

# Environmental Impact Assessment Report

Chapter 2 Legislative and Regulatory Framework

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**Grangemouth Flood Protection Scheme 2024**  
**Falkirk Council**



**GRANGEMOUTH**  
Flood Protection Scheme  
Protecting the heart of our communities



## **Grangemouth Flood Protection Scheme Environmental Impact Assessment Report**

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## Acronyms

EC	European Commission
EIA	Environmental Impact Assessment
FPS	Flood Protection Scheme
FRM	Flood Risk Management
HES	Historic Environment Scotland
LA	Local Authority
LDP	Local Development Plan
MHWS	Mean High Water Spring
MW	Marine Works
NPF	National Planning Framework
PAN	Planning Advice Note
SEPA	Scottish Environment Protection Agency

## 2. Legislative and Regulatory Framework

### 2.1 Introduction

This chapter sets out the statutory context for the EIA and the legislative and policy context for the Scheme in relation to the EIA.

### 2.2 Statutory context for the EIA

The requirement for EIA stems from Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (hereafter referred to as the EIA Directive) and Directive 2003/35/EC regarding public participation. Directive 2011/92/EU codifies four earlier directives (85/337/EEC, 97/11/EC, 2003/35/EC and 2009/31/EC), the first of which became law in European Union countries on 3 July 1988. The EIA Directive was amended by Directive (2014/52/EU) which was adopted on 15 May 2014 and transposed into UK legislation on 16 May 2017.

The UK left the EU on 31 January 2020, however, the requirements of the EIA Directive continue to apply as enacted under UK and Scottish law.

There are a number of EIA regulations that implement the requirements of the EIA Directive, and this EIA Report fulfils the requirements as set out in the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010, as amended by The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Amendment Regulations 2017 (Scottish Government, 2010 and Scottish Government, 2017a). As there is a requirement for marine licencing as part of the Scheme, the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (hereby referred to as the MW Regulations) (Scottish Government, 2017b) are also considered and are discussed further in Section 2.3.

The EIA Report will, as appropriate, also inform future applications for statutory licences and approvals required to undertake works to construct the Scheme.

### 2.3 Key Legislation Relating to the Scheme

#### 2.3.1 Flood Risk Management (Scotland) Act 2009

The Scottish Parliament enacted the Flood Risk Management (Scotland) Act 2009 (hereafter, the "FRM Act") to implement the Floods Directive and modernise flood risk management in Scotland. Further details on the requirements and principles associated with the Act are provided in Chapter 1: Introduction.

In relation to planning consents, Section 65 of the FRM Act inserted section 57(2B) into the Town and Country Planning (Scotland) Act 1997, which requires that once a Flood Protection Scheme is confirmed, the Scottish Ministers are to direct that any necessary planning permission is deemed to be granted, subject to any Scheme modifications or planning conditions which the Ministers may specify.

#### 2.3.2 Marine (Scotland) Act 2010

The construction of flood defences in the Scottish marine area, where works are downstream of the normal tidal limit and where works are below MHWS, will require a Marine Licence to be submitted under

a separate process in future under the Marine (Scotland) Act 2010 and, as such, the MW Regulations are considered to apply (as referred to in Section 2.2).

It is noted however that, the Scottish Ministers may direct that the 2017 MW Regulations do not apply (under regulation 8(4)) if they are satisfied that:

- a) assessment of any effects on the environment of the Proposed Works has already been, is being or is to be carried out by the Scottish Ministers or by another authority; and
- b) such assessment is, or will be, sufficient to meet the requirements of the EIA Directive (2011/92/EU) in relation to the Proposed Works.

An EIA Scoping Opinion was provided by Marine Scotland (now Marine Directorate) as part of this EIA (refer to Chapter 3: EIA Methodology). As commented in the Scoping Opinion provided by Marine Scotland, Falkirk Council, as the local authority proposing the Scheme, is required to undertake an EIA for the Scheme. Taking this into account, on receipt of the marine licence application for the proposed works, the Scottish Ministers will consider if the requirements of regulation 8(4) of the 2017 MW Regulations have been met.

