

MEATH COUNTY COUNCIL

CHIEF EXECUTIVE ORDER

Chief Executive Order Number: 423/25

Reference Number: AS525010

Subject: Declaration under Part 1, Section 5, Planning and Development Act 2000-2023

Name of Applicant: **Duleek Renewable Energy Limited**

Address: **c/o Jennings O'Donovan & Partners Limited, Finisklin Business Park, Sligo, Ireland, F91 RHH9**

Nature of Application: Non-material deviation in respect of permission granted (MCC PL. Ref. 21/2347) for the anaerobic Digestion (AD) Biogas facility

Location of Development: **Lunderstown, Duleek, Co Meath**

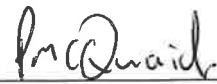
This development is **EXEMPT** from Planning Permission.

DECLARATION:

ORDER:

Being satisfied that all requirements relating to the Application have been complied with and to consider the proper Planning and Development of the County Meath Health District, IT IS HEREBY DECIDED, in pursuance of the above Act to declare that this is **EXEMPTED DEVELOPMENT**.

SIGNED:



On Behalf of Meath County Council

DATE: 25-02-25

MEATH COUNTY COUNCIL

Planning Department

Buvinda House

Dublin Road

Navan Co Meath

046 - 9097500

Planning & Development Act 2000- 2022

DECLARATION

To:

**Duleek Renewable Energy Limited
c/o Jennings O'Donovan & Partners Limited
Finisklin Business Park
Sligo
Ireland
F91 RHH9**

PLANNING REFERENCE AS525010

NUMBER:

APPLICATION RECEIPT DATE: 29/01/2025

FURTHER INFORMATION DATE:

In pursuance of the powers conferred upon them by the Planning and Development Act 2000-2023, Meath County Council has by order dated 25.02.25 decided to Declare the proposed development is **EXEMPT**, in accordance with the documents submitted namely: Non-material deviation in respect of permission granted (MCC PL. Ref. 21/2347) for the anaerobic Digestion (AD) Biogas facility **Lunderstown, Duleek, Co Meath**

Date: 25-02-25



On Behalf of Meath County Council

NOTE:

1. Any appeal against a Declaration of a Planning Authority under Section 5, sub-section 3(a) of the Planning and Development Act 2000-2023 may be made to An Bord Pleanala by the applicant **WITHIN FOUR WEEKS** beginning on the date of issue of the Declaration.
2. Appeals should be addressed to An Bord Pleanala, 64 Marlborough Street, Dublin 1. An appeal by the applicant should be accompanied by this form. The fee for an appeal against a Declaration of the Planning Authority is € 220.

For more information on Appeals you can contact An Bord Pleanala at:

Tel: 01 - 8588100 or LoCall: 1890 275 175

Fax: 01 - 8722684

E-mail: bord@pleanala.ie Web: www.pleanala.ie

Meath County Council



Planning Report

To:	Peadar McQuaid, A/Senior Executive Planner
From:	Nathan Cooney, Executive Planner
Date:	17/02/2025
MCC File Number:	AS5250010
Applicants:	Duleek Renewable Energy Limited
Development Address:	Lunderstown, Duleek, Co. Meath
Application Type:	Section 5 of the Planning & Development Acts 2000 (as amended): Declaration on Development/Exempted Development.
Development Description:	Minor reconfigurations and modifications to storage clam building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation.
Date Decision Due:	26/02/2025

1.0 Site Location & Description

The subject is located within the townland of Lunderstown which is south of Duleek village. The site is accessed from the adjoining R152. The wider surrounding area is characterised by agricultural fields. The site is located within the lowlands landscape character area which is of high value and moderate sensitivity. There are no known recorded monuments or protected structures on site.



Fig. 1.0: Aerial image of the subject lands to which the application relates (outlined in red).

2.0 Proposed Declaration

The applicants describe the development in the completed application form as '*Minor reconfigurations and modifications to storage clamp building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation*'. The Planning Authority is considering this question as:

Whether the minor reconfigurations and modifications to storage clam building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation is or is not development and is or is not exempted development.

The completed cover letter and submitted documents indicate that the extent of works proposed.

