

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 22/12

NAME OF APPLICANT: ELGIN ENERGY SERVICES LTD.

ADDRESS: C/O TOBIN CONSULTING ENGINEERS
BLOCK 10-4,
BLANCHARDSTOWN CORPORATE PARK,
DUBLIN 15,
D15 X98N

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: SHANDERRY, PORTARLINGTON, CO. OFFALY.

WHEREAS a question referred to Offaly County Council on 30/05/22 as to whether the development by Elgin Energy Services Ltd of a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation at Shanderry, Portarlinton, Co. Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-


- (a) Section 2 of the Planning & Development Act 2000 as amended and
- (b) Sections 3 of the Planning & Development Act 2000 as amended and
- (c) Article 6 of the Planning and Development Regulations 2001 as amended and
- (d) Schedule 2, Part 1, Class 26 of the Planning and Development Regulations 2001 as amended.

AND WHEREAS Offaly County Council has concluded that –

- The proposed works are development and are exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended, hereby decides that the development by Elgin Energy Services Ltd of a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation at Shanderry, Portarlinton, Co. Offaly **is development and is exempted development.**

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.


Administrative Officer

Date 27/06/2022

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	Dec 22/12
Question:	Whether or not a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation is or is not development and is or is not exempted development.
Applicant:	Elgin Energy Services Ltd.
Location:	Shanderry, Portarlinton, Co. Offaly.
Date received:	30 th May 2022
Date due:	26 th June 2022

1. Proposal

The question has arisen as to whether or not a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation is or is not development and is or is not exempted development.

2. Background

The underground 10kv cable is associated with the proposed 4.2MVA Solar Farm at Shanderry in County Offaly which secured planning permission from Offaly County Council in August 2018 (Planning Reference PL2/17/275).

The route of the proposed underground cable will connect the permitted onsite substation to the existing ESB substation in Shanderry, Co. Offaly. Approximately 0.25km of the proposed 1.46km route is within the public road corridor. The remaining 1.21km is within lands under the ownership of the solar farm landowner and contained within the red line boundary of the solar farm application. The cable route then exits the permitted solar farm site onto a local road (located within Kilmalogue Park Housing Estate) running in a south easterly direction for approximately 120m, then it turns north and runs for 130m before entering the existing ESB substation in Portarlinton.

3. INTERNAL REFERRALS:

Area Engineer:	No response as of date of report
Roads Design:	Requests further information in relation to: <ul style="list-style-type: none">• The drawings submitted with the application do not show the exact location of cable routes

	<p>within the public road in Kilmalogue Park and Kilmalogue Lawns. Applicant to re-submit site layout drawings to address above.</p> <ul style="list-style-type: none"> • Further to item 1, applicant to show the location of draw pits/inspection and joint chambers on site layout drawings. • Details of the proposed wearing course permanent reinstatement shall be submitted. Trench reinstatement shall be carried as per "Guidelines for Managing Openings in Public Roads, 2nd edition (Rev 1) – April 2017". • Details of car parking facilities for construction personnel and deliveries are to be provided for the Temporary Construction & Set-Down Area as illustrated on Site Location Plan, Drawing No.: MMD-372823-C-DR-00-XX-0002, Date: 22/06/17.
Environment/Water Services:	No response as of date of report

4. Relevant Planning History:

PL2/17/275: Permission **Granted** to Elgin Energy Services Limited for the construction of a solar farm comprising solar photovoltaic (PV) panels laid out in arrays on ground mounted frames on a site of approximately 12.63 hectares (ha). the proposed solar PV farm known as Portarlinton Solar PV Farm will include 4 no. Single storey inverter units, 1 no. Single storey ESB terminal substation, customer substation, 2 no. Steel storage containers, security fencing, 10 no. CCTV, and all associated ancillary development works including beneficial landscape planting, temporary internal construction access track to the on-site ESB terminal substation and permeable internal access tracks. Vehicular access to the development site will remain via the existing entrance off the R420. ESB operational access to the on-site terminal substation will be provided via the existing site entrance off the Kilmalogue Downs subject to 14 conditions.

5. Legislative Context

[Planning and Development Act 2000 \(as amended\)](#)

Section 2

2.— (1) In this Act, except where the context otherwise requires—
 “development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

Section 3:

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Planning and Development Regulations 2001 (as amended)

Article. 6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Schedule 2, Part 1, CLASS 26 The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking

Elgin Energy falls within the category of statutory undertaker on foot of its authorisation under the Planning Act to construct a solar farm (Planning Permission PL2 17/11) that is a project for the provision of electricity. On this basis the proposed development falls within the scope of Schedule 2, Part 1, CLASS 26 of the planning regulations.

6. Proposal by Applicant

The applicant wishes to ascertain whether or not a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation is or is not development and is or is not exempted development.

7. Appropriate Assessment

A screening exercise for an appropriate assessment has been carried out and it is concluded that the development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

8. Evaluation

Question: Is the following works considered as Development?

It is considered that the proposal constitutes 'development' as defined by Section 3(1) of the Act.

Question: Is the following works proposal considered as Exempted Development?

Elgin Energy falls within the category of statutory undertaker on foot of its authorisation under the Planning Act to construct a solar farm (Planning Permission PL2 17/275) that is a project for the provision of electricity. On this basis the proposed development falls within the scope of Schedule 2, Part 1, CLASS 26 of the planning regulations.