### **2.3.3 Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC)**

At the European level, the Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC) require member states to adopt a more integrated, catchment-based approach to land and water management with a view to developing efficient means of protecting the environment and alleviating flood risk. Although the UK is no longer an EU member state, the requirements of these Directives continue to apply under Scottish law.

## **2.4 Key Planning Policies of Relevance to the Scheme**

### **2.4.1 Introduction**

This section considers the key planning policies of the following documents that are of relevance to the Scheme:

- National Planning Framework 4 (NPF4);
- Falkirk Local Development Plan 2 (FLDP2); and
- Scotland's National Marine Plan.

The Development Plan relevant to the Falkirk Council area is comprised of NPF4 (The Scottish Government, 2023) and the Falkirk Local Development Plan 2 (FLDP2) (Falkirk Council, 2020). NPF4 is the more recent publication, adopted by the Scottish Ministers in February 2023. FLDP2 was adopted by Falkirk Council in 2020. Both plans are read together, however where there is any difference in policy content the more recent publication takes precedence, in this case NPF4.

Scotland's National Marine Plan (NMP) (The Scottish Government, 2015) sets out strategic policies for the sustainable development of Scotland's marine resources out to 200 nautical miles. The Scottish Ministers must make authorisation and enforcement decisions, or any other decisions that affect the marine environment, in accordance with the NMP.

In addition, the provisions of the UK Marine Policy Statement (HM Government, Northern Ireland Executive, Scottish Government, Welsh Assembly Government, 2011) have been taken into account in the development of the Scheme.

Table 2-1 identifies the key planning policies of relevance to the scheme and refers to the relevant EIA chapter(s) that consider the policy topics.

**Table 2-1: Key planning policies of relevance to EIA**

Policy	Summary Description	Relevant chapter of EIA Report
<b>National Planning Framework 4</b>		
Policy 1 Tackling the Climate and Nature Crises	When considering all development proposals significant weight will be given to the global climate and nature crises.	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual
Policy 2 Climate Mitigation and Adaption	Measures to protect against climate change	Chapter 10: Water Environment Chapter 12: Air Quality and Climate
Policy 3 Biodiversity	The policy intent is to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.	Chapter 7: Biodiversity
Policy 4 Natural Places	This policy contains provisions that are intended to protect, restore and enhance natural assets making best use of nature-based solutions.	Chapter 7: Biodiversity Chapter 9: Landscape and Visual
Policy 5 Soils	The policy intent is to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development.	Chapter 11: Soils, Geology and Land Contamination
Policy 6 Forestry, Woodlands and Trees	This policy contains provisions that are intended to protect and expand forests, woodlands and trees.	Chapter 7: Biodiversity Chapter 9: Landscape and Visual
Policy 7 Historical Assets and Places	The policy intent is to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.	Chapter 13: Cultural Heritage
Policy 8 Green Belts	To encourage, promote and facilitate compact urban growth and use the land around our towns and cities sustainably.	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual



Policy	Summary Description	Relevant chapter of EIA Report
Policy 9 Brownfield, Vacant and Derelict Land and Empty Buildings	This policy provides support for development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings. Proposals on greenfield sites will not be supported unless the site has been allocated for development or the proposals is explicitly supported by policies in the LDP. The policy requires that where land is known or suspected to be unstable or contaminated, development proposals are required to demonstrate that the land is, or can be made, safe and suitable for the proposed new use. The policy provides support for the reuse of existing buildings taking into account their suitability for conversion to other uses. Demolition will be regarded as the least preferred option.	Chapter 6: Population and Human Health Chapter 11: Soils, Geology and Land Contamination
Policy 10 Coastal Development	This policy contains provisions that are intended to protect coastal communities and assets and support resilience to the impacts of climate change.	Chapter 6 Population and Human Health Chapter 7: Biodiversity Chapter 12: Air Quality and Climate
Policy 13 Sustainable Transport	The policy intent is to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.	Chapter 6: Population and Human Health Chapter 14: Traffic and Transport
Policy 14 Design, Quality and Place	This policy requires that development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale. Development proposals will be supported where they are consistent with the six qualities of successful places: Healthy; Pleasant; Connected; Distinctive; Sustainable; and Adaptable. Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places will not be supported.	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual
Policy 15 Local Living and 20 Minute Neighbourhoods	This policy requires that "development proposals will contribute to local living including, where relevant, 20 minute neighbourhoods. To establish this, consideration will be given to existing settlement pattern, the level and quality of interconnectivity of the proposed development with the surrounding area..."	Chapter 6: Population and Human Health