3.0 Planning History

21/2347 Permission GRANTED for proposed erection of an agricultural biogas renewable energy facility, consisting of 3 no. primary digester tanks, 2 no. post digester tanks with integrated concrete link pump-room, containerised pasteurization unit with auxiliary tanks, 1 no. emergency flare with base and

security fencing, 3 no. agricultural solid feeders with associated concrete bases, 2 no. underground pre-reception tanks, 2 no. covered agricultural digestate storage tanks, 2 no. containerised gas CHP units with concrete bases, 1 no. site office/control building with associated staff car parking area and waste water treatment tank and eco-flow coco filter, 1 no. containerised biogas upgrading treatment system and associated hardstanding, 1 no. electric transformer and sub-station with associated hard standing and security fence, erection of covered agricultural storage building with internal clamp areas and center access passage, erection of nutrient recovery system building with 2 no. nutrient recovery systems with ancillary tanks and equipment, erection of 4 no. ASS double bunded storage tanks with concrete bases, erection of digestate drying and pelletising building, erection of pellet storage building with internal racking system, erection of underground agricultural weighbridge, erection of boundary earth bunded area and landscaping , relocation of existing agricultural access laneway, provision of new hardstanding access laneway, proposed upgrade of existing access arrangement and junction improvement works, proposed erection of street lighting columns with security camera provision, new internal drainage system with underground interceptor/storage tanks and rainwater collection tank, proposed laying of underground gas pipe line (3.4Km) to gas grid connection point, ancillary site works and new boundary fencing and landscaping scheme.

4.0 Internal, External and Prescribed Bodies

None.

5.0 Relevant National Legislation

In order to assess whether or not the works described in Section 2.0 of this report is or is not development or is or is not exempted development regard must be had to the following national legislation set out below.

5.1 Section 2 of the Planning & Development Acts 2000-2023

Section 2 of the Planning & Development Acts 2000-2023 provides the following interpretations which are relevant:

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

“exempted development” has the meaning specified in section 4;

“structure” means *inter alia* any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and where the context so admits, includes the land on, in or under which the structure is situate; and

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

5.2 Section 3 of the Planning & Development Acts 2000-2023

Section 3(1) of the Planning & Development Acts 2000-2023 defines “development” as follows:

“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.”

5.3 Section 4 of the Planning & Development Acts 2000-2023

Section 4(1) of the Planning & Development Acts 2000-2023 provides a list of statutory exempted development including:

“(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures”.

Section 4(2) of the Planning and Development Acts 2000-2023 provides for the making of regulations relating to exempted development. The Planning & Development Regulations 2001-2023 give effect to section 4(2).

Section 4 (2) (a) (i)

‘The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or..’

Section 4 (4)

‘Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.’

5.4 Section 5 of the Planning & Development Acts 2000-2023

Section 5 of the Planning & Development Acts 2000-2023 provides *inter alia*:

(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(2) (a) Subject to *paragraph (b)*, a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under *subsection (1)*, and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

(b) A planning authority may require any person who made a request under *subsection (1)* to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.

(c) A planning authority may also request persons in addition to those referred to in *paragraph (b)* to submit information in order to enable the authority to issue the declaration on the question.

5.5 Section 32 of the Planning & Development Acts 2000-2023

Section 32 of the Planning & Development Acts 2000-2023 sets out a general obligation to obtain planning permission in respect of any development of land, not being exempted development, and in the case of development which is unauthorised, for the retention of that unauthorised development.

5.6 Article 6 of the Planning & Development Regulations 2001-2024

Article 6 of the Planning & Development Regulations 2001-2024 provides (subject to the restrictions in article 9 of the Planning & Development Regulations 2001-2024) for the classes of exempted development under column 1 of Parts 1, 2 and 3 of Schedule 2, subject, where applicable, to the conditions and limitations imposed upon such classes as set out in column 2.

5.7 Article 9 of the Planning & Development Regulations 2001-2024

Article 9 of the Planning & Development Regulations 2001-2024 imposes specific restrictions on development of classes specified in Parts 1, 2 and 3 of Schedule 2 and in effect de-exempts certain classes of development that would be exempt under normal circumstances.

6.0 Assessment

The question has arisen as to whether the minor reconfigurations and modifications to storage clam building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation is or is not development and is or is not exempted development.

In this regard it is necessary to consider the question of “development” and “exempted development” as provided for in statute and summarised above.