It is noted Roads Design have requested further information in relation to:

- The drawings submitted with the application do not show the exact location of cable routes within the public road in Kilmalogue Park and Kilmalogue Lawns. Applicant to re-submit site layout drawings to address above.
- Further to item 1, applicant to show the location of draw pits/inspection and joint chambers on site layout drawings.
- Details of the proposed wearing course permanent reinstatement shall be submitted. Trench reinstatement shall be carried as per "Guidelines for Managing Openings in Public Roads, 2nd edition (Rev 1) – April 2017".
- Details of car parking facilities for construction personnel and deliveries are to be provided for the Temporary Construction & Set-Down Area as illustrated on Site Location Plan, Drawing No.: MMD-372823-C-DR-00-XX-0002, Date: 22/06/17.

However, I am of the opinion all of the Roads Design Sections concerns can be addressed as part of the Road Opening Licence Application which the Applicant will required to have in place prior to commencement of development.

9. Conclusion

It is recommended that the applicant be advised that the proposed development is **development and is exempted development.**

Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether the:

The development by Elgin Energy Services Ltd of a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation at Shanderry, Portarlinton, Co. Offaly is or is not development and is or is not exempted development.

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to-

- (a) Section 2 of the Planning & Development Act 2000 as amended and
- (b) Sections 3 of the Planning & Development Act 2000 as amended and
- (c) Article 6 of the Planning and Development Regulations 2001 as amended and
- (d) Schedule 2, Part 1, Class 26 of the Planning and Development Regulations 2001 as amended.

AND WHEREAS Offaly County Council has concluded that –

The proposed works are development and are exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that the

The development by Elgin Energy Services Ltd of a proposed underground 10KV grid connection (1.41km in length) to connect a permitted onsite solar farm substation to the existing 38Kv Portarlinton substation at Shanderry, Portarlinton, Co. Offaly is considered development and is exempted development.

Michael Duffy

Michael Duffy

Assistant Planner

21st June 2022

Carroll Melia

Carroll Melia

Acting Senior Executive Planner

24th June 2022

ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS

Screening is used to determine if an AA is necessary by examining:

- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.

Planning Authority:

Offaly County Council

Planning Application Ref. No.:

DEC/22/12

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Proposed development:	A PROPOSED UNDERGROUND 10KV GRID CONNECTION (1.41KM IN LENGTH) TO CONNECT A PERMITTED ONSITE SOLAR FARM SUBSTATION TO THE EXISTING 38KV PORTARLINGTON SUBSTATION IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.
Site location:	Shanderry, Portarlington, Co. Offaly.
Identification of nearby <i>European</i> Site(s):	Barrow and river Nore SAC
Distance to <i>European</i> Site(s):	0.7km
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the <i>European</i> site:	None
Is the application accompanied by an EIAR?	No
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):	
The reasons for the designation of the <i>European</i> site:	
The site is a SAC selected for alluvial wet woodlands and petrifying springs, priority habitats on Annex I of the E.U. Habitats Directive. The site is also selected as a candidate SAC for old oak woodlands, floating river vegetation, estuary, tidal mudflats, <i>Salicornia</i> mudflats, Atlantic salt meadows, Mediterranean salt meadows, dry heath and eutrophic tall herbs, all habitats listed on Annex I of the E.U. Habitats Directive. The site is also selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Nore Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter, Desmoulin's	

Whorl Snail *Vertigo moulinsiana* and the Killarney Fern.

The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the *European* site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) **(ATTACH INFO.)**

1016 Desmoulin's whorl snail *Vertigo moulinsiana*
 1029 Freshwater pearl mussel *Margaritifera margaritifera*
 1092 White-clawed crayfish *Austropotamobius pallipes*
 1095 Sea lamprey *Petromyzon marinus*
 1096 Brook lamprey *Lampetra planeri*
 1099 River lamprey *Lampetra fluviatilis*
 1103 Twaite shad *Alosa fallax*
 1106 Atlantic salmon (*Salmo salar*) (only in fresh water) 1130 Estuaries
 1140 Mudflats and sandflats not covered by seawater at low tide
 1310 Salicornia and other annuals colonizing mud and sand
 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
 1355 Otter *Lutra lutra* 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
 1421 Killarney fern *Trichomanes speciosum*
 1990 Nore freshwater pearl mussel *Margaritifera durrovensis*
 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
 4030 European dry heaths
 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
 7220 * Petrifying springs with tufa formation (*Cratoneurion*)
 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
 91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.pdf

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None received.
Summary of advice received from NPWS in written form (ATTACH SAME):	None received.

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

*(The purpose of this is to identify if the effect(s) identified could be significant – if **uncertain** assume the effect(s) are significant).*

Given the location the limited nature and size of the development applied for and the characteristics of *European* sites in the vicinity it is considered that 100 metres should be used as a potential zone of impact of the project in accordance with section 3.2.3 of the appropriate assessment guidelines. There are no *European* sites within 100 metres of the development applied for and therefore no significant effects on any *European* sites either alone or in combination with other plans and projects.

Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... a reduction in habitat area on a <i>European</i> site?	There will be no reduction in the habitat area.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> site?	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... serious / ongoing disturbance to species / habitats for which the <i>European</i> site is selected (e.g. because of increased noise, illumination and human activity)?	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?	Not likely to have an adverse impact due to its location, scale and characteristics.
Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to <i>European</i> sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.
(E) SCREENING CONCLUSION:	
Screening can result in:	
1	<i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i>
2	<i>No potential for significant effects / AA is not required.</i>
3	<i>Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>
	<i>Conclusion:2</i>
	Justify why it falls into relevant category above: <i>Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will be unlikely to have significant effects on any European sites.</i>
Signed:	Michael Duffy
Date:	21 st June 2022