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**RESPONSE TO FORTH PORTS STATEMENT**

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by

**FALKIRK COUNCIL**

in relation to

**THE GRANGEMOUTH FLOOD PROTECTION SCHEME**

**DPEA REFERENCE: FPS-240-1**

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## 1. INTRODUCTION

1.1 This statement sets out Falkirk Council's (the "Council") response to the written statement submitted by Forth Ports (the "Forth Ports Statement") in connection with the hearing to consider the Grangemouth Flood Protection Scheme (the "Scheme"). The Council relies upon and incorporates its Hearing Statement (the "Hearing Statement"), which addresses the issues raised by Forth Ports in detail. Additionally, the Council has provided a response to each of the key issues raised by Forth Ports, dealt with under individual headings below.

1.2 An aerial image of the Port of Grangemouth (supplied by Scottish Enterprise) has been included at Appendix 2.

## 2. POLICY MISALIGNMENT / STRATEGIC RISK

2.1 At paragraph 2.2 of the Forth Ports Statement, Forth Ports note that they object to the Scheme on the basis that it is inconsistent with legislative requirements and national policy and would directly impede the management, operation, development and expansion of the Port and delivery of the Forth Green Freeport ("FGF"). This overarching objection by Forth Ports frames five key issues which they state require modifications to deliver an effective and resilient Scheme that coexists with nationally important port functions and the FGF strategy.

2.2 The Council considers that Forth Ports has failed to consider the purpose of the Scheme and the legislative requirements under the Flood Risk Management (Scotland) Act 2009. The overriding purpose of the Scheme is to reduce flood risk to *existing* buildings and infrastructure through the delivery of a set of sustainable actions identified in the LFRMS [FC009.002] and LFRMP [FC009.001] which ensure a nationally consistent approach to the delivery of Flood Risk Management in Scotland. The Scheme can also be an enabler to future development, but that is a secondary purpose, and must be where that future development or use has been appropriately considered for its vulnerability to flood risk (amongst other factors).

2.3 Forth Ports' position is, as to be expected, focused on its own statutory duties and commercial interests. However, in promoting the Scheme the Council must balance competing interests – ranging from ecological impacts and constraints to residential amenity to business needs.

2.4 This delicate balance is recognised throughout the guidance which underpins the 2009 Act. For example, Scottish Government - Flood protection appraisals: guidance for SEPA and responsible authorities [FC010.009] states "*Flood risk management decisions should be underpinned by an appraisal of economic, social and environmental impacts, whole life costs, and proper consideration of risk and uncertainty. By balancing these issues, the most sustainable solution should be identified.*" Additionally, Scottish Government - Delivering Sustainable Flood Risk Management [now added as FC010.014] states "*A balance must be struck between national strategies and priorities and local decision making and accountability. This will require close collaboration and a structured planning process that creates the space and time needed to consider any competing needs and reach informed decisions.*"

2.5 The Council considers that the Scheme delivers the best balance between these competing local, regional and national needs, as well as between economic, social, residential and environmental impacts.

2.6 In response to Forth Ports submissions at paragraph 2.2, the Council would refer to the Hearing Statement which sets out in detail how the Scheme complies with legislative and national policy.

The Council notes that the Scottish Environment Protection Agency (“SEPA”) supports the view that the main purpose of flood protection schemes is to reduce (and not fully eliminate) flood risk when they state *“As part of the overall picture of flood resilience, flood protection schemes can reduce flood risk but cannot eliminate it. Their primary purpose is to protect existing development from flood risk rather than to facilitate new development. For this reason, caution and careful consideration is required when planning and promoting any new or re-development in areas where protection from a scheme is being relied upon to ensure that flood risk can be avoided.”* [FC009.005].

2.7 As set out in Policy 22 of National Planning Framework 4 (“NPF4”) [FC010.010], Local Development Plans (“LDPs”) should prioritise community resilience to current and future climate change. As a starting point, new development should be avoided in areas at risk of flooding. Resilience should also be enhanced by bringing previously developed land in built-up areas back into productive use, planning for appropriate adaptation measures, and identifying opportunities to improve the water environment through natural flood risk management and blue green infrastructure. In locations where climate change is expected to increase flood risk to levels that cannot be managed, alternative sustainable land uses should be considered. The Council notes that the Forth Ports Statement appears to focus on policies relating to development rather than those policies applicable to flood protection. It is the Council’s view that these policies are inextricably linked.

2.8 As set out in the Hearing Statement at paragraphs 2.8 to 2.10, Policy 22 provides four exceptions where development in an area of flood risk may be permissible:

- “i. essential infrastructure where the location is required for operational reasons;*
- ii. water compatible uses;*
- iii. redevelopment of an existing building or site for an equal or less vulnerable use; or*
- iv. redevelopment of previously used sites in built-up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long term safety and resilience can be secured in accordance with relevant SEPA advice.”*

2.9 It is noted that Policy 22 of NPF4 does not state that development will always be permissible under such exemptions, as the language used is that development “may” be permissible, and there may be circumstances where the level or nature of flood risk overrides the exception.

2.10 NPF4 also recognises that the protection afforded by an existing formal flood protection scheme, or one under construction, may be taken into account when assessing flood risk for development management purposes. That recognition does not convert a flood protection scheme into an instrument for enabling development; rather, it allows a measured consideration of residual risk and resilience when determining planning applications against policy and SEPA guidance.

2.11 While the Scheme’s primary purpose is to reduce flood risk to existing development, it is acknowledged that improved flood resilience can be a precondition for aspects of future investment in the Grangemouth area. Any such future development must nonetheless comply with NPF4, SEPA guidance and the relevant LDP policies on flood risk, resilience and adaptation (together with being determined acceptable in other regards, such as environmental impact), including demonstrating that long-term safety can be secured without over-reliance on engineered protection. Strengthening resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding should be a primary consideration when considering future development.

