensation in consequence of the Scheme. But matters of compensation are not in themselves within the remit of the Reporter in this examination of objections. Assessment of entitlement to (and amounts of) compensation are considered in a separate type of process, as explained in the Guidance.

### **Public Local Inquiry**

As you may be aware, the decision of Scottish Ministers as above to determine the matters arising means that the formal process to be applied by the Reporter in this examination is that of a Public Local Inquiry (known as a PLI).

However, the position of the Reporter on the procedure to adopt to ensure a full, detailed and rigorous examination is for him to decide (provided it meets the requirement at paragraph 7(2) of Schedule 2 to the 2009 Act). He wishes me to stress to all participants that the intention is to make the process as informal and relaxed as possible with no undue formality of process. Full opportunities for participation will be given (where desired) with no obligation to instruct legal or other representatives. All parties will be treated equally and the Reporter will use best endeavours to treat all parties fairly and to proceed as efficiently as possible.

Moreover, the Reporter is **not** at this stage minded to proceed with full formal PLI arrangements but that his intention is to hold matters on the basis of a more informal hearing, where appropriate. That process would apply if the examination were being done by East Lothian Council themselves. He is aware that certain matters in dispute are factual in nature and may need a more formal (PLI style) process to make findings where factual matters remain disputed. But he wishes to restrict the use of the more formal PLI process (as is explained in the Guidance) as far as possible.

Accordingly, Annex G of the Guidance referred to above should be considered by participants. This sets out procedures to be observed if the applicable process is to be a hearing and in pre-hearing preparation. These procedures are proposed to be applied. If you disagree to the use of the procedures at Annex G (where doing so is possible), please let me know within 14 days, explaining why. Due to the complexity of the matters and the likely partial need for a full PLI, the 12 week target in Annex G will not apply (see below for more on timescales).

### **Practicalities of a Hearing/PLI (including timings)**

Arrangements in more detail for the Hearing/PLI will follow, including as to location, duration and dates.

Due to the likely numbers of opted-in objectors (see below on opting in), this Hearing/PLI is likely to be held In Person (rather than virtually) and, for reasons of cost and efficiency, the Reporter hopes this to be at an East Lothian Council building (in or around Musselburgh if possible). If you have any objection to such a location (as a council building), please let me know within 4 weeks, explaining why. Doing so is though envisaged in the Guidance. The Reporter would be grateful if the Council could consider options for the location (as suitable for this purpose) and advise me.

While the Reporter would wish to avoid holding the Hearing/PLI over the Summer months of July to mid-August or other holiday periods (and will endeavour to hold this on dates convenient to most), he cannot guarantee that the Hearing/PLI will be on dates convenient to you.

At present, he aims to hold the Hearing/PLI between mid September and end October 2026. The duration is to be decided. The scheduling or timetabling of the Hearing/PLI will be decided once the topics (as below) are determined, in accordance with an Agenda to be provided in due course and once the balance between a Hearing and a full PLI can be more clearly anticipated. The aim is to minimise inconvenience for objectors so that they only need attend at times when specific issues of interest to them arise.

The Hearing/PLI may be webcast (if that can be facilitated) and participation will be treated as consent for data protection and GDPR purposes (on which see more below). Generally the public seating areas will not be directly filmed. However by entering the meeting venue and using the public seating area, you are consenting to being filmed and to the use and storage of those images and sound recordings and any information pertaining to you contained in them for webcasting and training purposes, for the purpose of keeping historical records and making those records available to the public.

It should be noted that this is a public Hearing/PLI at which anyone can attend but is not a public meeting and so there will be not necessarily be a right or opportunity to address the Hearing/PLI for non-participants (subject to the discretion of the Reporter). I am though exploring with the Community Council whether (and how) a separate, and wider, community engagement meeting before the Reporter can be arranged.

### **Pre Inquiry meeting**

On the basis of a preliminary consideration, the Reporter at this stage is not intending to hold a pre-inquiry meeting in relation to the matters before him. I will let you know if this changes.

### **Topics for examination and Statements of Case**

The Reporter has noted the [summary of the topics or headings of objection](#) (along with frequency of occurrence) as is lodged with him. A copy of that is attached to this letter as addressed in more detail in the attached [Report](#). Decisions on clustering topics to maximise efficiency of examination will be made later. Meantime, the objectors are asked to consider that summary and let me know, within 14 days, if their objection(s) are not covered by any of the general headings in that summary.

Based on that summary, the Council are requested, within 4 weeks of today's date, to submit to the Reporter a Statement of Case, setting out the justification being made by them for the Scheme, confirming the compliance with all notification and notice requirements under the 2009 Act and the above Regulations and their responses to the objections (and other representations) received. If more time is needed, please let me know.