Policy	Summary Description	Relevant chapter of EIA Report
Policy 18 Infrastructure First	This policy supports development proposals which provide (or contribute to) infrastructure in line with that identified as necessary in LDPs and their delivery programmes. The policy includes the statement that: "... The impacts of development proposals on infrastructure should be mitigated. Development proposals will only be supported where it can be demonstrated that provision is made to address the impacts on infrastructure..."	Chapter 6: Population and Human Health
Policy 20 Blue and Green Infrastructure	This policy includes the requirement that: "Development proposals that result in fragmentation or net loss of existing blue and green infrastructure will only be supported where it can be demonstrated that the proposal would not result in or exacerbate a deficit in blue or green infrastructure provision, and the overall integrity of the network will be maintained."	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual Chapter 10: Water Environment
Policy 21 Play, Recreation and Sport	This policy contains a range of criteria provided to meet the policy intention to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual
Policy 22 Flood Risk and Water Management	The policy intent is "To strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding."	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual Chapter 10: Water Environment
Policy 23 Health and Safety	The Policy Intent is "To protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing."	Chapter 6: Population and Human Health Chapter 8: Noise and Vibration Chapter 12 Air Quality and Climate Change.
Policy 33 Minerals	Intent to ensure the sustainable management of resources and to minimise the impacts of mineral extractions to communities and the environment.	Chapter 7: Biodiversity Chapter 11: Soils, Geology and Land Contamination
<b>Falkirk Local Development Plan 2</b>		
JE01 Business and Tourism	This policy promotes the following Strategic Business Locations as outlined in the FLDP2 Spatial Strategy: <ul style="list-style-type: none"> <li>• Falkirk Investment Zone</li> <li>• Grangemouth Investment Zone</li> <li>• Larbert Gateway</li> <li>• Eastern Gateway</li> </ul>	Chapter 6: Population and Human Health

Policy	Summary Description	Relevant chapter of EIA Report
JE02 Core Business Areas	The core business areas identified on the FLDP2 Proposals Map should be safeguarded primarily for business and industrial use.	Chapter 6: Population and Human Health
JE06 Major Hazards	This policy is relevant to the assessment of major hazard or accident risks.	Chapter 6: Population and Human Health
PE01 Placemaking	This policy requires that development proposals should address the following principles: Distinctive; Safe and pleasant; Easy to move around and beyond; Welcoming; Adaptable; and Resource Efficient.	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual
PE02 Placemaking Tools	The use of design and placemaking tools will be required to raise the standard of design and embed the six qualities of successful place in new development.	Chapter 9: Landscape and Visual
PE05 Antonine Wall	The Council will seek to retain, protect, preserve, and enhance the Antonine Wall, its associated archaeology, character and setting.	Chapter 13: Cultural Heritage Chapter 9: Landscape and Visual
PE06 Archaeological Sites	This policy relates to the protection of Scheduled Monuments and other archaeological resources	Chapter 13: Cultural Heritage
PE07 Listed Buildings	The Council supports the sustainable re-use and management of the historic built environment.	Chapter 13: Cultural Heritage
PE09 Areas of Townscape Value	The Council recognises the architectural and historic merit and potential of the additional areas of townscape value identified on the Proposals Map.	Chapter 13: Cultural Heritage Chapter 9: Landscape and Visual
PE10 Historic Gardens and Designed Landscapes	This policy relates to the protection of historic gardens and designed landscapes.	Chapter 13: Cultural Heritage Chapter 9: Landscape and Visual
PE13 Green and Blue Network	Policy PE13 supports the inclusion of green and blue infrastructure such as landscaping, open space, habitats, active travel and sustainable water management in new development.	Chapter 6: Population and Human Health Chapter 7: Biodiversity Chapter 9: Landscape and Visual
PE15 Green Belt	This policy provides that the purpose of the Green Belt is "to direct development to the most appropriate locations to support regeneration; to protect and enhance the character, landscape setting and identity of the settlement, including maintaining their visual separation; to protect and provide access to open space."	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual

Policy	Summary Description	Relevant chapter of EIA Report
PE16 Protection of Open Space	This policy “provides criteria for assessing potential losses of open space, and ensuring that open space of value continues to be protected or that, if there would be a loss of recreational amenity, this will be compensated by qualitative improvements to other open space in the vicinity”.	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual
PE18 Landscape	This policy focuses on the protection and enhancement of landscape character and landscape quality.	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual
PE19 Biodiversity and Geodiversity	This policy provides that: “The Council will protect and enhance habitats and species of importance, and will promote biodiversity and geodiversity through the planning process.” The policy contains a range of requirements relating to this overarching policy provision.	Chapter 7: Biodiversity Chapter 11: Soils, Geology and Land Contamination
PE20 Trees, Woodland and Hedgerows	This policy highlights the importance of protecting trees and woodland and the need to contribute to woodland and green network objectives through management and new planting as appropriate.	Chapter 6: Population and Human Health Chapter 7: Biodiversity Chapter 9: Landscape and Visual
PE22 The Water Environment	This policy “aims to ensure that water quality, habitat/species integrity and quality, and the recreational amenity of the water environment is safeguarded”.	Chapter 6: Population and Human Health Chapter 7: Biodiversity Chapter 9: Landscape and Visual Chapter 10: Water Environment
PE23 Marine Planning and the Coastal Zone	This policy supports the policies of the National Marine Plan and the Regional Marine Plan, when prepared. The policy also cross refers to other LDP policies which will be of particular importance in assessing proposals affecting the coastal zone.	Chapter 7: Biodiversity Chapter 10: Water Environment
PE24 Flood Management	The supporting text of this policy notes that Grangemouth Flood Protection Scheme is the highest priority action for this local authority within this policy area. The policy sets out the approach to other developments which may be at risk of flooding.	Chapter 7: Biodiversity Chapter 10: Water Environment
PE25 Soils and Agricultural Land	This policy aims to protect prime agricultural land and carbon rich or rare soils and to ensure the sustainable use of soils during construction and operation of any proposed development.	Chapter 11: Soils, Geology and Land Contamination

Policy	Summary Description	Relevant chapter of EIA Report
PE26 Air Quality	Development should not exacerbate existing air quality issues or introduce new sources of pollution which impact on local air quality without appropriate mitigation. Impacts on air quality are to be taken into account in assessing development proposals.	Chapter 12: Air Quality and Climate
PE27 Vacant, Derelict and Contaminated Land	This policy states: "Proposals that reduce the incidence of vacant, derelict, unstable and contaminated land will be supported, subject to compliance with other LDP policies, particularly those related to development in the countryside. Where proposals involve the development of unstable or contaminated land, they will only be permitted where appropriate remediation or mitigation measures have been undertaken, and proposals are consistent with PAN 33." (Planning Advice Note 33: Development of contaminated land. Scottish Government 2017)	Chapter 6: Population and Human Health Chapter 11: Soils, Geology and Land Contamination
IR01 Strategic Infrastructure	This policy states: "The Council will support, and safeguard land for the provision of the infrastructure listed in the Spatial Strategy and detailed in the Proposals and Opportunities Schedule".	Chapter 6: Population and Human Health
IR05 Travel Hierarchy and Transport Assessment	This policy requires that development proposals "should support a hierarchy of travel which maximises the extent to which its travel demands are met first through walking, then cycling, then public transport and finally through use of private cars".	Chapter 14: Traffic and Transportation
IR06 Active Travel	This policy states that "The Council will safeguard, improve and extend the network of active travel routes, with particular emphasis on the core path network...". The supporting text of the policy states that "Proposals should accord with the detailed guidance on active travel routes within SG05 'Green Infrastructure and New Development'".	Chapter 6: Population and Human Health Chapter 9: Landscape and Visual Chapter 14: Traffic and Transportation
IR15 Mineral Resources	This policy includes the provision that: "The sterilisation through development of mineral resources which are likely to be capable of environmentally acceptable extraction will not be permitted."	Chapter 11: Soils, Geology and Land Contamination
<b>Scotland's National Marine Plan (2015)</b>		
GEN 1 General Planning Principle	There is a presumption in favour of sustainable development and use of the marine environment when consistent with the policies and objectives of the plan.	Chapter 7: Biodiversity Chapter 10: Water Environment
GEN 5 Climate Change	Marine planners and decision makers must act in the way best calculated to mitigate, and adapt to, climate change.	Chapter 10: Water Environment