2.12 Even where proposals constitute essential infrastructure or otherwise meet the exceptions in Policy 22, it must be demonstrated that “*all risks of flooding are understood and addressed*” and “*there is [...] no need for future flood protection schemes.*”

2.13 Additionally, at paragraphs 9.3 to 9.4 of the Forth Ports Statement, Forth Ports asserts that the Council did not adequately consider Forth Ports’ LDP2/LDP3 submissions, the FGF designation and its own partnership role in the FGF. Forth Ports claim that designing in isolation from FGF proposals (and the subsequent preliminary confirmation without reconciling compatibility) conflicts with local, national and international policy directions and undermines Just Transition objectives.

2.14 In response to this, the Council would note that the FGF became operational after the Scheme was published. The Scheme does not preclude any FGF development proposals. Development proposals that are outwith the area being protected could still be developed, subject to applying for and obtaining the necessary consents. Within the protected area, proposals will be assessed in accordance with NPF4, SEPA guidance and the LDP, including the stringent criteria for development in areas of flood risk and the requirement to evidence long-term safety and resilience. In this way, the Scheme coexists with, rather than constrains, FGF objectives, while ensuring that flood risk policy is properly applied.

2.15 Finally, even if the Scheme were to be confirmed without modifications there is no guarantee the Scheme would be implemented or at least implemented prior to the expiry of the FGF tax benefits promoted to help encourage investment and development. It would therefore be inappropriate to predicate FGF development delivery on the assumption that the Scheme will be completed within any particular incentive period. Development proponents should continue to plan for resilience in accordance with policy, taking account of residual risk and without presuming the Scheme as a guaranteed enabler for time sensitive investment.

### **3. STRATEGIC DEVELOPMENT, STERILISATION, ALTERNATIVES AND DESIGN**

3.1 In respect of paragraph 2.3.1 of the Forth Ports Statement, Forth Ports contend that the route of the flood protection wall (“**FPW**”) east of the lock gate will not protect the land that is required for the Energy Park from flooding. Forth Ports proposes a shoreline realignment so the Energy Park is inside defences, and a demountable FPW section to preserve access over the Grange Burn bridge to land east of the burn; in their view, this retains the developability of the Energy Park and maintains access to the Grange Burn land.

3.2 The Council notes that other developers, including statutory undertakers, have adapted proposals to coexist with the Scheme and to bring forward development in proposed unprotected areas. For example, Scottish Water has engaged on a proposed solar farm (application reference P/25/0457/FUL) located outwith the Scheme defences (on the ‘wet side’) but comparably close to the SPA boundary, including proposing revisions to the design of the solar farm to coexist with the proposed alignment and design of the Scheme. The Council considers that this demonstrates that development (including energy development) can be taken forward notwithstanding its location in an ‘unprotected’ area and shows that there can be coexistence without the need for realignment.

3.3 In respect of Forth Ports’ proposed Energy Park, the Council would note that they were made aware of the plans to create an Energy Park on this land through the receipt of Forth Ports’ objection to the Scheme. To date, the project team are unaware of any planning application having been submitted for the development of this land, nor is it clear what is envisaged as comprising the ‘Energy Park’ with the Forth Ports Statement not providing any further information. Given

its direct proximity to the Firth of Forth Special Protection Area, it is highly likely that an Environmental Impact Assessment (“**EIA**”) and Habitats Regulations Appraisal (“**HRA**”) would be required and therefore it may not be possible to undertake development using permitted development rights. Similarly, no evidence has been provided to suggest that the use of this land as an energy park would constitute development that benefits from permitted development rights under Class 35 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

- 3.4 In addition, the unprotected area for the proposed Energy Park is not identified in the Falkirk Local Development Plan 2 for core business use, although it does lie within the urban limit. Forth Ports states “*Re-route the flood defence wall to follow the shoreline, ensuring the land benefits from flood protection and the Energy Park can be developed.*” However, even with the defence re-routed, the protection afforded to this land may not be sufficient to allow development. Forth Ports’ suggestion to reroute the defences to follow the shoreline would not, in itself, guarantee that the land could be developed. Even if protection were afforded by a revised alignment, the developability of the land would still remain dependent on planning policy, environmental assessment outcomes and the acceptability of residual flood risk.
- 3.5 No additional allowance for rising sea levels (due to climate change) has been included in the proposed flood defence level. Therefore the standard of protection provided by the Scheme will be the 1 in 200 year (0.5% annual chance of occurring) in the year 2030 but would reduce thereafter due to the effects of climate change and sea level rise. Any proposed development would be required to consider its suitability in relation to planning guidelines and consider vulnerability at the time of application, noting that planning guidance is constantly evolving.
- 3.6 The land and estuary around the port are designated a Special Protection Area, RAMSAR and Site of Special Scientific Interest (“**SSSI**”) [Figure 9 of the HRA, FC006.001]. Special Protection Areas (“**SPAs**”) are selected to protect one or more rare, threatened or vulnerable bird species listed in Annex I of the Birds Directive, or certain regularly occurring migratory species. Any developments that are close to (or within) the boundary of an SPA may require a HRA if they are likely to have a significant effect on the site. An initial screening stage would be required, followed by an appropriate assessment. Where it is considered that an adverse effect on the integrity of the site is likely, and no alternatives are available, the proposals can only go ahead if there are imperative reasons of overriding public interest (“**IROPI**”) and if the appropriate compensatory measures can be secured.
- 3.7 Given the location of the flood defences in relation to the Firth of Forth SPA, the proposed flood defences have been positioned as far from the SPA as practicable to reduce the potential risk of disturbance to qualifying species in the Firth of Forth SPA as well as satisfying other design principles the team used to determine the most appropriate location for flood defences [FC003.0009]. The Council have taken a precautionary approach to impacts on the SPA, as is standard and best practice when carrying out environmental assessments. This approach has been agreed with NatureScot, the statutory nature conservation body that must opine on whether satisfactory assessments (and, in the case of a derogation, satisfactory compensation) has been identified.
- 3.8 If the defences were moved as suggested by Forth Ports, the Council would need to provide evidence there is no alternative to the proposed alternative alignment. This would be difficult, given the Scheme is based on an alternative alignment and the HRA for the Scheme discounts the alignment suggested by Forth Ports due to its closer proximity to the SPA and its corresponding greater impacts on birds. Additionally, in moving the wall closer to the shoreline, the height of

the defences would increase due to the land at the shoreline being lower lying. The flood defences would also be much more exposed to waves at the shoreline and would therefore require a large rock revetment which would result in both temporary and permanent loss of habitat which could lead to a further adverse effect on site integrity (AESI) due to habitat loss – the current alignment of the defences avoids these adverse effects and would not result in this additional temporary or permanent loss of habitat. The current alignment also ensures that adverse effects are situated in less important land (i.e. non functionally linked), while the proposed changes by Forth Ports could result in functional land being lost.