That Statement should include (a) confirmation that the Scheme to be examined now contains the 54 amendments stated as made in response to consultation (b) a note of whether the Council seek confirmation with any further modifications and (c) confirmation that all received objections were validly made on time or, where late, are nevertheless accepted as valid objections (as appears, from the Committee report of 30 September 2025, to be the case).

Separately the Reporter requests that the Council provide a note that confirms which objectors (if any) are proceeding under regulation 12(2) of the above Regulations (objectors with an interest in any land on which the scheme operations are to be carried out or which may be affected by them or by any alteration in the flow of water caused by them) and whether the requirements of that provision are met.

The Reporter would in general be content if objectors wish to rely on their letters or emails of objection as lodged as being their statement of reasons for objecting (in terms of regulation 12(1) of the above Regulations) but equally would be happy to receive a further statement of case from any objector, in response to the Statement of the Council. Objectors will be advised as and when the Council Statement is submitted and will have 4 weeks from being so advised to submit a statement in response (if desired).

### **Opt in to participation in the examination**

Due to the large number of objections across a range of themes, the Reporter is proceeding by way of arrangements for objectors to opt in to participation in the oral examination. I would stress though that full consideration will be given to objections regardless of whether objectors opt in or not. This is an arrangement to simplify the examination and reduce risks of duplication.

You should opt in to the examination if you wish to attend the public Hearing/PLI as a participant (see above) or if you wish to make further written representations in support of your objections or submit any documents in support (or any or all of these).

To opt in to the procedure, please reply to me **within 10 weeks of the date of this letter**, confirming to that effect. It is important that you do so, if you wish to continue to participate in this matter.

**If you do not opt in, the Reporter will treat you as relying on your existing objection alone and I will not be in touch further in relation to the examination (nor will you be advised in detail of arrangements for the public Hearing/PLI). You would of course still be entitled to attend the Hearing/PLI, as a public hearing, though not participate.**

### **Topics for consideration at the Hearing/PLI**

As above, decisions on the content and scheduling of the Hearing/PLI will be made later in the process. The Reporter will invite views of parties to ensure the efficient use of time (in particular for objectors). He intends to prepare a clear Agenda of issues for discussion,

informed by the views of participants. Once the opt in timings are passed, the shape of the oral procedure should become clearer.

He would wish though to indicate, primarily to the Council, that he is likely to wish to hear evidence (through witnesses in attendance) and representations on the scheme justification (including financial), the process of options appraisal and design (including flood prevention alternatives to having a scheme and alternatives to the adopted scheme), the time scales for implementation (if confirmed), the responses to all objections, the Council position in relation to statutory consultation responses, the process and outcomes of public consultation on the development of the scheme, the Environmental Impact Assessment (and related matters concerning the Habitats Regulation Appraisal and the related appropriate assessment) and an assessment of the planning context under the Town and Country Planning (Scotland) Act 1997. The last of these is relevant as confirmation of the Scheme will comprise a deemed planning permission, also granted by Scottish Ministers, in exercise of planning functions.

### **Documents**

If you intend to refer to any documents at the Hearing/PLI, these should be sent to me ahead of the final deadline for documents which will be no later than 4 weeks in advance of the start date of the Hearing/PLI, once set.

However, it would be preferable if any documents to be relied on were submitted as soon as available rather than being left to that period.

This is anticipated as applying more to the Council than objectors but is relevant to both. The Council are requested to review the documents considered relevant and in particular are requested to lodge with me (a) all relevant documents establishing compliance with the notification and notice requirements under the 2009 Act and the above Regulations and (b) the EQIA in relation to the Scheme.

Please note that DPEA cannot accept links to documents that are stored on external websites as these can change. All documents should therefore be provided in pdf or word format.

More generally, the responsibility for ensuring that papers in relation to the Scheme are made available for public inspection remains with the Council (meeting the requirements of paragraph 2(1) and 2(2) of Schedule 2 to the 2009 Act). I would be grateful if they could advise me of the address at which copies of statements, documents and precognitions (virtual and hard copy) will be made available for inspection, as appropriate and so far as required.

### **Precognitions (witness statements)**

In aiming at proceeding broadly in the Hearing format, the Reporter will not expect any objector to lodge a witness statement in respect of their own evidence. These objectors can simply attend and speak to their objection at the appropriate stage in the Agenda. Council officials and witnesses will address matters raised so far as relating to such topics, in discussion led by the Reporter.