6.1 “Development”

It is considered that the proposed minor reconfigurations and modifications to storage clamp building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation falls within the statutory interpretation of works and therefore within the section 3(1) PDA 2000 definition of development.

6.2 “Exempted Development”

In terms of whether the development is exempted development, the applicants proposes minor reconfigurations and modifications to the interior of a storage clamp building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation.

From a review of Article 6 of the Planning & Development Regulations 2001-2024 the Planning Officer considers that the proposed works would not be categorised within any of classes for exempted development listed. Therefore, the proposed works would not be considered to be exempted development and planning permission would be required.

However, the Planning Officer in this particular case considers that the proposed works proposed would fall under Section 4(1)(h) of the Planning and Development Act 2000 (as amended):

“(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures”.

On the basis of the details submitted with the application, the Planning Officer considers that the proposed development can be considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

7.0 Appropriate Assessment

Article 6(3) of Council Directive 92/43/EEC (as amended) on the conservation of natural habitats and of wild fauna and flora (‘the Habitats Directive’) requires that any plan or project that is not directly connected with or necessary to the management of the Natura 2000 site concerned but is likely to have a significant effect on it, on its own or in combination with other plans and projects, is to be authorised only if it will not adversely affect the integrity of that site. The application site is not within any designated Natura 2000 site. The nearest sites located within 15km of the subject site are as follows:

- River Boyne And River Blackwater SAC (Site Code 002299)
- River Boyne and River Blackwater SPA (Site Code 004232)
- River Nanny Estuary and Shore SPA (Site Code 004158)

- North-west Irish Sea SPA (Site Code 004236)
- Boyne Coast and Estuary SAC (Site Code 001957)
- Boyne Estuary SPA (Site Code 004080).

The Planning Authority's Screening for Appropriate Assessment has considered the potential effects including direct, indirect and in-combination effects of the proposed development, individually or in combination with the permitted developments and cumulatively with other plans or projects on European Sites. The Planning Authority concludes that the proposed development (entire project), by itself or in combination with other plans and developments in the vicinity, would not be likely to have a significant effect on European Site(s). In light of this, it is considered that a Stage 2 Appropriate Assessment (Natura Impact Statement) is not required in this instance.

8.0 Conclusion and Recommendation

It is therefore recommended that a declaration of Exemption be issued for the minor reconfigurations and modifications to storage clam building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation as indicated on the submitted plans and particulars.

WHEREAS the question has arisen as to whether

- *“Whether the minor reconfigurations and modifications to storage clam building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation is or is not development and is or is not exempted development.”*
is or is not development and is or is not exempted development.

AND WHEREAS Meath County Council in consideration of this question has had regard particularly to:

- Sections 2(1), 3(1), 4, & 177U(9) of the Planning and Development Act 2000 – 2023,
- Article 6 & 9 of the Planning and Development Regulations, 2001-2024
- Information provided.

AND WHEREAS Meath County Council has concluded: -

- Minor reconfigurations and modifications to storage clamp building, reconfiguring the building into four equal storage clamps, each with individual access from front elevation is exempted from the requirement to obtain planning permission under Section 4(1) of the Planning and Development Act 2000- 2023.

NOW THEREFORE Meath County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000-2023, hereby decides that the said Minor reconfigurations and modifications to storage clam building as detailed on plans and particulars submitted on 29th January 2025 is development and is exempted development.

Nathan Cooney

Nathan Cooney
Executive Planner
Date:17/02/2025

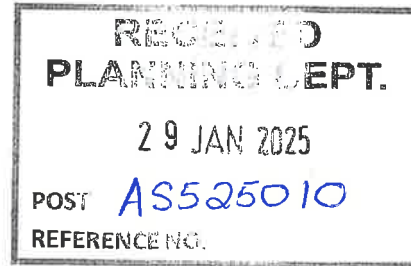
**RECOMMENDATION
ACCEPTED**
25 FEB 2025
Peadar McQuaid

Signed:
Peadar McQuaid
A/Senior Executive Planner
Date:24/02/2025

28th January 2025

Our Ref: 7310/409/001/KD

Planning Department
Meath County Council
Buvinda House, Dublin Road
Navan
County Meath
C15 Y291



Jennings O'Donovan and Partners Limited,
Finisklin Business Park,
Sligo, Ireland, F91 RHH9.