3.9 As noted in the EIA for the Scheme [FC007.001 to FC007.038], construction of the proposed flood defences is likely to be spread over a period of at least 8-10 years. At this stage, there is no confirmed programme for construction of the flood defences within the Port, although it is very likely that these works will be carried out towards the end of the overall programme. It is the Council's understanding that Forth Ports may seek to develop this land within the next 5 years, although they state “*...a decision to exclude this land from flood protection, making the Energy Park project impossible...*”. The Council does not accept that excluding this land from protection directly results in the Energy Park being impossible, particularly as there are no detailed proposals evidenced. There are a number of factors which will need to be considered in developing the Energy Park land, flood risk being one of them. Forth Ports also state that it is very likely that the Energy Park will be operational by the earliest potential start date of Port-area construction (circa 2032), which confirms that the proposed Scheme will not result in land being ‘sterilised’ as Forth Ports imply the Energy Park proceeding ahead of the Scheme.

3.10 Forth Ports also have the option to put in place their own flood defences irrespective of whether the Scheme proceeds (and, indeed, they would be required to do so under the terms of Policy 22 of NPF4, which also provides that future proposals for essential infrastructure must be demonstrated to not have “a need for future flood protection schemes”). If the proposed Energy Park proceeded prior to the Scheme, it would need to incorporate its own defences, which would need to coexist with the Scheme (although the Council could seek to make minor amendments to the design to maximise coexistence).

3.11 The Council notes that the Scheme currently includes two flood gates which would provide access to the Energy Park site and to the Grange Burn land.

3.12 Paragraphs 5.1.19 to 5.1.22 of the Forth Ports Statement also relate to alternatives and deficiency in the appraisal process. The Council's position is that alternatives and the appraisal scope were comprehensively considered. In response to paragraph 5.1.19, there was significant consideration of the Port infrastructure as is evidenced in the long list [FC003.019] and short list reports [FC003.020].

3.13 In relation to paragraph 5.1.20, the Council would reiterate that the primary purpose of a flood protection scheme is to protect existing development risk from flood risk rather than to facilitate new development [FC009.005]. The Scheme is not required to anticipate or provide for all potential future development within the Port (or, for that matter, other industrial or residential areas). The Port operator and any developer can implement their own defences around any of the sites identified by Forth Ports. It is important to note that the Council's proposed defences are all around the landward perimeter of the sites. Therefore, the Council does not accept that there will be sterilisation. This position also addresses the points made at paragraph 5.1.23 of the Forth Ports Statement.

3.14 In relation to paragraph 5.1.21, the Council notes that the options appraisal was carried out in accordance with the more recent guidance document [FC010.009].

- 3.15 In respect of paragraph 5.1.22, the Council notes that all the areas identified by Forth Ports are currently undeveloped – that is, there is no development on these sites and there are no planning applications either approved or submitted. The Council would highlight that there is no guarantee that development on these areas of land would be approved despite these areas of land being within the FGF and the Grangemouth Tax Area.
- 3.16 In relation to paragraph 5.1.24, the Council would note that since 2017 they have been asking all major landowners and business operators to provide details of planned developments. The project team does not recall receiving confirmation of the Energy Park proposal from Forth Ports prior to their objection.
- 3.17 The Council therefore maintains its position that the current alignment and design of the Scheme does not preclude future development of the Energy Park at the Port and, consequently, no amendment to the Scheme is required.

#### **4. OPERATIONAL INTERFERENCE, ACCESS AND SAFETY**

- 4.1 At paragraphs 2.3.2 to 2.3.3 of the Forth Ports Statement, Forth Ports claim that the FPW alignment risks interfering with or obstructing port operations, specifically the routine transport of wide loads and abnormal indivisible loads (“AILs”). Forth Ports assert that they require the FPW to be set back “as far as possible” from the operational road or to adopt demountable/alternative solutions where unavoidable, to safeguard width, swept paths and safe operations consistent with the Ports and Marine Facilities Safety Code.
- 4.2 In response, the Council would note that the flood defence wall is offset from the surfaced road and does not encroach onto North Shore Road. A technical note [FC003.013] was issued in October 2023 to Forth Ports explaining the reasons for locating the flood defence wall in close proximity but offset from North Shore Road.
- 4.3 There is an existing concrete wall on the north side of North Shore Road opposite Nustar which is 0.4m in height and 390m long. This is the current pinch point where the obstruction free width is c.8.92m. The Council would refer to Figure 2 in document [FC003.013]. There are also fixed lighting columns in this area. Following submission of their objection, the Council offered to make the lower part of the flood defence permanent (e.g. a concrete wall of the same height as the Nustar wall), with the top of the flood defence being demountable, i.e. removeable. This proposal was rejected by Forth Ports who suggested the need to remove a section of the defence wall would be a major constraint as they may only have a few hours’ notice of an AIL needing to be moved along North Shore Road. The Council considers that it is unlikely that Forth Ports would have only a few hours’ notice of the arrival of a very large load given the planning that would be required to both unload and load vessels and the need to remove lighting columns, ensure no parked vehicles and presumably give notice to businesses that roads will be out of use when AILs were being moved.
- 4.4 Any movement of the AIL via the public road network outwith the Port would require notice to be issued to both Police Scotland and either the Council or Transport Scotland giving at least 2 working days’ notice. It is anticipated that the removal of any demountable defences could be done in less than 2 days and depending on the load possibly only certain sections would need to be removed.
- 4.5 As noted in the technical note issued to Forth Ports [FC003.013], if a Self-Propelled Modular Transporter (“SPMT”) was utilised to transport a wide load, the height of the load deck would be higher than the proposed flood defence wall meaning the wall would not obstruct the

movement of loads along North Shore Road providing loads did not hang lower than the SPMT load deck. Given the extensive planning that is required to move an AIL and the many constraints that will need to be considered, the Council considers it unlikely that the proposed location of the flood defence would lead to the movement of AILs no longer being possible. That is, even if the flood defence was an additional constraint, the extensive planning required to move AILs could take this into account and develop a suitable movement plan that took account of the flood defences.

