

# REPORT

## **Boston Alternative Energy Facility - Preliminary Environmental Information Report**

Chapter 3 Policy and Legislation Context

Client: Alternative Use Boston Projects Ltd

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### **3 Policy and Legislation Context**

3.1.1 This chapter provides a summary of the key UK legislation and national policy drivers that are material to the proposed development of the Boston Alternative Energy Facility (the Facility).

#### **3.2 The Planning Act 2008**

3.2.1 The Planning Act 2008 (as amended) is the primary legislation that established the legal framework for applying for, examining and determining applications for Nationally Significant Infrastructure Projects (NSIPs) and considering the guidance provided by National Policy Statements. NSIPs are usually large-scale developments such as power generating stations, electricity lines, waste or water developments or pipelines. They require a Development Consent Order (DCO) which allows permission to construct and operate, governed by the Planning Act 2008.

#### **3.3 National Policy Statements**

3.3.1 The policy framework for examining and determining applications for NSIPs is provided by National Policy Statements (NPSs). Section 104 of the Planning Act 2008 requires the Secretary of State to determine applications for NSIPs in accordance with any relevant NPS, unless:

- It would lead to the UK being in breach of its international obligations;
- It would be in breach of any statutory duty that applies to the Secretary of State;
- It would be unlawful;
- The adverse impacts of the development outweigh its benefits; or
- It would be contrary to any Regulations that may be made prescribing other relevant conditions.

3.3.2 In July 2011, the Secretary of State for the Department of Energy and Climate Change ('DECC' which was recently replaced by the Department for Business, Energy and Industrial Strategy (BEIS)) designated a series of NPSs relating to nationally significant energy infrastructure.

3.3.3 The NPSs that are relevant to the Facility include:

- The overarching National Policy Statement for Energy (EN-1) (DECC, 2011a); and

- National Policy Statement for Renewable Energy Infrastructure (EN-3) (DECC, 2011b).

3.3.4 Part 4 of EN-1 sets out a number of ‘Assessment Principles’ that must be considered by applicants and the Secretary of State in preparing and determining applications for nationally significant energy infrastructure.

3.3.5 Paragraph 4.1.2 of EN-1 details the requirement for the Secretary of State:

*‘Given the level and urgency of need for the infrastructure covered by the energy NPSs ... to start with a presumption in favour of granting consent for applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused’ or any of the considerations referred to in Section 104 of the 2008 Act (noted above) apply.*

3.3.6 Paragraph 4.1.3 of EN-1 states:

*‘In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Secretary of State should take into account:*

- *Its potential benefits, including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider-benefits; and*
- *Its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.’*

3.3.7 Paragraph 4.1.4 of EN-1 continues by stating that within this context the Secretary of State should:

*take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels.*

3.3.8 The generation of electricity from renewable sources of energy is an important element in the Government’s development of a low-carbon economy. There are ambitious renewable energy targets in place and a significant increase in generation from large-scale renewable energy infrastructure is necessary to meet the 15% renewable energy target (see Section 3.4 of EN-1).

3.3.9 In addition to the assessment principles and generic impacts covered by EN-1 (where relevant to fossil fuel generating stations), EN-3 sets out the factors (e.g. factors influencing site selection) and ‘assessment and technology specific’ considerations to be taken into account in the preparation and assessment of applications for renewable energy infrastructure. This includes relevant environmental matters, such as (but not limited to) noise and vibration, landscape

and visual, air quality, water quality, soils and geology, transport and biodiversity.