Policy	Summary Description	Relevant chapter of EIA Report
GEN 6 Historic Environment	Development and use of the marine environment should protect and, where appropriate, enhance heritage assets in a manner proportionate to their significance.	Chapter 13: Cultural Heritage
GEN 8 Coastal Process and Flooding	Developments and activities in the marine environment should be resilient to coastal change and flooding, and not have unacceptable adverse impact on coastal processes or contribute to coastal flooding.	Chapter 10: Water Environment
GEN 9 Natural Heritage	Development and use of the marine environment must: <ul style="list-style-type: none"> <li>a) Comply with legal requirements for protected areas and protected species.</li> <li>b) Not result in significant impact on the national status of Priority Marine Features.</li> <li>c) Protect and, where appropriate, enhance the health of the marine area.</li> </ul>	Chapter 7: Biodiversity
GEN 10 Invasive Non-Native Species	Opportunities to reduce the introduction of invasive non-native species to a minimum or proactively improve the practice of existing activity should be taken when decisions are made.	Chapter 7: Biodiversity
GEN 12 Water Quality and Resource	Developments and activities should not result in a deterioration of the quality of waters to which the Water Framework Directive, Marine Strategy Directive or other related Directives apply.	Chapter 10: Water Environment
GEN 13 Noise	Development and use in the marine environment should avoid significant adverse effects of man-made noise and vibration, especially on species sensitive to such effects.	Chapter 7: Biodiversity

## 2.5 Positive Effects for Biodiversity

The Planning Act (Scotland) 2019 requires the National Planning Framework (NPF) to contain a statement about how Scottish Ministers consider that development will contribute to an outcome of 'securing positive effects for biodiversity'. The Act does not provide further detail on the scope or content of how this should be achieved.

NPF4 (Scottish Government, 2023) contains a strategy and the following policies that are relevant to securing positive effects for biodiversity.

Policy 1 Tackling the climate and nature crises states that '*when considering all development proposals significant weight will be given to the global climate and nature crises.*' Any future development plans will have to address these crises by promoting nature recovery and restoration in the area resulting in nature positive places.

Policy 3 Biodiversity is the principal biodiversity policy, and it sets out the requirement for development proposals to secure positive effects for biodiversity as follows.

- 3a) 'Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible'.
- 3b) 'Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. To inform this, best practice assessment methods should be used. Proposals within these categories will demonstrate how they have met all of the following criteria:
  - i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;
  - ii. wherever feasible, nature-based solutions have been integrated and made best use of;
  - iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;
  - iv. 'significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and
  - v. local community benefits of the biodiversity and/or nature networks have been considered...'. (Scottish Government, 2023).
- 3d) 'Any potential adverse impacts, including cumulative impacts, of development proposals on biodiversity, nature networks and the natural environment will be minimized through careful planning and design. This will take into account the need to reverse biodiversity loss... and build resilience by enhancing nature networks and maximizing the potential for restoration.'

## 2.6 Summary and Conclusion

This chapter provides the legislative and policy context of the Scheme and the key regulatory requirements relating to the EIA. The policy topics identified in this chapter, and additional legislation, policy and guidance specific to individual EIA topics, are included within the appropriate chapters (refer to Chapters 6 to 14) as indicated in Table 2-1.

The Scheme approach to achieving positive effects for biodiversity required under NPF4 (Scottish Government, 2023) is set out in Chapter 7: Biodiversity (Section 7.9: Positive Effects for Biodiversity) and in Appendix B7.4: Approach to Positive Effects for Biodiversity.

## 2.7 References

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