

Chief Governance Officer
GFPS Objections
Falkirk Council



By email: objectionsgfps@falkirk.gov.uk

CC Alistair Dawson Falkirk Council
Richard Kehoe NatureScot
grangemouthfps@falkirk.gov.uk

21st January 2025

Dear Sir/ Madam

FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009 AND THE FLOOD RISK MANAGEMENT (FLOOD PROTECTION SCHEMES, POTENTIALLY VULNERABLE AREAS AND LOCAL PLAN DISTRICTS) (SCOTLAND) REGULATIONS 2010 (AS AMENDED)

GRANGEMOUTH FLOOD PROTECTION SCHEME 2024

We acknowledge that we have not written since you sent the draft Habitats Regulations Appraisal (HRA) in September 2024, but we were not aware that this was being considered to be a consultation on this additional information as no response was requested and no date was specified for a response to this information. It has now come to our attention that the Executive of Falkirk Council are to make a preliminary decision on the Grangemouth Flood Prevention Scheme, as per the Flood Risk Management (Scotland) Act 2009, on 23rd January 2025. We therefore urgently wanted to get in touch and this letter should be considered in conjunction with our principal response to the consultation dated 15th June 2024 (attached for ease of reference).

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The RSPB is part of Bird Life International, a Partnership of conservation organisations working to give nature a home around the world.

RSPB Scotland has sought to engage constructively at numerous times before the submission of the application and after its submission. After carefully considering the information that was available at the time the application was submitted, we objected (letter dated 15th June 2024). As noted in that letter, RSPB Scotland recognises the need for flood protection schemes to mitigate the effects of climate change. However, schemes must be carefully designed and sited to ensure they do not result in unacceptable unmitigated impacts on nature.

In September 2024, we received a draft HRA from Falkirk Council and Jacobs. It is our opinion that it is not acceptable that this was sent after the formal period of consultation had concluded and was not flagged as additional information with suitable due process including requesting further responses from consultees.

As such, we do not feel appropriate process has been followed for assessing the impacts on the SPA and remain extremely concerned that the information provided to consultees was not adequate to allow proper consideration of the likely impacts of the proposal. As per our objection of 15th June 2024, we wish to note that Regulation 10B of the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 sets out that where a proposed scheme/application requires an EIA and a Habitats Regulations Assessment to be carried out, the local authority must ensure these assessments are coordinated. We do not believe that this has happened in this instance. The draft HRA was not detailed in the EIA and we only saw the draft HRA after the consultation period was closed and we had submitted our objection to the Scheme.

Having now reviewed the information in the draft HRA, RSPB Scotland wishes to maintain our **objection to the proposed Scheme** for the following reasons:

- Insufficient information to demonstrate that alternative solutions have been fully considered.
- Lack of proper consideration of available mitigation measures to reduce negative impacts on the designated sites.
- Unsuitability of the proposed compensation measures to provide adequate and appropriate compensation for the effects of the proposal on site integrity.

We will reconsider our position in the light of any further information that is made available.

We note that the Report for the Council meeting states that, *"Following analysis of the objections received and subsequent discussions with objectors, it is considered that no new issues have arisen which have not already been addressed by the GFPS project team as far as reasonably practicable"*. Although we believe that our reasons for

objection could be resolved, and RSPB Scotland is willing to work with Falkirk Council as the Applicant to try and do so, particularly relating to compensation measures, at present this has not occurred.

Following the information provided in the draft HRA we are prepared to withdraw the following elements of our original objection:

- Insufficient information to allow us to properly respond to the potential impacts on the Firth of Forth SPA.
- Lack of assessment of the effects of indirect habitat loss through 'coastal squeeze' resulting from the proposed development.

Further detail relating to our position is provided in the accompanying Annex. Please do not hesitate to contact me should you wish to discuss further any of the points raised.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Toby Wilson', with a stylized, cursive script.

