East Lothian Council

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Mr Danny McCluskey
Jacobs
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Dear Mr McCluskey,

Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 and Amendment Regulations 2017 EIA screening opinion - Musselburgh Flood Protection Scheme, East Lothian

I refer to your request for the adoption of an Environmental Impact Assessment (EIA) screening opinion for the proposed Musselburgh Flood Protection Scheme (MFPS) under the provisions of the above Regulations (2010) and as amended (2017). East Lothian Council has considered the scheme and the supporting information, and carried out internal consultation with various Council services and external consultation with a number of Key Agencies to inform the decision. The decision and relevant issues that have been taken into account in arriving at the decision are set out below.

Please note that this decision is based on the information contained within the supporting report and appendices. Any changes to the project, depending on their nature, could require a further screening opinion to be issued. It is important therefore that continuous engagement with ELC Planning Service is undertaken throughout the process.

Background and decision-making process

The proposed Musselburgh Flood Protection Scheme (MFPS) is a large scale infrastructure project in and around Musselburgh including parts of the River Esk, Fisherrow Harbour, Eskmills and Pinkie Burn. The project comprises of physical defensive installations (walls, embankments, demountable barriers and flood gates) as well as pumping stations, debris traps, and possible bridge removal/replacement. Additional more natural flood defence and catchment management solutions will also be incorporated. Included within the report is *Figure 3-2 Preferred Scheme alignment and corresponding flood cells* (cells 1 – 8) which illustrates the areas that will be subject to change as part of the scheme.

The Flood Risk Management Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (and as amended 2017) requires relevant flood protection schemes to be screened for environmental effects, and an opinion provided on whether the flood protection scheme is likely to have a significant effect on the environment. Consequently, the Musselburgh Flood Protection Scheme must be considered under these regulations.

Key Agencies

It is recognised that extensive discussions have already taken place on the MFPS with a number of Key Agencies prior to the request for an EIA screening opinion. However, in

accordance with the legislation, consultation was formally undertaken with Scottish Environment Protection Agency, Scottish Natural Heritage, Historic Environment Scotland, and Scottish Water. The full responses are included within Appendix 1 to this letter.

East Lothian Council Services

Within East Lothian Council, a number of Services have already been involved with the MFPS project to date. Again, consultation was formally undertaken in order to inform the EIA screening opinion. This included expertise from Biodiversity, Climate Change, Landscape, Archaeology & Heritage, Transportation, Economic Development and Emergency Planning. Responses indicated that the project would have significant environmental effects. The full responses are included within Appendix 1 to this letter.

Taking into account the scale of the project, the spatial extent of change to the environment and landscape, the benefits of the project in relation to the protection of people and buildings from harmful effects of flooding, and considering the responses received through consultation, it is the opinion of East Lothian Council that the Musselburgh Flood Protection Scheme has potential for significant environmental effects, and therefore does constitute EIA development. An Environmental Impact Assessment Report will be required for this project.

Next steps

The next stage in the process is scoping of environmental issues to be assessed and included within the EIA Report. I note that the submission requesting EIA screening was contained within the draft EIA scoping report. Therefore following the formal adoption of this EIA screening opinion, the EIA scoping process will begin. Again, consultation will be undertaken extensively to ascertain whether the proposed scope of the EIA Report, including the issued outlined at part 2.1 of the report, will be sufficient or whether there are any recommendations for additional considerations or methodology to be used. A formal EIA scoping opinion will be provided in due course.

You should bear in mind that the Planning Authority's opinion on the likelihood of significant environmental effects is reached only for the purposes of adopting this screening opinion under the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 and Amendment Regulations 2017. This screening opinion is given without prejudice to any subsequent consideration by East Lothian Council of the impacts of the proposed development, and the Council's assessment of the acceptability or otherwise of the proposed development which will include consideration of its impact on statutorily designated areas as outlined in the East Lothian Local Development Plan 2018 and other material considerations.

Should you wish to discuss any of the above in more detail please contact the Policy and Strategy Team (policy&projects@eastlothian.gov.uk).

Yours sincerely,



Keith Dingwall
Planning Service Manager

Appendix 1 – responses from consultation on EIA screening opinion

Historic Environment Scotland (HES)

Thank you for your consultation which we received on 27 August 2020 about the above EIA scoping report (July 2020). We have reviewed the details in terms of our historic environment interests. This covers world heritage sites, scheduled monuments and their settings, category A-listed buildings and their settings, inventory gardens and designed landscapes, inventory battlefields, historic marine protected areas (HMPAs) and undesignated marine cultural heritage features.