Registered in Ireland Number: 149104
VAT Reg: IE6546504D

Tel: +353 (0)71-91 61416
www.jodireland.com

Re: Request for non-material deviation in respect of permission granted (MCC PL. Ref. 21/2347) for the Anaerobic Digestion (AD) Biogas facility to be located in the townland of Lunderstown, Duleek, Co. Meath

Dear Sirs,

We, Jennings O'Donovan & Partners Limited on behalf of our Client, Duleek Renewable Energy Limited wish to confirm the following non-material deviation of planning permission granted for the above AD Biogas facility, Lunderstown, Duleek, Co. Meath.

The AD Biogas facility was granted planning permission by Meath County Council under reference 21/2347.

Following a detailed constructability and usability assessment of the storage clamp building, minor reconfigurations and modifications are proposed to enhance its safety, usability and constructability. Notably, there will be no changes to the permitted footprint and the overall height of the storage building.

The proposed modifications focus on reconfiguring the internal layout of the building into four equal storage clamps, each with individual access from the front elevation. This adjustment involves opening the building's front elevation and removing the single, centrally permitted access route to the silage clamp.

This new configuration offers several benefits:

- **Enhanced Safety:** The new layout improves sightlines thus reducing risks to personnel moving in, out and around the clamps. Additionally, removing the central access location results in less intersecting traffic in and out of the clamps.
- **Environmental Benefits:** By optimising the structure, the overall amount of structural steel required for the roof is reduced, minimizing the environmental impact of the construction.
- **Improved Access:** Each storage clamp area can be accessed directly from the front, streamlining operations of loading and unloading.
- **Reduced Vehicle Movements:** Fewer vehicle movements are required to fill and manage each clamp, improving operational efficiency.

These refinements ensure a safer, more practical, efficient, and environmentally conscious design, while maintaining compliance with the permitted building footprint and overall height.

Directors
Nigel Board (British)
Abigail Draper (British)
David Kiely
Seamus Lee
David O'Hagan
Alan Ryder (British)

Chief Finance Officer
Rose Davis

Technical Directors
Joe Healy
Sean Molloy

Regional Director
Audrey Phelan

Senior Associates
Seán Gilmartin
John McElvaney
Tomás McGloin

Associates
Breana Coyle
Dermot Guilfoyle
Lindsey McCormack
Cáit O'Reilly

The drawings enclosed with this submission (Drg. No. 7310-JOD-XX-DR-PC-001 & 002) illustrate the extent of the non-material deviation which Duleek Renewable Energy Limited is seeking to confirm and show that the minor and non-material deviation does not exceed the maximum structural dimensions as permitted.

This minor adjustment does not change the essential nature of the permitted development. We note that none of the Planning Permission conditions prohibit minor deviations. In terms of visual amenity, no significant impact is envisaged.

Relevant Case Law

In *Lever Finance Ltd v Westminster City Council* [1970]¹ Lord Denning felt it was a sensible practice to decide whether a variation from an approved plan was material or not. Lord Denning highlighted the fact that the need to amend proposals would arise from time to time, unforeseen issues would need to be addressed and these should be considered in an expedient way. He did not consider it appropriate that proposals should have to go back to a planning committee for every immaterial variation. Lord Denning drew a distinction between immaterial minor amendments (non-material changes) and de-minimis. The court judgement effectively said that immaterial minor amendments may go beyond something that is de-minimis as long as they are considered immaterial in the context of the original approval “

“Further, the common practice in Westminster known to the planning authority and to developers alike is for the developers' architect to submit any such proposed minor variations to the planning officer concerned with the case. If, in that planning officer's view, the modification in question is one which is not material, he says so, and when that happens the common practice then is that the development goes forward in accordance with the modified plans as approved in that sense by the planning officer and nobody on either side considers it necessary to submit a further application for a further formal approval of the details by any Committee of the local planning authority”.

Burroughs Day v Bristol City Council [1996]²

In *Burroughs Day v Bristol City Council* [1996] the appellant proposed alterations to a listed Georgian building involving the construction of a lift shaft with a flat roof. This would be situated in the valley gutter between the double ridges of a roof. It would not exceed the height of the ridges and would not be visible from the street.

