



**FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009**

**Grangemouth Flood Protection Scheme**

**Objection of Forth Ports Limited**

**Response to Written Statements**

**12 January 2026**

## 1. INTRODUCTION

- 1.1 This response statement on behalf of Forth Ports Limited (**Forth Ports**) provides comments in response to the written statements of Falkirk Council (**the Council**) and RSPB Scotland (**RSPB**).

## 2. RESPONSE TO THE COUNCIL'S WRITTEN STATEMENT

- 2.1 The Council has not addressed the concerns raised by Forth Ports with regard to the Flood Protection Scheme (**the Scheme**) as detailed in its written statement and objection. The Council did not provide a formal response to Forth Ports' objection in 2024, which was done in response to all other objections, and so there are no specific comments from the Council for Forth Ports to respond to at this stage, and nothing yet before the Reporter to detail the Council's position in respect of Forth Ports' objection, including why the Council has been unwilling to consider the amendments to the Scheme proposed by Forth Ports.
- 2.2 As such, Forth Ports provides the following general comments in response to the Council's written statement.
- 2.3 **Failure to consider the implications of the exclusion of the Energy Park land and Grange Burn land**
- 2.4 The Council's written statement is misleading in its assessment of the impact of the Scheme as currently designed on the Forth Green Freeport (**FGF**).
- 2.5 The Council's statement identifies the importance of the Scheme in supporting economic growth, driving investment in the region, and facilitating a sustainable and just transition [paragraph 2.17]. Of direct relevance, it identifies the strategic role of the Port, its vulnerability to flood risk, and its Green Freeport status [2.1, 2.3]. The Council highlights that the FGF is '*a fundamentally important infrastructure asset which is necessary to maintain industry presence in Grangemouth for future generations*' and that '*the Scheme is a key enabler for the implementation of the freeport*'.
- 2.6 However, the Council's analysis omits the fact that the Scheme design leaves unprotected the remaining developable areas of the FGF, which entirely undermines its argument that the Scheme '*is a key enabler for the implementation of the freeport*', and ignores the significant economic loss resulting from the sterilisation of this land if left unprotected from flooding. It is frustrating that the Council has not directly addressed this issue, given Forth Ports' objection and the fact that the Council is a partner in the FGF.
- 2.7 The Council's statement is also contradictory in its argument on the Scheme's role in protecting future development. The Council states that the Scheme's primary purpose is to reduce the risk to existing development, with future development as a secondary consideration [2.10]. From Forth Ports' interpretation of the Scheme purpose and supporting plans and policy, this is not the case. As identified by the Council, the primary outcome for the Scheme is to protect communities and the industries which they support, and the secondary outcome is to '*remove a major barrier to long-term investment and facilitate physical and economic development in and around the Scheme area*' [2.14, 2.15]. The objectives of the Scheme [FC012.006] include, relevantly, to develop the Scheme in accordance with measures set out in the Forth Estuary Flood Risk Management Strategy (**FRMS**) [FC009.002] and the Forth Estuary Local Flood Risk Management Plan (**LFRMP**) [FC009.001] to reduce flood risk at Grangemouth (01); to increase development activity in Falkirk/Grangemouth corridor such as the Falkirk TIF initiative (3.5); and to provide a platform for the regeneration of Grangemouth (3.6). Nowhere in the list of objectives is there a stated primary purpose of protecting existing development. Also notably, a focus on primarily protecting existing development is not a restriction of the Flood Risk Management (Scotland) Act 2009 (**2009 Act**) or a stated purpose of the LFRMP.
- 2.8 Despite its argument that the primary purpose is to protect existing development, the Council acknowledges that the Scheme is a '*prerequisite to the significant future development proposals*

*around the Grangemouth area' [2.10] and 'can be an enabler to support future development where that use has been appropriately considered for its vulnerability to flood risk' [2.3], and that the presence of flood defences is directly relevant to investment decisions [2.4]: "it is clear that improved flood resilience across the entire Grangemouth complex would alleviate concerns from existing businesses as well as those of any prospective investors".*