East Lothian Council's archaeological and cultural heritage advisors will also be able to offer advice on the scope of the cultural heritage assessment. This may include heritage assets not covered by our interests, such as unscheduled archaeology, and category B- and C-listed buildings.

Musselburgh Flood Protection Scheme

We understand the preferred scheme selected for the Musselburgh Flood Protection Scheme will be subject to Environmental Impact Assessment (EIA). The preferred scheme comprises a series of flood protection measures within Musselburgh town centre. These include direct defences (flood walls and embankments), pumping stations and a bridge removal and replacement. In addition, the preferred scheme will involve the creation of an 'upper catchment debris trap' and the adaptation of two Scottish Water reservoirs to store greater volumes of water during a flood event.

Scope of assessment

We consider that there is a potential for significant impacts on both marine and terrestrial heritage assets and their settings caused by works associated with the construction and operation of the Flood Protection Scheme. We therefore consider that any Environmental Impact Assessment (EIA) undertaken for the proposals should include a detailed assessment of impacts on the historic environment. We recommend that this assessment is undertaken by a suitably qualified professional and meets the requirements of Scottish Planning Policy (SPP, 2014), the Historic Environment Policy for Scotland (HEPS, 2019) and associated Managing Change Guidance Notes. Further guidance can also be found in the Cultural Heritage Appendix to the EIA Handbook (SNH, HES, 2018).

Any such assessment should give particular focus to impacts on heritage assets and their settings which may be affected during construction works. We note, for example, that the Flood Protection Scheme is located inside the designated areas for the Pinkie Battlefield (BTL15) and the Pinkie House Inventory Designed Landscape (GDL313). Impacts are also likely to occur on the Category A listed Old Bridge over the River Esk (LB38378) and the Category B listed New Bridge Between Bridge Street and High Street (LB38363), caused by the construction of flood defence walls on either side of each bridge.

In each instance, we recommend that mitigation by design is undertaken to minimise impacts on heritage assets caused during construction works. This may be through a detailed Construction Environmental Management Plan (CEMP), for example. We also recommend that any such assessment is supported by detailed drawings and appropriate technical information demonstrating that impacts can be limited to an acceptable degree.

Further to this, we would expect that impacts on the setting of heritage assets are assessed while the Flood Protection Scheme is in operation. This should include potential impacts on

the setting of the above heritage assets, as well as any additional nearby heritage assets. We note from the EIA Scoping Report (July 2020) that it is proposed to assess impacts on the setting of heritage assets located within a 500m study area and are broadly content with this. Impacts on the setting of heritage assets should be assessed using photomontage and wireframe visualisations where impacts are likely to be highest.

We also consider that the Flood Protection Scheme proposals may give rise to impacts on marine archaeology located below the tidal limit. We note that the EIA Scoping Report (July 2020) identifies the potential for unknown archaeological remains located along the banks of the River Esk and the coastline. We therefore recommend that any archaeological survey undertaken in these areas should also take into account the potential for unrecorded archaeology located below the tidal limit. Appropriate mitigation measures should also be identified. The guidance in The Crown Estate Protocol for Archaeological Discoveries document will help with the design of suitable actions and mitigation measures. We also recommend that the developer takes account of the Joint Nautical Archaeological Committee's Code of Practice for Seabed Development as part of the assessment of the impact of this proposal.

We are uncertain about the potential for impacts on heritage assets and their settings caused by the construction, operation and maintenance of the proposed 'upper catchment debris trap' and the adaptation of Scottish Water reservoirs. We note that limited information regarding these works is provided as part of this consultation and therefore recommend that further detail on this is provided as an assessment is progressed. Impacts may, for example, occur on the Dalkeith Palace Inventory Designed Landscape (GDL128) and scheduled monuments including the Eastfield, enclosures and pit alignments, Old Craighall (SM6020), Monktonhall Junction, Neolithic cursus 150m N of Whitecraig (SM13318) and Monktonhall Junction, Roman camps and prehistoric settlement (SM3610). We would be happy to provide further advice on this as necessary.

Other Consents

It should be noted that any construction works directly affecting the Category A listed Old Bridge over the River Esk (LB38378) and the Category B listed New Bridge Between Bridge Street and High Street (LB38363) are likely to require listed building consent (LBC). Similarly, it should be noted that elements of the proposed scheme below the tidal limit are likely to require a Marine Licence. We therefore also recommend further dialogue on the preparation of any associated LBC or Marine Licence applications.

EIA Scoping Report (July 2020)

We have reviewed the EIA Scoping Report (July 2020) and are broadly content with the approach to assessment set out at Section 7 (Cultural Heritage) subject to the comments below.