The inspector determined that for a change to be material it had to be of significance, of substance and of consequence. The inspector noted that the proposed changes would not affect the size, bulk, height, footprint or position of the building, nor would they result in any change to its description, the number of units, or ratio of communal to private space. The external appearance would be altered but principally by the rearrangements of elements which had already been approved. The windows of a first-floor flat would be moved closer to neighbouring bungalows, but these were to be demolished. The inspector concluded that he could not find any changes of such significance, either individually or collectively that could be said to materially affect or alter the permission already granted.

¹ *Lever (Finance) Ltd v City of Westminster*: CA 22 Jul 1970

² 1 EGLR 167, QBD

It is our professional opinion that the proposed minor adjustment would not have any potential to affect any European site(s), or the environment generally, over and above the development already assessed in the Environmental Report, which was examined by Meath County Council and upon which the permission was granted.

It is also our opinion that this minor adjustment will not have any negative impact on residents in the vicinity of the project and the adjoining landowners.

The deviation from the original grant of planning permission is considered to be non-material in the context of the development as a whole and do not go to the heart of the original grant of planning permission or any of the planning conditions associated with the planning permission.

Based on the above considerations, in our professional opinion, the minor adjustment to the storage building is an immaterial deviation from the Planning Permission. We would be grateful if you could confirm your agreement to same.

Please also note that all intended works shall be advanced as per conditions attached under (MCC PL. Ref. P21/2347). We have enclosed a cheque to the value of €80 to cover this request.

Should you require any further information or clarification please do not hesitate to contact this office. Duleek Renewable Energy Limited would be obliged if you would confirm that the non-material deviation as described above and shown on 7310-JOD-XX-DR-PC-001 & 002 is acceptable to the Planning Authority.