Toby Wilson
Senior Conservation Officer
RSPB Scotland
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Annex - RSPB Scotland objection to the proposed Grangemouth Flood Protection Scheme

1. Insufficient information to demonstrate that alternative solutions have been fully considered.

Regulation 49 of the Habitats Regulations sets out that if it cannot be ascertained that the proposal will not adversely affect the integrity of a European site, it can only proceed if there are no alternative solutions, **and** imperative reasons of overriding public interest (IROPI). Natural flood management solutions do not appear to have been fully explored as part of the package of measures and appear to have been dismissed out of hand. Consequently, we remain of the view that the applicant has not demonstrated that there are **no alternative solutions. We therefore object to the proposed Scheme due to lack of information on the consideration on alternatives.**

2. Lack of proper consideration of measures to reduce negative impacts on the designated sites.

Undertaking the work outside the autumn and winter period, when the wildfowl and waders of the SPA are largely absent could significantly reduce possible construction impacts of disturbance on the SPA species. Whilst we understand that the proposed Grangemouth Flood Protection Scheme is large and complex, and restricting the working period is likely to be difficult, this is not in itself sufficient reason for this possibility not to be considered. We do not believe there has been enough information provided to show that this is not possible, beyond stating that it would be difficult. Therefore, **we object to the proposed Scheme due to lack of information and consideration of construction restrictions.**

3. Unsuitability of the proposed compensation measures to provide adequate and appropriate compensation for the predicted effects of the scheme.

In the event that further mitigation has not allowed a conclusion of no adverse effect on site integrity, there are no alternative solutions and imperative reasons of overriding public interest, the competent authority must secure any necessary compensatory measures to be taken to ensure the overall coherence of the UK Site Network. The EIA Report (EIAR) concludes that adverse effects on qualifying bird species of the Firth of Forth SPA and Ramsar site cannot be discounted. Section 7.8 of the EIAR states that, *"compensatory measures must therefore be taken to ensure that the overall coherence of the European site network is protected."* We do not dispute the principle of providing off-site habitat for the species likely to be affected as compensation for the impacts of the scheme, however, RSPB Scotland has significant concerns about the compensation measures proposed. Overall, we do not think it is good practice to provide compensation within an SPA, as this raises issues of additionality.

3.1 Feasibility and maintenance

As part of the Inner Forth Landscape Initiative, Falkirk Council and RSPB Scotland produced a Management Plan for Kinneil Lagoons. RSPB Scotland attempted to undertake similar works to those proposed as part of the compensation package for the proposed development. RSPB Scotland was unfortunately unable deliver the work for a number of reasons, which included gaining SEPA consent. In light of this, we have concerns as to the feasibility of the proposed compensation measures. We reiterate that any compensation must be secured and in place before work on the Grangemouth Flood Protection Scheme can go ahead. The proposed compensation must be adequately maintained at both proposed sites for the period at which any disturbance to the SPA occurs as a result of the Scheme and we again question whether Falkirk Council has the resources to do this.

3.2 Reduction in number of roost sites and disturbance

The species at risk of disturbance from the Grangemouth Flood Protection Scheme currently use three principal roosts sites in the immediate area: Grangemouth, Kinneil Lagoons and Bothkennar Pools. The disturbance from the proposed Scheme is likely to remove or reduce the viability of the roost (s) at Grangemouth. Simply providing compensation on the remaining two roosts, even if it is effective in increasing their functional size, means that the birds are at greater risk of disturbance, having lost one of the alternative roosting sites. If, as happens regularly at both Kinneil Lagoons and Bothkennar Pools, the birds are disturbed, they no longer have the Grangemouth roosts to relocate to, and so are at greater risk of the negative effects that disturbance can have on physical condition etc. We consistently raised this issue during discussions with Falkirk Council and their consultants, Jacobs, and urged them to look at alternative, additional sites but this does not appear to have been pursued.

Therefore, **we object to the proposed Scheme due to the inadequacy of the proposed compensation.** We are keen to work with Falkirk Council to look at additional and alternative sites.