- 2.9 Protection of future industrial development should be a central consideration in the design of the Scheme, particularly in the context of FGF development. Given the 100 year lifetime of the Scheme, it is completely critical that the Scheme accounts for protection of future large scale industrial and economic development, particularly where that development is designated, nationally important, anticipated to come forward in the short to medium term, and fundamental for the socio-economic prosperity of the local and regional community as well as nationally. Forth Ports reiterates the point made in its written statement that development on the Energy Park land is anticipated to come forward in the short term, and notes the Council's comment that construction of the Scheme will take around 8-10 years to complete, with construction of industrial elements to follow residential elements. Therefore, Forth Ports is not asking the Council to account for development proposed long in the future, rather to forward plan for the industrial development of the FGF which is likely to come forward before construction of the Scheme is complete.
- 2.10 Therefore, as currently designed, the Scheme fails to meet the Scheme objectives and outcomes, is not in accordance with the strategic alignment policies identified by the Council, and directly undermines the Council's focus on facilitating economic growth.
- 2.11 Further, it is not correct for the Council to say that the Scheme is in accordance with the FRMS and the LFRMP. The purpose of the FRMS and the LFRMP is to manage flood risk within identified Potentially Vulnerable Areas (**PVA**), and the Port land is included within PVA 10/11, including the Energy Park land and Grange Burn land. The objectives to manage flooding for this PVA include, relevantly: *"Reduce economic damages to residential and non-residential properties in Grangemouth caused by river flooding and coastal flooding."*, and an action for this PVA is to develop the Grangemouth flood protection scheme. There is no suggestion in the LFRMP that it would be appropriate to exclude specific land within the PVA which is at high risk of flooding (risk for the Energy Park land is 'tidal 2 year') from the Scheme.
- 2.12 **Procedural considerations**
- Engagement*
- 2.13 The Council has detailed the engagement carried out with the public and stakeholders which it says has informed the development of the Scheme.
- 2.14 However, Forth Ports considers the Council has not sufficiently met its legislative and common law duties with regards to consultation with Forth Ports, evidenced by the Council's lack of formal response to Forth Ports' objection, and its failure to take into account Forth Ports' concerns and proposed amendments to the Scheme in the development of the Scheme design.
- 2.15 Forth Ports provided early input on the Scheme proposals, raising key concerns that remain the subject of its objection. The Council engaged with Forth Ports in a series of technical meetings in 2022 and 2023, and briefly in 2024. While the intention was to undertake progressive discussions moving towards agreement, Forth Ports was not given the opportunity to provide meaningful input on Scheme design and its proposed amendments to the Scheme were not seriously considered by the Council. Technical justification from the Council for its proposed alignment of the FDW at the Energy Park land was either not provided to Forth Ports at all (for example technical note [FC003.009] which was drafted in 2022 but only made public to inform this hearing), or was shared with Forth Ports after the Council had advised that it would not be taking into account further technical input from Forth Ports on Scheme design (and instead Forth Ports would need to make an objection) (see [FC003.015]).

### *Preliminary decision*

- 2.16 At the time the preliminary decision to approve the Scheme without modification was made by the Council, Forth Ports had not received a formal response to its objection and its concerns had not been resolved. However, the report to the Falkirk Council Executive Committee to inform the preliminary decision [FC002.005] did not address these outstanding issues, and fundamentally did not bring to the Committee's attention the significance of Forth Ports' objection.

- 2.17 The main report stated as follows in relation to the outstanding objections to the Scheme:

*"5.2 In making this decision, the Council should consider any valid objections (which may include late objections) – see Appendices C (iv & v) of the Objection Management Report.*

***5.3 It is the Project Team's belief that all issues raised through the Objection process have been raised previously and responses provided so far as possible in the past at various public engagement, exhibition sessions and in correspondence with the parties concerned. Many of the issues raised in objections to the Scheme have, when raised previously, been instrumental in the development of the published design during the extensive pre-notification engagement process. For example, in response to concerns regarding removal of trees in Zetland Park, the alignment of the flood defences has been altered to reduce the number of trees affected.***

...

***5.9 Following analysis of the 20 valid objections remaining it is considered that no new issues have arisen which have not already been addressed as far as reasonably practicable in the scheme design.***

**[Emphasis added]**

- 2.18 This commentary suggests that Forth Ports' proposed amendments to the Scheme had been given proper consideration and its objection had been resolved as far as possible, which was not the case.
- 2.19 Appendix C (Objection management report) to the report highlighted that there were 20 valid objections outstanding. The extent of discussion on Forth Ports' objection is at section 4.3.5 'Business Impact', which summarised Forth Ports' objection as follows:

*"OBJ-022 – Forth Ports: Port operation and land considerations: The objector submitted a detailed objection which addresses their interests which would be impacted by the Scheme. The GFPS team have discussed the position/alignment of the flood defences and their impact on Port operations. The alignment of the defences and the various land parcels involved have also been discussed."*

- 2.20 The accompanying 'GFPS team comment' in respect of the business-related objections discusses mitigation and potential compensation for impacts. It does not give any insights into Forth Ports' concerns, or suggestion that there are key considerations for the Committee in terms of the potential exclusion or inclusion of developable Port land within the Scheme. The Committee would need to go to the objection itself to determine this is the case.
- 2.21 The report also states that every objector was issued a formal response, which was not the case for Forth Ports, and that the Council would continue to engage with objectors on outstanding concerns.
- 2.22 It is also relevant that Forth Ports is not a regular stakeholder in this process; Forth Ports is a statutory undertaker whose works, property and the carrying out of its statutory undertaking are expressly accounted for in the 2009 Act, limiting the Council's ability to exercise its power to manage flood

risk<sup>1</sup>. This does not appear to have been considered at all in the Council's analysis of Forth Ports' objection, nor relayed to the Committee in the report recommending the Scheme be approved without modification.