Yours faithfully,

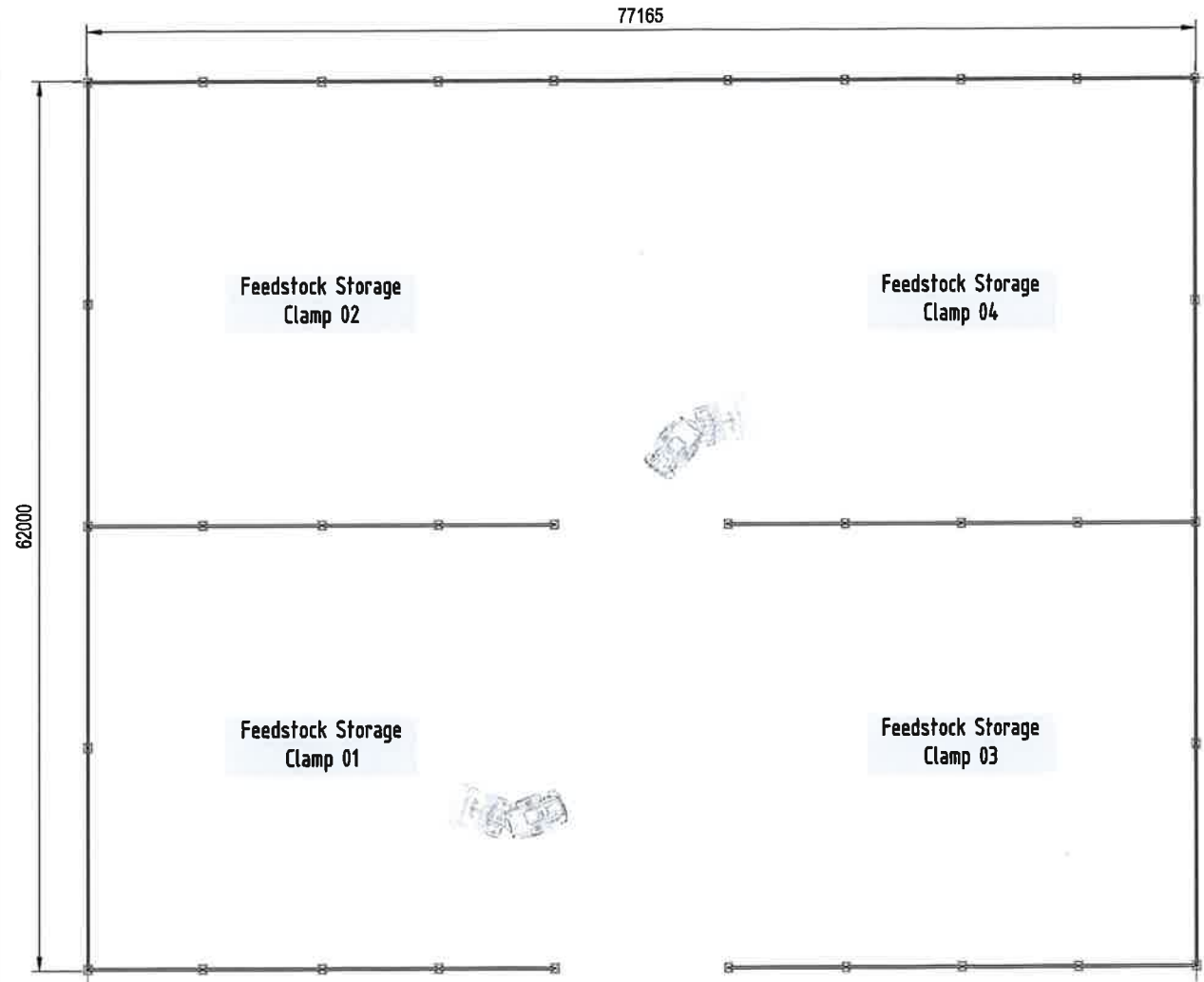


Kenneth Dunne
Jennings O'Donovan and Partners Limited

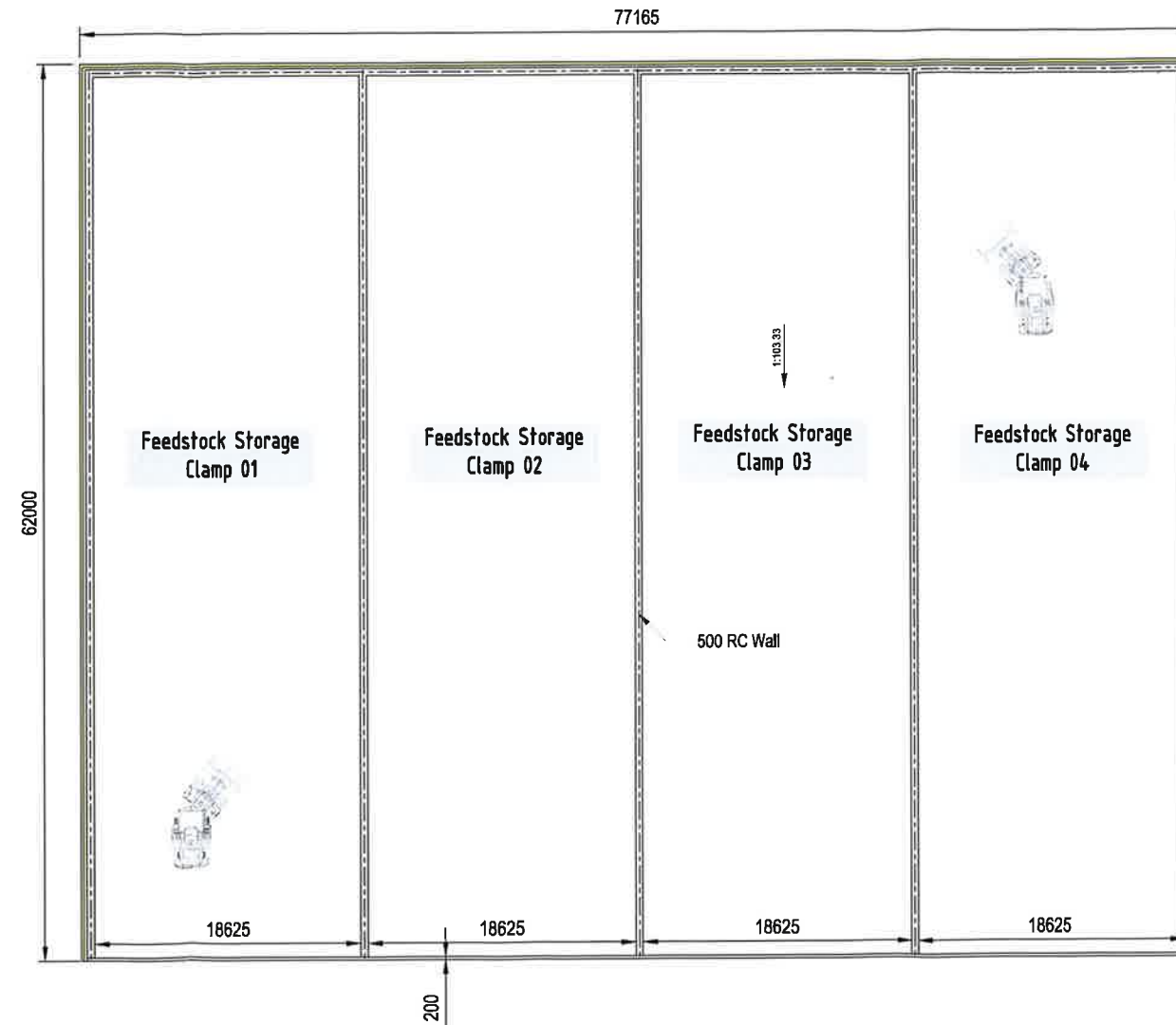
Encl./

- NOTES:
- 1 FIGURED DIMENSIONS ONLY TO BE TAKEN FROM THIS DRAWING.
 - 2 ALL DRAWINGS TO BE CHECKED BY THE CONTRACTOR ON SITE.
 - 3 ENGINEER TO BE INFORMED OF ANY DISCREPANCIES BEFORE ANY WORK COMMENCES.
 - 4 THIS DRAWING TO BE READ IN CONJUNCTION WITH ALL OTHER RELEVANT DRAWINGS AND SPECIFICATIONS.

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 29 JAN 2025
 POST A5525010
 REFERENCE NO.



Permitted Storage Clamp Building Floor Plan