However, where topics are being addressed more formally in a PLI session or where objectors want to call their own witness (expert in technical areas or otherwise), different procedures will apply. In that case, such a person attending in order to give evidence at the

oral proceedings will be required to provide a prepared statement (known as a precognition).

This will apply to all witnesses or attendees on behalf of the Council, setting out their professional qualifications and a summary of the evidence to be given.

Further guidance on precognitions will follow.

### **Site visit**

The Reporter will wish to carry out an unaccompanied site visit, to see the proposed Scheme area from a public road or public place. For reasons of practicality, holding a general site visit accompanied by parties will not be feasible or practicable.

However, if any objector considers that there is merit in a location specific site visit to understand their individual objection (attended only by them and a Council representative), please let me know. Equally, if the Council wish the Reporter to see part of the site requiring access over private land, please let me know. This can be arranged at or around the time of the Hearing/PLI.

### **Other parties**

As there are a number of other bodies or parties who have engaged with the Council or otherwise may be (or wish to be) considered as interested parties in this examination, this letter is being sent to them separately. These bodies may choose to opt in to participate in the examination in the same way as objectors, within the same time scales as set out above. If they do so, their representations will be placed on the DPEA website as below. Decisions on the nature of their engagement in the examination (where they have not lodged objections) will be made by the Reporter later in the process. This may include updates from these bodies as to their views.

### **Appeals Website**

Documentation relating to this case has been published on the DPEA website and can be searched under the reference FPS-210-1. Further documents will be added as they become available. This will include responses by the Council to various requests to them as set out in this letter.

In order to comply with the Data Protection legislation and GDPR, we remove all signatures, personal telephone numbers and personal e-mail addresses from documents we publish. More information on our publication rules and the DPEA can be found at [Planning and Environmental Appeals: privacy notice - gov.scot](#)

### **Other matters**

As above, I will contact you regarding the dates planned for the oral procedure and other relevant matters in due course.

If any participants or attendees have mobility or other special requirements, please let me know immediately the nature of your needs. We will endeavour to accommodate you.

For information regarding expenses please refer to [Planning Circular 6/1990: awards and expenses - gov.scot](#) and the introduction to SODD Circular 17/1998. Regardless of which

form of oral procedure is adopted, that procedure is to be treated as a public local inquiry for the purposes of that Circular of 1990. Please see also page 70 of the Guidance.

If you wish to discuss this case or are unhappy with any aspect of our service, please do not hesitate to contact me. If you remain unhappy, or wish to complain, then please write to the Head of Performance and Administration, Planning and Environmental Appeals, Scottish Government, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR.

A guidance note about making complaints is available on our website at [www.scotland.gov.uk/Topics/Built-Environment/planning/Appeals/ourperformance/commentsandcomplaints](http://www.scotland.gov.uk/Topics/Built-Environment/planning/Appeals/ourperformance/commentsandcomplaints).

I trust this information is clear. Please do not hesitate to contact me if you have any queries or require a paper copy of any of the guidance or documents referred to in this letter.

Yours sincerely,

*Hazel Bailey*

**HAZEL BAILEY**  
**Case Officer**  
**Planning And Environmental Appeals Division**



## Appendix E

**From:** [Planning and Environmental Appeals Division - Scottish Government](#)  
**To:** [Hazel Bailey](#)  
**Subject:** Musselburgh Flood Prevention Scheme – Allegations of a data breach  
**Date:** 24 February 2026 12:00:34

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Our Ref: FPS-210-1

Dear DPEA Contact,

We are aware of a complaint involving documents published on our web portal in connection with the Musselburgh Flood Prevention Scheme and are writing to update you on this matter.

As soon as a member of the public brought this issue to our attention on Friday, all relevant material was proactively taken offline and an urgent internal review was launched.

We recognise that reports circulating online and in the media may have caused some concern, and we want to provide clarity and reassurance.

As part of the statutory process for schemes of this kind, it is routine and lawful for names and postal addresses of those who have provided a representation to be published. This supports transparency and public participation.

However, during our initial review, we identified that alongside information that is routinely published, some non-permissible personal data was inadvertently released.

We want to reassure you that we are treating this matter with the highest priority, and we are taking careful and proportionate steps to understand what has occurred.

Once the review is complete, we will re-list the materials available for public viewing, which will include information such as the names and addresses of those who have made a representation.

If any information about you was inadvertently released, we will contact you directly.

If you have any questions or concerns in the meantime, please feel free to contact us.

Regards,

Martyn Connolly MCM

Head of Delivery

Planning and Environmental Appeals Division (DPEA)  
Scottish Government  
Ground Floor, Hadrian House  
Callendar Business Park  
Falkirk, FK1 1XR