- 2.23 Forth Ports wishes to see genuine consideration by the Council of its concerns and proposed amendments to the Scheme. Forth Ports is disappointed with the lack of meaningful engagement it has received, lack of meaningful acknowledgement of its role as a statutory undertaker, and the apparent lack of consideration of alternative Scheme design.

#### *Habitats Regulations Appraisal*

- 2.24 As highlighted in its written statement, Forth Ports also takes issue with the fact the HRA was not made publicly available until after the Council's preliminary decision was made.

- 2.25 Forth Ports does not agree with the Council's argument at [6.4] that there is no requirement to undertake and make available an HRA as part of the Scheme notification process because the Habitats Regulations are not engaged until the final determination / Scheme confirmation. While there is no requirement under the Habitats Regulations for the Council to consult the public on the HRA, the HRA must inform the development of the Scheme, and must be taken into account by the Council in its decision-making. In accordance with Schedule 2 to the 2009 Act, the Council's preliminary decision could have been the final decision, i.e. confirmation of the Scheme, if not for the outstanding objections – as such the HRA should have been part of information provided to inform the Committee's decision-making at the preliminary decision stage. Further, withholding the HRA from the public during the public engagement process on the development of the Scheme is not in accordance with the Council's common law duties on consultation, which include making relevant information available.

#### 2.26 **Economic assessment**

- 2.27 With regard to the Council's economic assessment of the Scheme, Forth Ports maintains that the Council should have accounted for the indirect costs of sterilising the developable Port land. HM Treasury's Green Book, relied upon by the Council to inform the economic assessment approach, outlines an appraisal process which requires consideration of a longlist of options, avoiding predetermined solutions, with the appraisal and down-selection of options being guided by set objectives.

- 2.28 As detailed above, the outcomes and objectives for the Scheme include the facilitation of economic development and investment in the area. As such, the indirect economic impacts of the Scheme on the developability of the FGF land should have been accounted for.

- 2.29 From the materials provided by the Council, it appears that the limited consideration of alternatives for alignment of the FDW around the Energy Park land has been focused only on technical and environmental matters, and the FGF status and economic value of the developable Port land has not been factored into the Scheme's economic assessment at all.

### 3. **RESPONSE TO RSPB'S WRITTEN STATEMENT**

- 3.1 Forth Ports notes RSPB's comments on the Scheme HRA, set out in its written statement and objection letters, and in particular its concerns regarding the need to consider further mitigation measures and the adequacy of the proposed compensation measures.

- 3.2 Forth Ports' position regarding the HRA remains as set out in its written statement:

---

<sup>1</sup> Flood Risk Management (Scotland) Act 2009, section 58.

- 3.2.1 the Council has failed to account for the option of re-aligning the FDW to protect the Energy Park land and facilitate access to the Grange Burn land, which undermines the assessment of alternatives and IROPI case;
  - 3.2.2 the Council has not provided evidence that amending the Scheme in this way would result in measurably greater adverse effects on site integrity (**AEoSI**) due to displacement impacts; and
  - 3.2.3 if a greater degree of AEoSI were to result from the amendment, requiring a greater scale of compensation, this could be accommodated.
- 3.3 With regard to RSPB's position on further mitigation measures, Forth Ports does not support the implementation of seasonal working restrictions. Scheme construction in proximity to the Port which is condensed into the summer months would cause greater disruption to Port operations, and as such would materially interfere with Forth Ports' carrying on of its statutory undertaking.
- 3.4 With regard to RSPB's position on the adequacy of the proposed compensation measures at Kinneil Lagoon and Bothkennar Pools, Forth Ports notes that NatureScot has confirmed it is comfortable with the proposed compensation measures and has not raised the same concerns regarding location within the SPA and the additionality principle.
- 3.5 It is for the Council to consider RSPB's comments and provide evidence of sufficient and appropriate compensation to satisfy the derogation test. Forth Ports' position remains the same that, if the proposed compensation measures are determined to be appropriate to satisfy the derogation test, there is sufficient capacity in the measures to accommodate any additional requirements which may result from greater AEoSI due to the re-alignment of the FDW around the Energy Park land. Alternatively, RSPB has provided evidence that there are appropriate alternative sites for the delivery of compensation measures, which the Council can consider.
- 3.6 The HRA must be updated regardless, to address Forth Ports' proposed amendments to the Scheme. To not do so is flawed, for the reasons set out in Forth Ports' written statement, but also ignores the inevitability of development of the Energy Park land and Grange Burn land in future as part of the FGF. It is a preferable approach to assess the impacts, AEoSI and any required compensation for a flood protection scheme which incorporates the Energy Park land now, rather than providing compensation for the Scheme as currently proposed then later requiring an additional HRA and potentially additional compensation for further and separate flood defences around the Energy Park land, which will be required to facilitate development of the land in the future.

**12 January 2026**

**Forth Ports Limited (SC134741)**

1 Prince of Wales Dock, Edinburgh, Midlothian, EH6 7DX

in its capacity as **Statutory Harbour Authority for the Port of Grangemouth**  
Port Office, Grangemouth Docks, Grangemouth, FK38UE