4.6 The Council previously considered locating the flood defence wall closer to the shoreline. The width of land between the shoreline and the seaward edge of North Shore Road varies from c.2.8m to 10m. Locating the defences closer to the shoreline would result in a significant enlargement of the stone revetment and further encroachment into the SPA leading to increases in both the temporary and permanent loss of habitat, something the Council sought to avoid in line with the general design principles [FC003.008] and following feedback from NatureScot (then SNH) during a walkover of the site in June 2019. Depending on the extent of encroachment it is possible this could lead to an additional AESI due to loss of habitat.

4.7 Paragraph 5.2.1 to 5.2.2 of the Forth Ports Statement also references operation interference. Forth Ports note that North Shore Road is used to move wide loads and AILs to and from Scotland via the port – the western end of the road crosses a bridge that can only be 5-6m wide. The bridge is half-through deck construction meaning the deck is supported off the bottom of the main side girders – the girders project significantly above the road level. This bridge (shown in Figure 1 below) is likely to be the most significant constraint to what can and cannot be transported along North Shore Road, particularly if loads are being brought to the port or going off site from the port.



Figure 1: Existing bridge leading to North Shore Road

4.8 Also of note is that Forth Ports constructed a new bridge on the south side of the port to enable AILs to be taken out to the south (South Shore Road/Powdrake Road).

4.9 The Council therefore maintains its position that the current alignment and design of the Scheme does not materially alter or obstruct operations at the Port and, consequently, no amendment to the Scheme at North Shore Road is required.

## 5. STRATEGIC DEVELOPMENT, STERILISATION

5.1 Paragraph 2.3.3 of the Forth Ports Statement asserts that the route of the FPW to the western edge of the Port will not protect Port development land from flooding. Forth Ports note that this land has been designated as part of the Grangemouth Tax Site within the FGF and will be sterilised without flood protection. Forth Ports proposes that the FPW is re-aligned to a shoreline route to protect this land. Alternatively, they argue that the current route and the preferred shoreline route must both be secured, with the current route constructed only where no development proposals

have been identified before construction of this part of the FPW is due to commence and, despite best efforts, there remains a funding shortfall making the preferred shoreline route impossible.

5.2 In response to paragraph 2.3.3 of the Forth Ports Statement, the primary purpose of the Scheme is to reduce flood risk to existing buildings and infrastructure rather than to enable future development, although where future development or future use has been appropriately considered for its vulnerability to flood risk, the Scheme can be an enabler.

5.3 The issues at this location are similar to those at the proposed Energy Park. For example:

- 5.3.1 The Council are not aware of the type of development or detailed proposals being considered for this location and it is unclear whether the proposed standard of protection provided by the Scheme would permit development of this site on flood risk grounds, or if additional defences would still be required.
- 5.3.2 There is also the question as to whether relocation of the defences would result in a greater disturbance to birds in the SPA and compromise the HRA due to there being a viable alternative with less disturbance.
- 5.3.3 It is unclear whether the timescales for implementing the Scheme would mean that any development would be prior to implementation of the Scheme and therefore potentially may require separate flood defences.

5.4 The Council strongly disagrees that this land will be sterilised if the Scheme was to proceed. If the flood defences were constructed on the proposed alignment and Forth Ports chose to develop the site in the future, it would be open to Forth Ports to agree alterations to the Scheme with the Council or to otherwise design the development so that it coexists. Similarly, if development of the site preceded implementation of the Scheme, the Council would act reasonably in considering proposed changes to the Scheme to suit defences built by the developer to protect the development.

5.5 Access is still available to this land via the proposed vehicular ramp over the flood defences which is included in the published scheme. The construction of flood defences will not result in land on the riverward / seaward side being classed as undevelopable.

5.6 In response to paragraphs 5.1.1 to 5.1.18, the Council's position is that Scheme will not sterilise land. As noted above, the primary purpose of the Scheme is to reduce flood risk to existing buildings and infrastructure rather than to protect new development.

5.7 The land at the western edge of the Port was first mentioned in Forth Ports objection [FC004.020]. The tax site status was effective (June 2024) after the Scheme was published. The design of the Scheme was frozen in 2023 to allow preparation of the various scheme documents.

5.8 Forth Ports could develop this land at any time (subject to obtaining the necessary consents), and confirmation of the Scheme does not change the classification of the land. SEPA's Position Statement on Development Protected by Formal Flood Protection Schemes [FC009.005] states "*Their (FPS) primary purpose is to protect existing development from flood risk rather than to facilitate new development. For this reason, caution and careful consideration is required when planning and promoting any new or re-development in areas where protection from a scheme is being relied upon to ensure that flood risk can be avoided*".

5.9 The Council therefore maintains its position that the current alignment and design of the Scheme does not preclude future development of the tax site at the Port and, consequently, no amendment to the Scheme is required.

## **6. CRITICAL INFRASTRUCTURE, DESIGN**

6.1 In response to the assertions made at paragraph 2.3.4 of the Forth Ports Statement, the Council would note that it has proactively engaged with Forth Ports over a considerable period of time regarding options for replacing the lock gate with the preferred option being a new dual function lock/ flood gate to replace the middle set of mire gates (long list and short list option reports, [FC003.019 and FC00.020]). The short list report identified two options for locking the gates in position during a flood event. In addition to the replacement of the gates, a combination of permanent and demountable flood defences would be required on either side of the lock channel.

