

MUSSELBURGH FLOOD PROTECTION: FROM CONFRONTATION TO A NEGOTIATED SOLUTION

The decision by East Lothian Council to ask the Scottish Government to determine the Musselburgh Flood Protection Scheme (MFPS) opens up the possibility of a new way of resolving disagreement between a local council and the affected residents. This is what should happen here if the Cabinet Secretary is prepared to listen to and act upon the considered representation of local people, who are also tax payers and voters.

The normal inquiry approach is both outmoded and democratically unfair

Proceeding to a Public Local Inquiry is traditionally highly costly, confrontational and means that local democracy loses out. Residents cannot afford highly paid legal representation, whereas Councils can by moving money from elsewhere. This is democratically disgraceful. Also, all a Council's legal counsel is interested in is in demolishing the residents' credentials and credibility in putting the case and thereby convincing the Reporter that the Council are correct. It is a black and white approach that is outmoded given the public expenditure crisis. It is outmoded given the terms of the 2015 Community Empowerment (Scotland) Act.

A new style mediated approach is essential

The appointment of a Mediator to seek to negotiate changes in the MFPS with the Council and the objectors will help to gain at least some measure of agreement if there is a willingness on the part of all parties. This will ensure that the representations of relevant objectors with a valid objection are heard in a **non-adversarial** manner by a Reporter and a mediator.

The ELC's consultants have identified some xx modifications or changes to the MFPS in the light of the outstanding objections. However, the ELC ignored these and approved the Scheme as originally presented some time ago.

What is wrong with the specific proposals?

Times have changed since the Flood Risk Management (Scotland) Act 2009 with four crises that are pertinent and must be taken into account, as the Scottish Government does in its high level strategies – climate change, biodiversity loss, pollution increases and worsening public finances. In addition, the Scottish Government's Flood Resilience Strategy places residents in a key role in addressing reduction in flood risk and building up community resilience. All of these should and must have an effect on the type of flood protection scheme that is suitable for Musselburgh and affordable from the public purse. Here are key elements for a negotiated solution for the Cabinet Secretary to take fully into account before any decision is taken by the Scottish Government on the next steps on the Musselburgh Scheme.

1. There is agreement by residents living alongside the river, on the flood plain and along the coast that flood risk will increase and that action to reduce the risk of flooding of properties and harming people is needed.
2. An integrated whole catchment approach is the international norm, now being used in others part of the UK. So why not in Scotland and on the Lothian Esk? There is a lot of evidence that measures in the catchment to reduce peaks in water flow will help a little and bring many other benefits to address the climate and biodiversity crises. These include the following: blocking drains, planting trees, placing leaky dams in streams, removing flood barriers to give access to flood plains and using storage reservoirs and ponds. We are heartened that the Lothian Esk Catchment Management Partnership is up and running with expert input from the Forth Rivers Trust. Our long standing proposal is that this work is accelerated to provide a suite of solutions as part of the Musselburgh Scheme and to address the climate change, pollution and biodiversity aspects of the crisis.
3. At the coast, the Scottish Government's advisers, Dynamic Coast, have recommended that a Coastal Change Adaptation Plan is drawn up considering all possible options to reduce inundation of coastal properties. Although the ELC state that it has begun this process, it does not involve local residents as is recommended in the Dynamic Coast guidance. Specifically, the advice of Dynamic Coast that all options should be considered has been ignored. ELC have determined that a sea wall be built from the river mouth to the council's boundary despite advice by the experts in Dynamic Coast this solution can only last for 10 years whereas the Council's consultants are planning for a 100 year scheme! We plead that the CCAP go ahead will all speed but with active engagement of the coastal community on an equal partnership basis as the Scottish Government guidelines on CCAP recommend.
4. There are elements of the Musselburgh Scheme that will cost a great deal but are not justified. Foremost of these is the replacement of the sea wall along the lagoons east of the river mouth. The sea wall is owned by a private company Iberdrola of which Scottish Power is a subsidiary. It is totally unjustified for this replacement, even if it is justified, should be paid from public funds.
5. Most fundamentally from objectors' point of view is that the 'consultation' by the ELC and its consultants uses an outmoded approach. Their claim that this is the greatest consultation ever in a Scottish flood scheme belies the reality that they set the consultation questions, they have pre-determined answers, treat the consultees with disdain and arrogance as at best second rate people and hardly change anything. They refuse to operate on a co-partner basis, which is the new way of working in many parts of Scotland and fully in tune with the Scottish Government's Flood Resilience Strategy of engagement of communities.

We hope that the Scottish Government recognise the veracity of these points and are willing to listen to us in person. More significantly we hope that the Scottish Government will implement a democratic way of proceeding towards a Musselburgh Flood Scheme that is advantageous to our town, to the public funds available and also addresses the climate change, biodiversity and pollution crises that are being faced.

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