 Scale 1:500



Proposed Non Material Deviation Storage Clamp Building Floor Plan
 Scale 1:500

rev.	modifications	D	C	A

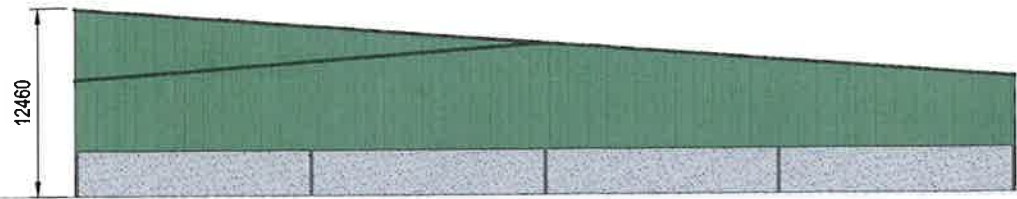
Client Duleek Renewable Energy Limited				
Project Lunderstown AD Plant, Lunderstown, Duleek, Co. Meath				
Stage Planning Compliance				
Title Non Material Deviation Sheet 1 of 2				
Scales 1:500 (A3)				
Surveyed	Prepared	Checked	Approved	Date
K.D.	S.M.	S.M.	S.M.	27/01/25



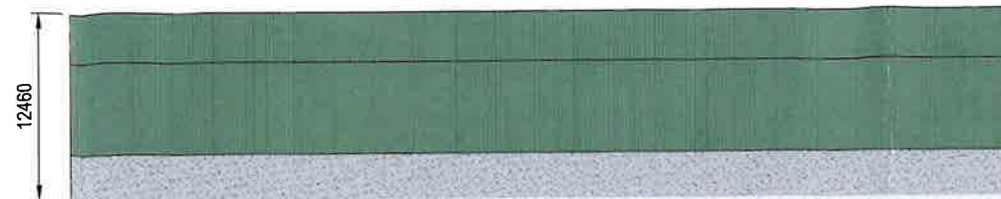
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✉ @JOD_Sligo Jennings O'Donovan & Partners Jennings O'Donovan