- 3.3.10 The generation of renewable energy from waste is covered in section 2.5 of EN-3 which refers to the use of solid recovered fuel (SRF) from waste. For the purposes of this Preliminary Environmental Information report (PEIR), SRF as referenced in EN-3 is the same as refuse derived fuel (RDF), and henceforth, RDF (or 'feedstock') is used for consistency.
- 3.3.11 Gasification technology is covered within the scope of EN-3. However, EN-3 does not stipulate which technology should be used, but identifies the policies that the technology will be required to adhere to (EN-3, section 2.5.11).
- 3.3.12 EN-3 states that throughput volume is not in itself a factor in the decision-making process. However, the potential adverse impacts that may result from high throughput volumes must be balanced against the net benefits of the thermal conversion of the waste to energy.
- 3.3.13 EN-3 states in section 2.5.25 that Government policy encourages multi-modal transport and there is an expectation that fuel and residues are transported by water or rail routes where possible. The location for the Facility was specifically determined on the basis that the feedstock could be imported by ship and the aggregate product could be exported by ship.
- 3.3.14 The following details the assessment principles for renewable energy infrastructure applications set in EN-3:
- National Designations – in sites with nationally recognised designations (Sites of Special Scientific Interest, Natural Nature Reserves, National Parks, the Broads, Areas of Outstanding Natural Beauty and Registered Parks and Gardens), consent for renewable energy projects should only be granted where it can be demonstrated that the objectives of designation of the area will not be compromised by the development, and any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by the environmental, social and economic benefits. This is assessed in **Chapter 12 Terrestrial Ecology** and **Appendix 17.1 Habitats Regulations Assessment (HRA)**.
  - Historic Environment – EN-3 notes that the Secretary of State should consider whether any harm or loss of a designated heritage asset may be outweighed by the positive role that large-scale renewable energy infrastructure would play in the mitigation of climate change, emissions reductions, the delivery of energy security and urgency of meeting the Government's renewable energy targets. This is assessed in **Chapter 8 Cultural Heritage**.

- Air Quality and Emissions – EN-3 refers to compliance with the Waste Incineration Directive (WID) and the Large Combustion Plant Directive (LCPD). Both of these Directives were superseded by the Industrial Emissions Directive (IED) on 1 January 2016. Where a proposed renewable energy facility meets the requirements of the IED and will not exceed the local air quality standards, the proposed power station should not be regarded as having adverse impacts on health (EN-3 section 2.5.43). Potential impacts on air quality are assessed in **Chapter 14 Air Quality**.
- Landscape and Visual – EN-3 states (section 2.5.50) that good design that contributes positively to the character and quality of the area will go some way to mitigate adverse landscape and visual effects. Development proposals should consider the design of the generating station, including the materials to be used in the context of the local landscape to ensure that the design of the proposed generating station is of appropriate quality and minimises adverse effects on the landscape character and quality. The Landscape and Visual Impact Assessment (LVIA) is provided in **Chapter 9 Landscape and Visual Impact Assessment**. The Facility is also designed to incorporate landscape and visual mitigation measures at the outset.
- Noise and vibration – EN-3 states (section 2.5.56) that consent should not be granted where the proposed development fails to meet the noise criteria set in EN-1 section 5.11.9. These require that the development avoids significant adverse impacts on health and quality of life from noise, that there is appropriate mitigation to minimise other adverse impacts on health and quality of life from noise, and where possible, contribute to improvements to health and quality of life through the effective management and control of noise. See **Chapter 10 Noise and Vibration**.
- Odour, insect and vermin infestation – insect and vermin infestation may be a particular issue with regard to storage of fuels for renewable energy power generating stations as they may be attracted to biodegradable feedstock stored and processed at the facility. Odour is also likely to arise during the reception, storage and handling/processing of incoming feedstock and the application must set out appropriate measures to minimise impacts on local amenity from odour, insect and vermin infestation. The potential impact of insect and vermin infestation and odour will be assessed within the ES.
- Waste management – EN-3 requires that an assessment of the proposed development should be undertaken to ensure that it accords with the waste hierarchy and is of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England. Waste management is considered in **Chapter 23 Waste**. The proposed development should also consider the disposal requirements for residues



from the proposed gasification plant. The Facility will look to use on-site processing to transform the residues into an aggregate product. Section 2.5.81 of EN-3 identifies that substantial positive weight should be given to development proposals that have a realistic prospect of recovering residues.