6.2 Given the timescales for implementing the Scheme are many years away, the detailed design of the lock gates is unlikely to take place before early/ mid 2030's at the very earliest. The Council agree that it is crucial that the final detailed design, procurement, and construction methodology are all developed in conjunction with Forth Ports, and the Council sought to enter into an Interface Agreement with Forth Ports in 2023 to secure this. This Interface Agreement would, to the extent possible at the current time before detailed design has been finalised, set out a process for approving the final design and for the ongoing operation of the Scheme. Additionally, it is envisaged that the agreement would impose obligations on the Council to continue to engage with Forth Ports as the design is finalised and construction works take place. Heads of terms were prepared and circulated to Forth Ports by the Council, but no comments were ever received back from Forth Ports. Forth Ports subsequently indicated that they would not be able to enter into such an agreement until design was more progressed and that they would require the alignment of defences to be altered as per their suggestions. In the absence of such an agreement, the Council is committed to further engagement, and once a programme for the detailed design and construction works has been identified the Council will engage further with Forth Ports.

6.3 The procurement of contractors and designers has not taken place yet and will not commence until the Scheme is confirmed (Q3 2026 at the earliest) and a funding model has been agreed between the Council, Scottish Government, and others. It is not possible to comment on the potential procurement routes at this stage, but the Council will be engaging with Forth Ports at an appropriate stage to seek their views and input.

## **7. CONSTRUCTION AND OPERATIONS**

7.1 In response to the points made at paragraph 2.3.5 of the Forth Ports Statement, the Council are aware that the construction of flood defences could cause some disruption due to partial road/ land closures and closures of the inlet channel to facilitate replacement of the lock gates. As noted above, the Council are committed to engaging with Forth Ports on this matter once more certainty around the programme of construction works is available. The Council wishes to continue the positive engagement it has had with Forth Ports over the years and to continue their stakeholder dialogue to ensure the Scheme is constructed in a manner that causes least disruption to the Port. It is envisaged that a 'working group' would be established with membership comprising Forth Ports, the Council and their appointed designers and contractors. This group would meet regularly to agree construction methodology, road/ lane closures, traffic diversions, lay down areas etc. Again, the mechanics for agreeing these points are expected to be secured within the Interface Agreement to be agreed with Forth Ports.

### *Operational and Maintenance Impacts*

7.2 Given the significant development of the Port referred to in the Forth Ports Statement, it is clear that major works are possible within the Port whilst it remains operational. As noted earlier it is

envisaged that a ‘working group’ would be established to consider the construction impacts on the Port and to develop an agreed plan with mitigation measures to minimise disruption.

7.3 Responsibility for maintenance, repair and operation of the flood defences is to be agreed between the Council and Forth Ports and to be secured with the Interface Agreement. Given Forth Ports’ experience in the operation and maintenance of lock gates, (and some of the demountable defences on the quay side at the lock), it would be sensible for Forth Ports to be responsible for the operation and maintenance of the new dual function lock / flood gate and quayside demountable defences, subject to agreement of terms including liabilities. It is anticipated that the Council would be responsible for the operation and maintenance of flood defence walls with Forth Ports facilitating access at all reasonable times for the Council and/or its appointed contractors.

## **8. ENGAGEMENT**

8.1 At paragraphs 3.1 to 3.2 of the Forth Ports Statement, Forth Ports state that engagement since 6 November 2024 has stalled, with the Council perceived as process-focused rather than solutions-focused. Forth Ports also claims that, pending agreement, the Scheme poses a significant risk to the operation, management and future development of Forth Ports’ statutory harbour undertaking and its safety duties under the Ports and Marine Facilities Safety Code.

8.2 The Council has undertaken considerable engagement with Forth Ports including in relation to the design of the Scheme. There have been numerous meetings since 2017 and numerous studies as noted in the technical notes and reports relative to the Scheme design and the port.

8.3 During the last meeting held between Forth Ports and the Council in November 2024, it was agreed that Forth Ports would take the actions to review the draft HRA and to walk North Shore Road and thereafter feedback to the project team. Forth Ports never responded and did not appear to carry out their allocated actions following the meeting. As far as the Council is aware, Forth Ports have never commented on the port study reports or any other documents issued to them.

8.4 Additionally, at paragraphs 9.9 to 9.11 of the Forth Ports Statement, Forth Ports state that the Council ceased meaningful engagement in late 2024 and did not adequately consider the objection before its preliminary decision. They further note that objections and proposed solutions must be revisited before any final confirmation to ensure sound, fully-informed decision-making consistent with statutory frameworks.

8.5 As noted above, the Council has carried out significant engagement with Forth Ports and strongly disagree that there has been a lack of meaningful engagement. The Council also notes that Forth Ports seemingly did not wish to progress without a more detailed Interface Agreement or similar commercial agreement but then suggested that such an agreement could not be negotiated until the design was more progressed. Forth Ports and all other objections were considered by the Council prior to making a preliminary decision.

8.6 The Council has included a timeline in Appendix 1 which sets out a summary of key engagement with Forth Ports.

## **9. STATUTORY AND LEGAL CONSTRAINTS**

9.1 Section 56(2)(d) of the 2009 Act empowers the Council to enter into an agreement (or other arrangements) with any party, including Forth Ports and other statutory undertakers, for the carrying out by the Council of any work which it could do under the authority of Part 4 of the 2009 Act, which includes matters for the management of flood risk.

9.2 Paragraph 4.1 to 4.5 of the Forth Ports Statement notes that Forth Ports is a statutory undertaker, and its consent will be required for any interfering works, reinforcing the need for close design collaboration and appropriate conditions on deemed planning permission. Consent from Forth Ports will be necessary for implementation of the Scheme, if and when finally confirmed, in relation to any works which interfere with Forth Ports' statutory undertaking. Forth Ports also note that section 58 of the Flood Risk Management (Scotland) Act 2009 ("2009 Act") limits local authority powers to manage flood risk: works cannot damage property of a statutory undertaker or interfere with its undertaking without consent (not to be unreasonably withheld).