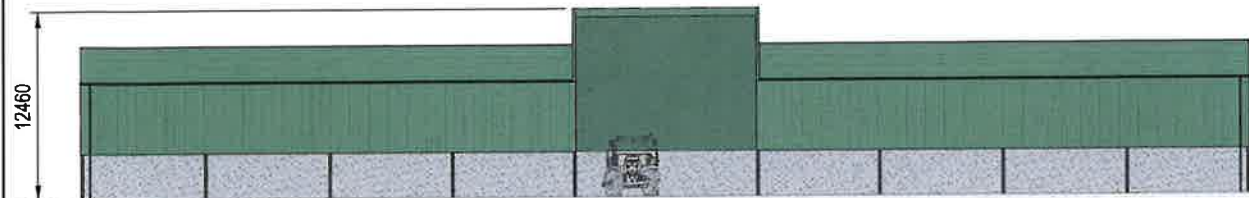
Job Ref.	Drawing No.	Revision
7310	7310-JOD-XX-DR-PC-001	P01.0



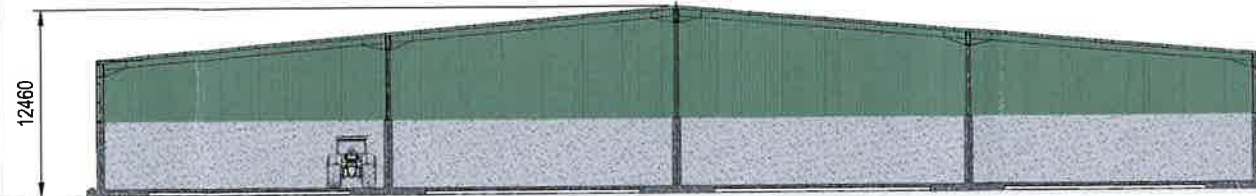
Permitted Storage Clamp Building Floor Side Elevation
Scale 1:500



Non Material Deviation Storage Clamp Building Floor Side Elevation
Scale 1:500



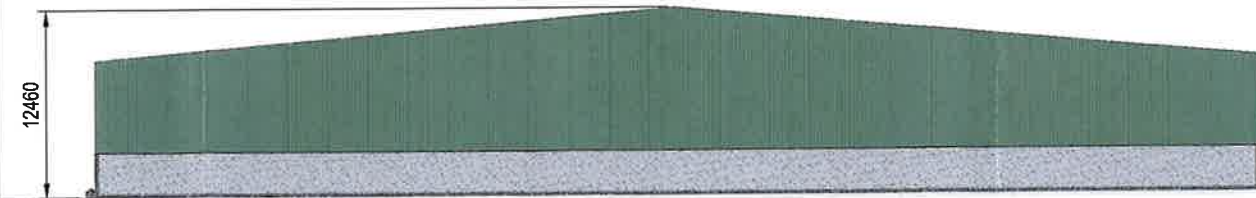
Permitted Storage Clamp Building Floor Front Elevation
Scale 1:500



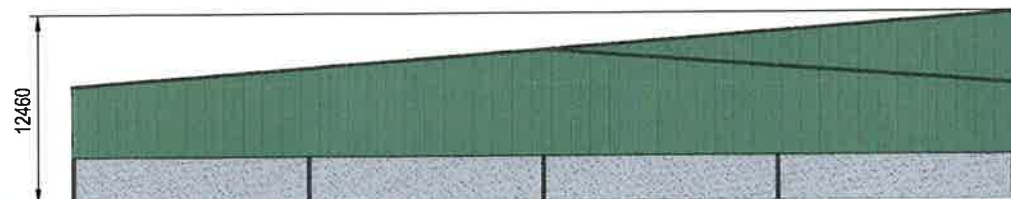
Non Material Deviation Storage Clamp Building Floor Front Elevation
Scale 1:500



Permitted Storage Clamp Building Floor Rear Elevation
Scale 1:500



Non Material Deviation Storage Clamp Building Floor Rear Elevation
Scale 1:500



Permitted Storage Clamp Building Floor Side Elevation
Scale 1:500



Non Material Deviation Storage Clamp Building Floor Side Elevation
Scale 1:500

- NOTES:
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 29 JAN 2025
 POST AS525010
 REFERENCE NO.

rev.	modifications	D	C	A

Client Duleek Renewable Energy Limited				
Project Lunderstown AD Plant, Lunderstown, Duleek, Co. Meath				
Stage Planning Compliance				
Title Non Material Deviation Sheet 2 of 2				
Scales 1:500 (A3)				
Surveyed	Prepared	Checked	Approved	Date
	K.D.	S.M.	S.M.	27/01/25



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Job Ref.	Drawing No.	Revision
7310	7310-JOD-XX-DR-PC-002	P01.0