As set out above, it should be noted that limited information is provided about the construction, operation and maintenance of the 'upper catchment debris trap' and works for adaptation of Scottish Water reservoirs. We recommend that the scope of any assessment should therefore be adapted to reflect these aspects of the proposals. We would be happy to provide further advice on this as an assessment is progressed.

We also disagree with the proposal at Section 7.3 that effects on the historic environment caused by noise/vibration or change to the landscape will be assessed in different EIA Chapters. Here, it should be noted that these heritage assets are designated for their cultural heritage value. We therefore consider that any effects caused by noise/vibration or change to the landscape should be considered in terms of their cultural heritage impact. Relevant

findings from other chapters within the EIA Report should therefore be clearly cross-referenced within the cultural heritage assessment.

Further information

A new Historic Environment Policy for Scotland (HEPS, 2019) was adopted on the 1st May 2019, which replaces the Historic Environment Scotland Policy Statement (HESPS, 2016). The new Historic Environment Policy for Scotland is a strategic policy document for the whole of the historic environment and is underpinned by detailed policy and guidance. This includes our Managing Change in the Historic Environment Guidance

Scottish Environment Protection Agency (SEPA)

Thank you for consulting SEPA for an Environmental Impact Assessment (EIA) screening opinion for the Musselburgh Flood Protection Scheme (FPS).

We understand, as per the EIA Scoping Report (dated July 2020) and your consultation email (dated 27 August 2020), that the FPS will be progressed under the provisions of the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (as amended) ('FRM Regulations').

Under the FRM Regulations, SEPA only need to be consulted when the local authority has determined that no EIA is required. Section 2.2 of the report states given the sensitivity of the study area's natural and built environment and close proximity to residents at certain locations that 'it was considered likely that there will be a potential for significant environmental effects'. The FPS is therefore regarded as EIA development with regard to Schedule 1 of the regulations. On that basis, we support the undertaking of EIA for the FPS. We are happy to prepare scoping advice by request to help focus the assessment.

Please note, if it is determined that no EIA is required please reconsult us in line with the provisions of the FRM Regulations.

Scottish Natural Heritage (SNH)

Our normal position is that it is solely the competent authority's decision as to whether a proposal is EIA or not.

However in this instance there are a wide range of receptors within NatureScot's remit that must be considered, and it is our understanding that there are many more receptors outside of our remit. Given the wide range of receptors and impacts that must be assessed it may make sense for the assessment to be consolidated into the EIA process.

Within our remit there are potential impacts upon:

- most notably, the Firth of Forth SSSI/ SPA/ Ramsar site
- additional sites protected for nature (e.g. Gladhouse Reservoir SSSI/ SPA)
- European protected species (e.g. otter, bats)
- UK protected species (e.g. birds, badger)
- public access

We have been working closely with the MFPS project officers and will continue to advise the Council throughout the remainder of this process, including the EIA scoping stage, if this project is screened in.

ELC Archaeology & Heritage

Thank you for your email regarding the Musselburgh Flood Protection Scheme. The proposed scheme has the potential to have significant impacts on the historic environment. This includes both direct impacts on buried archaeology and historic structures, as well as indirect impacts on the setting of a number of key sites, Scheduled Monuments, Listed Buildings, the Battle of Pinkie Inventory Battlefield, and several designated Gardens and Designed Landscapes. Due to these potential significant impacts on the historic environment, I would recommend that an EIA is undertaken to fully assess the impacts.

ELC Biodiversity

I do consider the Musselburgh Flood Protection Scheme to be an EIA development due to the potential for significant impacts on the Firth of Forth SPA, Ramsar and SSSI and also the potential for significant impacts on protected species, in particular bats and otters.

ELC Climate Change and Sustainability

In my view this should be an EIA development. I note the extensive EIA Draft Scoping Report on the MFPS prepared by Jacobs and submitted for this project. This appears to cover the major aspects that should be considered in the EIA. I note that Air Quality and Climate Change are specifically included. With regard to Climate Change I have the following comments:

- Unfortunately the Scoping document does not make reference to East Lothian Council's Climate Change Strategy – this should be included. Our Climate Change Strategy sets out how the Council will tackle both Climate Change Mitigation and also Climate Change Adaptation locally. I think it is important that the Scoping document distinguishes between these two aspects of tackling climate change. 'Climate Adaptation: Climate Ready Communities' is one Key Priority Area set out in our Climate Change Strategy, with the specific action (Action 7.5f) to "Progress the Musselburgh Flood Protection Scheme". This project will have a major significant impact on protecting Musselburgh from future flooding that might arise, and become more likely to occur, as a result of climate change.