- Water quality and resources – EN-3 requires that the application should demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water. The Facility will use air-cooled condensers; therefore, this is considered to represent minimal risk.

3.3.15 The Planning Act 2008, the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, the overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) together set out the DCO requirements and obligations for renewable forms of energy infrastructure. This includes projects generating energy using advanced thermal technologies, such as gasification facilities, with a generating capacity of greater than 50 megawatts (MW).

## 3.4 Planning Policy and Legislation

### Policy Documents

A Green Future: Our 25 Year Plan to Improve the Environment (Defra, 2018)

3.4.1 The Government's environment plan sets out our goals for improving the environment within a generation and leaving it in a better state. In terms of waste management, it seeks to minimise waste, reuse materials and manage materials at the end of their life to minimise the impact on the environment, by:

- working towards the ambition of zero avoidable waste by 2050.
- working to a target of eliminating avoidable plastic waste by end of 2042.
- meeting all existing waste targets – including those on landfill, reuse and recycling – and developing ambitious new future targets and milestones.
- seeking to eliminate waste crime and illegal waste sites over the lifetime of this Plan, prioritising those of highest risk. Delivering a substantial reduction in litter and littering behaviour.
- significantly reducing and where possible preventing all kinds of marine plastic pollution – in particular material that came originally from land.

### National Planning Policy Framework

3.4.2 The Revised National Planning Policy Framework (NPPF) (Ministry of Housing, Communities and Local Government, 2018) sets out the Government's planning



policies for England and how these are expected to be applied. The Framework states that the policies contained within it are not specifically relevant to NSIPs, but there may be some matters of relevance to determination.

3.4.3 One of the main aims of the Framework is to ensure policies and Local Plans favour sustainable development. The planning system has three overarching objectives which are economic, social and environmental which are to be delivered through the application of the Framework policies and through the preparation and implementation of effective plans.

#### National Planning Policy for Waste (2014)

3.4.4 The National Planning Policy for Waste (DCLG, 2014) sets out detailed waste planning policies and aims to deliver the UK's waste ambitions through:

- *“Delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy;*
- *Ensuring that waste management is considered alongside other spatial planning concerns, such as housing and transport, recognising the positive contribution that waste management can make to the development of sustainable communities;*
- *Providing a framework in which communities and businesses are engaged with and take more responsibility for their own waste, including by enabling waste to be disposed of or, in the case of mixed municipal waste from households, recovered, in line with the proximity principle;*
- *Helping to secure the re-use, recovery or disposal of waste without endangering human health and without harming the environment; and*
- *Ensuring the design and layout of new residential and commercial development and other infrastructure (such as safe and reliable transport links) complements sustainable waste management, including the provision of appropriate storage and segregation facilities to facilitate high quality collections of waste.”*

3.4.5 It requires local planning authorities to have regard to its policies when discharging their responsibilities to the extent that they are appropriate to waste management. Increasingly local authorities are working together in partnerships to deliver full and efficient waste services; a requirement of the duty to cooperate in section 110 of the Localism Act 2011. The document sets out detailed waste planning policies to facilitate a more sustainable and efficient approach to

resource use and management, for example by ensuring the design and layout of new infrastructure complements sustainable waste management.

#### Waste Management Plan for England (2013)

- 3.4.6 The key aim of The Waste Management Plan for England (Defra, 2013) is to work towards a zero-waste economy as part of the transition to a sustainable economy. The wastes covered by the plan are municipal waste, industrial (including agricultural) and commercial waste, construction and demolition waste and hazardous waste.
- 3.4.7 The Plan is non-site specific. It evaluates how it would support implementation of the objectives and provisions of the revised Waste Framework Directive (rWFD) (Waste Framework Directive, 2008).
- 3.4.8 The Plan includes using the 'waste hierarchy' (waste prevention, re-use, recycling, recovery and finally disposal as the last option) as a guide to sustainable waste management. One aim is to have the appropriate waste reprocessing and treatment infrastructure at all levels of the waste hierarchy.
- 3.4.9 The 'Proximity Principle' as established in the rWFD, requires waste to be disposed of, or recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies to ensure a high level of protection for the environment and public health. The rWFD also requires Member States to move towards the aim of self-sufficiency in waste disposal and recovery of waste.
- 3.4.10 Over three million tonnes of waste derived fuel is exported from England alone (Environment Agency, 2017), to northern continental Europe and Scandinavia for energy recovery by incineration. Therefore, in line with the proximity principle, the proposed Facility seeks to move the recovery of energy to closer to the point of production and ensure that England is more self-sufficient in managing its own waste.