9.3 The Council is fully aware that Forth Ports is a statutory undertaker and that works cannot damage its property or interfere with its undertaking without consent. As a statutory undertaker, there are a number of safeguards in place for Forth Ports that constrain how the Council may promote and deliver the Scheme. The Council cannot lawfully implement interfering works without Forth Ports' agreement; it must proactively design the Scheme to avoid or minimise interference; and it must embed appropriate protective measures and approval gateways into the implementation framework. Put simply, Forth Ports' statutory undertaker status gives it additional protection over any interfering works, and section 58 of the 2009 Act ensures that role remains a binding legal safeguard throughout Scheme delivery.

9.4 However, the 2009 Act recognises that while consent is needed from a statutory undertaker, it must not be withheld unreasonably, and it is ultimately for the Scottish Ministers to determine whether consent has been unreasonably withheld.

## **10. PLANNING CONTROL AND CONDITIONS**

10.1 Paragraph 4.6 to 4.7 of the Forth Ports Statement states that conditions attached to deemed planning permission must provide sufficient optionality to address design issues (e.g. alternative FPW alignments, demountables) and must secure Forth Ports' consultation/approval for control documents governing design, implementation and operation where they affect the Port. Forth Ports expects this detail to be available for scrutiny at the hearing.

10.2 The Council agrees that appropriate controls must secure both design flexibility and protection of port operations although notes that Forth Ports has not set out the nature of conditions that it would expect to see. Lawful conditions must be precise and necessary. The Council's position is that approval of post-consent submissions should rest with the planning authority, with consultees being consulted as required in accordance with legislation (noting that, as set out in section 9 above, statutory undertakers have additional protections under section 58 of the 2009 Act).

## **11. HABITATS**

11.1 At paragraph 7.1 to 7.3, the Forth Ports Statement notes that the HRA was published in August 2025 and was not available at consultation or at the Council's preliminary decision in January 2025. Forth Ports claims that the HRA did not consider Forth Ports' proposed modifications (including Energy Park inclusion, Grange Burn access, and operational interfaces), yet Forth Ports considers these changes compatible with, and supportive of, the HRA's findings if implemented.

11.2 The Scheme documents demonstrate that the current design is feasible, and the iterative design process incrementally reduced the extent of potential adverse effects on the SPA/Ramsar site. Any changes to the published Scheme design which would increase adverse impacts on the SPA (e.g. via increased habitat loss or disturbance) is unlikely to pass Stage 6 of the HRA process which considers whether there are alternative solutions.

11.3 Setting flood defences closer to the shoreline along North Shore Road and the inclusion of the Energy Park and Grange Burn land could result in a notable increase in temporary and permanent habitat loss from the SPA (including the potential addition of functional, as opposed to non-functional, land), which could trigger an AESI for habitat loss (noting that there is currently only an AESI for disturbance of high tide roosts). Additional compensation would be required for this habitat loss, which would be separate to the compensation proposals at Bothkennar and Kinneil (which provide high tide roost provision only). Design changes which would further encroach upon the SPA could also increase the number of birds potentially disturbed during construction and maintenance works. This could also trigger the need for additional high tide roost compensation if the change in numbers that fall within the zone of influence was large enough.

11.4 Moving the design closer to the estuary edge would also invite further discussion and assessment around coastal squeeze (noting that RSPB already had an objection in relation to coastal squeeze in their original objection, which has been reiterated in their statement submitted in advance of the Hearing).

11.5 The above has focused on the SPA/Ramsar site and the associated HRA, but any increase in habitat loss from these sites as a result of the Scheme would also result in additional habitat loss from the Firth of Forth SSSI, which may need to be considered in an update/addendum to the EIAR.

11.6 Additionally, paragraph 7.4.1 to 7.4.2 of the Forth Ports Statement notes that Regulation 48 requires an appropriate assessment before authorisation and that the HRA was not available when the Council made its preliminary decision on 23 January 2025. Forth Ports notes that Scottish Ministers' views should be sought and taken into account before confirmation to ensure procedural compliance and informed decision-making. In response to this, the Council would note that Regulation 48 is being complied with, and the Council are awaiting a response from the Scottish Ministers. Regulation 48 requires an appropriate assessment at the point when a competent authority consents a plan or project – for the purposes of the 2009 Act, a preliminary decision is not a decision which triggers Regulation 48 as it is not consenting a plan or project. Rather, it will be triggered following the Hearing at the point when the Council takes a final decision in respect of the Scheme.

11.7 In response to paragraphs 7.9.1 to 7.9.6 of the Forth Ports Statement regarding the Council's AESI conclusions and their IROPI case, the Council would refer to their position above. The Council do not accept that the Scheme will sterilise land and, consequently, the Council's IROPI case is not impacted. The Scheme has included access through the flood defences to allow access to both the Energy Park and tax site areas of land. The Scheme does not result in the potential land use being changed.

*Appropriate Assessment*

11.8 In response to paragraphs 7.5.1 to 7.5.12 of the Forth Ports Statement and the precautionary nature of the Council's assessment, the Council would note that, as observed by Forth Ports, the HRA did not assess flood defences at the estuary edge to include the Energy Park land. Therefore, statements made by Forth Ports on the outcome of the HRA should this land be included are based on speculation and not detailed assessments.

11.9 Moving the flood defences to include the Energy Park land would shift the alignment closer to the SPA by up to 200m in some locations, which would move the Zone of Influence for disturbance further into the SPA. This would increase the number of birds that could be disturbed during construction and maintenance works and potentially require additional compensation.