- It is important that this development considers both the greenhouse gas emissions arising during construction and during the operational life of the scheme throughout the entire 'lifespan' of the scheme. Circular economy principles should be incorporated to ensure the long term sustainability of the construction materials proposed, including consideration of the lifetime sustainability of the scheme. I note these are referred to in the Scoping document provided.

- I would also be looking for natural flood management opportunities alongside the River Esk where appropriate to enhance the green network properties of the Esk Corridor and promote natural water management and natural habitat enhancement, such as use of reedbeds / marshland areas: in addition to Climate Adaptation benefits, further natural habitat enhancement, such as tree planting, will also offset carbon emissions and help us to reach a Carbon Neutral East Lothian as set out in our Climate Change Strategy. This links to specific actions in our Climate Change Strategy under Outcome 6 ('A Healthy and Resilient Natural Environment and the route to Carbon Neutral'), specifically Actions 6.2b and 6.2e. This would also benefit biodiversity. However in this respect I will defer to the Biodiversity Officer.

- You will need to contact Protective Services (Lynn Crothers / Colin Clark) for specific comments/feedback on the Air Quality aspects of this report as this is within their remit.

ELC Flooding

I have reviewed both the Musselburgh FPS EIA Screening/Scoping Report and Appendices A – C from a flood risk perspective and along with the Flood Risk Management Regulations 2010 and Flood Risk Management Amendment Regulations 2017 Statutory Instruments as requested in your email below.

Both the report and the appendices have been prepared and published in accordance with the various requirements of these Statutory Instruments. The Preferred Scheme whilst continually evolving in terms of design follows the EIA Screening Findings and Scoping Method as reported. There are still further studies and consultation events still to be undertaken to further inform and guide the Preferred Scheme which will be the subject of a future Planning Application.

Overall I am happy with the procedures and reports published so far.

ELC Landscape

The scheme generally proposes a number of pumping stations, a debris trap at Shiremill Heugh with barrier walls & embankments running along both sides of the river Esk through the heart of Musselburgh and beyond, continuing along the coastline from the mouth of the River Esk at Fisherrow Sands and westwards along Fisherrow Links passing the harbour and terminating at the Brunstane Burn, Newhailes (east of Eastfield) where it meets the sea.

The scheme will require the removal of many large mature significantly important trees along the banks of the River Esk throughout the extent of the works, and the construction of barriers resulting in significant landscape change throughout the scheme. Such tree removal and extent of landscape change does not accord with LDP policies, nor does the scheme align with the Green Networks SPG, Special Landscape Areas SPG, or Countryside and Coast SPG, and thereby cannot be supported on landscape grounds. Notwithstanding this, if the scheme is pursued, it is recommended that an application under the EIA regulations will be required under the landscape section due to the extent of the works creating significant landscape change.

The works also appear to contravene the Council's climate change emergency; however, this area would be better advised by the Council's Sustainable Energy and Climate Change Officer.

If it is decided that an EIA application is required for the scheme, I would advise that the information put forward for scoping would be clearer to understand if it targeted the preferred 'Scenario D' in its summing-up, rather than suggesting that the scheme may result in a combination of individual elements from other scenarios. Targeting the 'preferred' scenario D, and tabulating the actual barrier heights with their actual positions and extent of land-take clearly indicated on a plan would illustrate the worst case scenario and allow us to assess the maximum impact the scheme will have on the existing site conditions, which would inform the process to better scope out any unnecessary information. Using a combination of elements from other scenarios in the screening will result in possibly several different end products I would recommend that all potential options be scoped individually (being a combination of scenario D with differing elements of other scenarios) so that each stands-alone and can be assessed on its own merit; however, I am not sure that the regulations will allow a variety of alternatives to be dealt with in a single application!

The schematic details of typical wall heights in figure 3.10 shows 1.2m, 1.6m and 1.8m; thereby giving the assumption that the maximum wall height is no greater than 1.8m; however, it would appear from the literature that it may be higher, if so, the details should be representative of the reality. The literature states that a wall 1.4m high is 'generally' acceptable ~ I am not convinced this is the case as it will exclude many user groups from being able to look over! It also still creates a significant landscape change and would require landscape assessment before it could be determined whether this would be acceptable.

The information in section 6 satisfactorily details the necessary requirements we would require in taking forward the scoping of the scheme in respect of identifying the significance of change to the landscape, and addressing mitigation measures and potential improvements. Section 6 also refers to using the landscape industry standards and LDP policies & SPG's in addressing the scheme's landscape and visual assessment.