#### Waste Prevention Programme for England 2013

- 3.4.11 The Government-developed Waste Prevention Programme for England in 2013 to set out the key roles and actions which should be taken to move towards a more resource efficient economy. As well as describing the actions the government is taking to support this move, it also highlights actions businesses, the wider public sector, the civil society and consumers can take to benefit from preventing waste. Using resources more efficiently, designing and manufacturing products for optimum life and repairing and reusing more items could save money and provide opportunities for economic growth at the same time as improving the environment.

### The Strategy for Hazardous Waste Management in England 2010

3.4.12 The 'Strategy for hazardous waste management in England' (2010) sets out the principles for the management of hazardous waste and helps waste producers and managers:

- make the right decisions about their waste; and
- identify the available treatment facilities available.

### **Legislation**

3.4.13 In terms of waste, UK legislation is underpinned by several international (e.g. European Union (EU)) agreements. Following the 2016 referendum on UK withdrawal from the EU, the UK will continue to be committed to EU agreements until finalisation of the withdrawal agreement. Following withdrawal, the exact nature of amendments to UK legislation which had an origin in EU law will depend on the agreements made with the EU and the extent to which EU measures continue to apply (e.g. achieve trading agreements) as well as the ongoing political agendas of the UK government. At the time of writing of this PEIR, these details were not confirmed.

### EU Action Plan for the Circular Economy

3.4.14 The revised legislative framework on waste in the EU's Circular Economy Package (CEP) entered into force at the start of July 2018 through Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018, by amending Directive 2008/98/EC on waste (the Waste Framework Directive – see below).

3.4.15 The governments of member states have 24 months to transpose it into national legislation. The implementation of CEP in the UK will be subject to the UK withdrawal agreement. However, the UK is likely to implement rigorous targets for diverting waste from landfill; and managing the waste produced by households.

3.4.16 The CEP extends targets for municipal waste recycling. A target of 55 per cent by 2025 will be introduced, with a 60 per cent goal for 2030, then a subsequent 65 per cent target being set for 2035. EU member states are currently working towards a 50 per cent target for 2020.

3.4.17 Additionally, the CEP proposes a binding landfill target to reduce landfill to maximum of 10% of municipal waste by 2035.

3.4.18 The CEP will also provide concrete measures to promote re-use and stimulate industrial symbiosis where one industry's by-product is reused as another industry's raw material.

### EU Waste Framework Directive (Directive 2008/98/EC), 'rWFD'

3.4.19 The rWFD set the basic concepts and definitions related to waste management, such as definitions of waste, recycling, recovery. It explains when waste ceases to be waste and becomes a secondary raw material (by meeting “end-of-waste” criteria), and how to distinguish between waste and by-products.

3.4.20 The rWFD provides the basic waste management principles:

- It requires that waste be managed without endangering human health and harming the environment, and in particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest.
- It introduces the concept of the waste hierarchy and provides a direction for the management of waste by applying a priority order to the management of waste.
- It incorporates provisions on hazardous waste.
- It provides recycling and recovery targets to be achieved by 2020: 50% preparing for re-use and recycling of certain waste materials from households and other origins similar to households, and 70% preparing for re-use, recycling and other recovery of construction and demolition waste.