11.10 The Council reiterates that its approach to HRA, in particular the precautionary basis of its assessment and its position on alternatives, is supported by NatureScot, the statutory nature conservation body which must sign off on the Appropriate Assessment that is to be carried out. Significant weight should be afforded to NatureScot's confirmation of their agreement to the HRA [FC006.0005] and its conclusions, including the alternatives considered.

*Alternatives*

11.11 At paragraphs 7.6.1 to 7.6.9 of the Forth Ports Statement, Forth Ports state that the Regulation 49 alternatives appraisal is flawed by not considering a shoreline 'Do Something' Option 4 that includes the Energy Park and a demountable section for Grange Burn access. As proposed, Option 4 functions like flood defences setback Option 5 at the Energy Park, which the Council itself considered unviable for failing the objectives (OBJ3–5). Only a revised Option 4 that includes the Energy Park and access can meet the Scheme objectives and support a "no alternative" conclusion.

11.12 In response to this, the Council note that Forth Ports state it is very likely that the Energy Park will be operational at the start date for construction of the Scheme, being 2032 at the earliest. It is likely the earliest start date for the Scheme would be significantly later than this given the November 2025 committee paper noted the River Carron residential works would be 2028–31 with the other residential areas being after this. Depending on the funding approach, it will be potentially 2035 or later before any Scheme works are carried out in the Port.

11.13 Option 4C considers the flood defences at the shoreline, i.e. Forth Ports' preferred alignment. As noted in Table 6.3 this alternative was ruled out due to the likely increased disturbance, greater temporary and permanent habitat loss in the SPA, increased technical issues and longer duration to construct. Option 4A is a viable alternative that mitigates the additional issues that would be created by Option 4C.

*IROPI Economic Case*

11.14 At paragraph 7.7.1 to 7.7.7 of the Forth Ports Statement, Forth Ports state that the imperative reasons of overriding public interest (IROPI) case recognises national importance and economic benefits, but omits the FGF value and the consequences of severing c. 35 ha at Grange Burn and leaving the Energy Park unprotected and at high risk. Forth Ports contends that this omission undermines IROPI; conversely, realigning to protect the Energy Park and preserve access strengthens IROPI by securing the developability and economic potential intended by national policy.

11.15 In response to this, the Council would reiterate that the Energy Park will not be isolated as there are flood gates proposed through the flood defences to allow access to this currently undeveloped land. As previously noted, the Scheme will not result in the sterilisation of land, and Forth Ports can choose to develop any of the sites identified either before or after implementation of the Scheme.

11.16 The IROPI case relates to the implementation of the Scheme, not the implementation of the Energy Park or any other development. As previously noted, there is no consent in place, or even applied for, for the Energy Park or any other development. The Council has clearly established that the Scheme meets the IROPI threshold – the (unproven) suggestion that the IROPI case would be even stronger if the Scheme were redesigned to protect the Energy Park is unnecessary for the purposes of reaching a conclusion under the Habitats Regulations and it fails to consider the consequential increase in adverse effects that such a redesign would likely have.

### *Compensation*

11.17 At paragraphs 7.8.1 to 7.8.6 of the Forth Ports Statement, Forth Ports states that the Council proposes compensation at Kinneil Lagoons and Bothkennar Pools, with capacity significantly exceeding worst-case displacement estimates. Forth Ports claim if a shoreline realignment marginally increased AEoSI risk, existing compensation capacity should be more than sufficient; there is no ecological reason to retain a suboptimal alignment that sterilises strategic land.

11.18 In response to this, the Council notes that no assessment has been conducted by Forth Ports to determine the number of birds that could be disturbed by their proposed altered flood defence alignment and therefore their claim that the compensation sites could support the additional birds is based on speculation only. The defences would move closer to the SPA by more than 200m at the Energy Park site, which would shift the zone of influence further into the SPA. This would increase the potential for disturbance to significantly more birds.

11.19 As stated in the HRA, the '*Scheme compensation measures need to be large enough to support all roosting birds potentially disturbed by the works (SPA qualifying species and non-qualifying species), in addition to the number of birds which are already known to use the locations at which the compensation measures are proposed*'. The compensation measures also need to allow for years when numbers of birds using these areas could be even higher than those recorded during the surveys.

### *Legal Adequacy*

11.20 Paragraphs 9.6 to 9.8 of the Forth Ports Statement states that as presently framed, the HRA approach misrepresents alternatives, overlooks FGF development value in IROPI, and cannot sustain the necessary Habitats conclusions without the requested modifications. Realigning the FPW and securing access are necessary to reach a lawful outcome on alternatives and IROPI in light of national economic and Net Zero policy.

11.21 The Council rejects the criticisms of the HRA and would refer to section 6 in the Hearing Statement which sets out more fully that the HRA complies with relevant legislation. As noted in the Hearing Statement, the Council (as competent authority) formally consulted with both the public and NatureScot on the HRA. NatureScot has confirmed that they are content with the HRA as it relates to the Appropriate Assessment. The Council are in the process of consulting with the Scottish Ministers on the HRA in advance of the Appropriate Assessment in compliance with Regulation 48.

11.22 The HRA does not rely on the additional benefits Forth Ports are claiming. Forth Ports have failed to demonstrate that their proposed alternative alignment would have lesser impacts on the SPA and Ramsar/ SSSI sites and therefore any suggestion that there would not be any greater impacts or that the proposed compensation would still be satisfactory is speculative as Forth Ports have not provided any evidence to support this assertion.

## **12. ECONOMIC CASE**

12.1 Paragraphs 8.1 to 8.3 of the Forth Ports Statement states that the FGF is projected to deliver £7.9bn investment, £8.1bn GVA and up to 34,500 jobs; the Scheme's own benefits (~£2.4bn in avoided damages) are undermined if it sterilises FGF land. Forth Ports further assert that excluding the Energy Park land and the remaining Port development land from the protections afforded by the Scheme undermines the development potential and value of land within the Grangemouth Tax Site, weakening investment pull for nationally supported decarbonisation projects. Including these areas within the protected limits, however, enhances the Scheme's

economic case and long-term value creation. An agreement regarding how the Scheme's construction and operation will interact with the Port activities would assist in securing economic benefits of the FGF and constraining existing economic activity at the Port.

- 12.2 In response to this the Council notes that the Scheme is a strategic flood risk management intervention whose primary purpose is to reduce flood risk to people, property and critical infrastructure, with an estimated order of £2.4 billion in avoided damages. It is noted that the figures quoted by Forth Ports relate to the entire FGF (Edinburgh, Fife and Falkirk) and are not specifically related to the Grangemouth site which only accounts for a small proportion of FGF benefits.
- 12.3 It is not the role of the Scheme to underwrite or prioritise specific commercial development platforms within the FGF. The appropriate planning test is whether the Scheme's design and implementation reasonably avoid, reduce and mitigate adverse effects on adjacent land uses, consistent with the mitigation hierarchy and sound engineering practice. To the extent that Forth Ports seeks bespoke protective measures for particular plots, these must be justified, deliverable within the Scheme's engineering and environmental constraints, and proportionate to demonstrable risk.
- 12.4 The deliverability of the FGF should not be contingent upon the Scheme conferring special protections or bespoke exclusions for selected parcels of land. If the FGF's delivery case relies on flood protection beyond that which is strategically justified and fundable within the Scheme, Forth Ports retains the ability to bring forward site-specific mitigation or adaptation works through the planning system, land assembly, and commercial investment. The FGF is a multi-site, multi-year programme; its success should be underpinned by diversified delivery pathways rather than dependency on a single third-party infrastructure scheme. If the Scheme were delayed or modified, it would not follow that the FGF could not deliver; rather, delivery would proceed through alternative phasing, site selection and private mitigation, as is standard for major programmes subject to external infrastructure interfaces.
- 12.5 As noted above, the Council is willing to enter into an Interface Arrangement with Forth Ports to set out how construction and operation will interact with ongoing Port activities. This can address matters such as temporary access, construction sequencing and windows, abnormal load routes, laydown and temporary works compounds, interface with utilities, safeguarding of operational berths, and protocols for emergency and security access.

### **13. OVERALL RISK AND DELIVERABILITY**

- 13.1 Paragraph 9.5 of the Forth Ports Statement states that in its current form, the Scheme risks the efficient and economic operation of nationally important infrastructure and constrains the policy-backed growth trajectory. It is stated that modest, targeted modifications would materially improve the need case, financial case and HRA robustness without materially worse environmental effects or disproportionate technical difficulty.
- 13.2 The Council's response is that (as noted earlier) the tax benefits promoted to help encourage investment and development with the FGF are likely to expire before any part of the Scheme is implemented in the FGF. This was presumably considered during the FGF bid and subsequent FBC and it therefore seems very surprising that reliance is now being placed on the Scheme to deliver the FGF benefits. There is no evidence to demonstrate the Scheme would prohibit any of the developments identified by Forth Ports. The Council would also refer to section 12 above which sets out the Council's position on the economic case.

## **14. CONCLUSION**

14.1 For the reasons outlined above, and as further detailed in the Council's response to objection [FC004.018] and the Hearing Statement, the Council considers that the issues raised by Forth Ports have been fully addressed. The Council remains committed to ongoing engagement with Forth Ports to manage construction impacts and to ensure delivery of the Scheme in a manner that is as efficient and minimally disruptive as reasonably practicable.

Appendix 1: Timeline of key engagement with Forth Ports:

Date	Email/Meeting Topic
06/09/2017	Meeting and walkover to outline the flood protection scheme.
09/03/2018	Meeting – Design Workshop
04/05/2018	Meeting – Discuss the lock entrance
23/07/2018	Meeting – Options Workshop.
23/08/2018	Meeting and walkover, review historical photos of the lock entrance.
15/11/2018	Meeting – Proposed GI Works
13/12/2018	Meeting and Walkover to inspect the flood defence locations.
29/04/2019	Meeting – update on the lock options.
06/06/2019	Walkover with SNH for HRA
17/07/2019	Walkover for HRA
18/07/2019	Walkover – South Shore Road
20/05/2020	Meeting – Port Study, GI Phase 5, Overall scheme update
19/08/2020	Meeting – Ineos Bridge over the Grange Burn
05/10/2021	Meeting to discuss port study
17/02/2023	Meeting - General update and discussion on the flood defences parallel to North Shore Road.
22/02/2022	General update and discussion - Overview of the plans, - Access for construction works, - Constructability of proposed flood defence, - Gate/ramp locations through/over the proposed flood defences
17/02/2023	Meeting – General update, discussion on flood defence parallel to North Shore Road and South Shore Road.
09/05/2023	Meeting to close out technical issues
20/12/2023	Meeting – update on scheme and technical notes
02/05/2024	Meeting – legal discussions
11/07/2024	Email requesting a meeting with Forth Ports to discuss their objection.
02/08/2024	Meeting to discuss Forth Ports objection.

16/09/2024	Email issued to Forth Ports - notes of meeting held on 02 08 2024 and revised HoT's for an Interface Agreement and separate Lock Gate agreement and a request for a further meeting
02/10/2024	Meeting to discuss Forth Ports objection.
03/10/2024	Email following meeting to advise that FC will be sending over copy of shadow HRA and topographic survey files will be issued via file transfer
03.10/2024	Draft HRA issued to Forth Ports.
04/10/2024	CAD file of topo along North Shore Road and proposed flood defence wall alignment issued to Forth Ports
07/11/2024	Meeting to discuss Forth Ports objection. FP's acknowledged receipt of shadow HRA and topo and that they would review the topo next week and revert back to FC on North Shore Road. FP noted that HoT'S at this stage would only serve as an agreement to agree and could not be completed at this stage.
31/01/2025	Email to objectors to advise of Preliminary decision to confirm the scheme without modification
07/04/2025	Email to update objectors on Scottish Ministers decision not to call in the scheme
03/09/2025	Email advising of participate plus HRA engagement

Appendix 2: Aerial Image of Port of Grangemouth (image supplied by Scottish Enterprise)