3.4.21 The Directive requires that Member States adopt waste management plans and waste prevention programmes.

3.4.22 Much of the requirements of the rWFD are implemented by UK or English legislation (for example the Environmental Permitting Regulations). The provisions to sever the legislative links with the rWFD in such legislation will be confirmed as the UK progresses its negotiations for leaving the EU.

### Environmental Protection Act 1990 Part II – Controlled Waste and Duty of Care

3.4.23 This is the UK Act of Parliament that makes provision for the management of wastes to avoid pollution.

3.4.24 It sets the rules for the management of controlled wastes and identifies the waste Duty of Care, which places an obligation on person who imports, produces, carries, keeps, treats or disposes of controlled waste, including householders, commercial producers and industrial producers of waste.

### The Environmental Permitting (England and Wales) Regulations 2016 (as amended)

3.4.25 The Environmental Permitting (England and Wales) Regulations 2016 (“the

Environmental Permitting Regulations”) consolidate earlier amendments to the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675). They set out an environmental permitting and compliance regime that applies to various activities and industries, including the management of waste.

- 3.4.26 The environmental permitting regime is a common framework for applying for, receiving, varying, transferring and surrendering permits, along with compliance, enforcement and appeals arrangements. It rationalises the previous permitting and compliance regimes into a common framework that is easier to understand and simpler to use. A key component is that it allows applicants that would otherwise require several permits for activities falling under various regulations on a single site to complete a single application, and to be issued with one permit.
- 3.4.27 The framework introduces different levels of control, based on risk: exclusions (very low risk activities which may be undertaken without any permit), exemptions (lower risk activities which may be undertaken after registering, which is free), standard rules permits (standard requirements and conditions for the relevant activities are set out so that applicants can determine in advance whether the permit is applicable to their proposals) and bespoke permits (permits written specifically for activities which are unique or of higher risk).

#### The Waste (England and Wales) Regulations 2011

- 3.4.28 The 2011 Waste Regulations transposes the rWFD in England and Wales. In addition, it reduced the fragmentation of waste legislation to some extent and so it streamlines and replaces some waste regulation, in particular the subordinate legislation relating to the registration of waste carriers and brokers and to the “duty of care”.
- 3.4.29 Key provisions in the rWFD were implemented by the Waste Regulations:
- Waste hierarchy: legal requirement the waste hierarchy for waste prevention and management in legislation and policy.
  - Separate collections (household waste): set up separate collection (as a minimum) for paper, metal, plastic and glass by 2015, “where technically environmentally and economically practicable and appropriate”.
  - Separate collections (private companies): From 1 January 2015: (1) businesses which collect waste paper, metal, plastic or glass need to collect such waste separately; and (2) businesses which collect, transport or receive separately collected waste paper, metal, plastic or glass should ensure that such waste is not mixed with other waste.



- Waste carrier and broker registration: Registration is required for all those that “normally and regularly transport waste, whether the waste is produced by them or others”. The Regulations introduced a new two-tier system for registration.

#### Hazardous Waste Regulations 2005 (as amended)

- 3.4.30 Waste is generally considered hazardous if it (or the material or substances it contains) are harmful to humans or the environment. All producers and holders of hazardous waste are obliged to ensure that the hazardous waste does not cause harm or damage. All producers and holders of waste are obliged to know whether their waste is classified as hazardous or non-hazardous.
- 3.4.31 The hazardous waste regulations identify the administrative provisions for handling hazardous waste. The regulations also make it illegal to mix a hazardous waste with either non-hazardous or another hazardous waste.

#### **Local Planning Policy**

- 3.4.32 Paragraph 4.1.5 of NPS EN-1 states that:

*“Other matters that the IPC may consider important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for the purposes of IPC decision making given the national significance of the infrastructure.”*

- 3.4.33 The local planning policies detailed below were therefore considered in this PEIR as being pertinent to the whole proposed development. Local policies specific to each technical topic are detailed in the respective chapters.

#### The Lincolnshire Minerals and Waste Local Plan (2016)

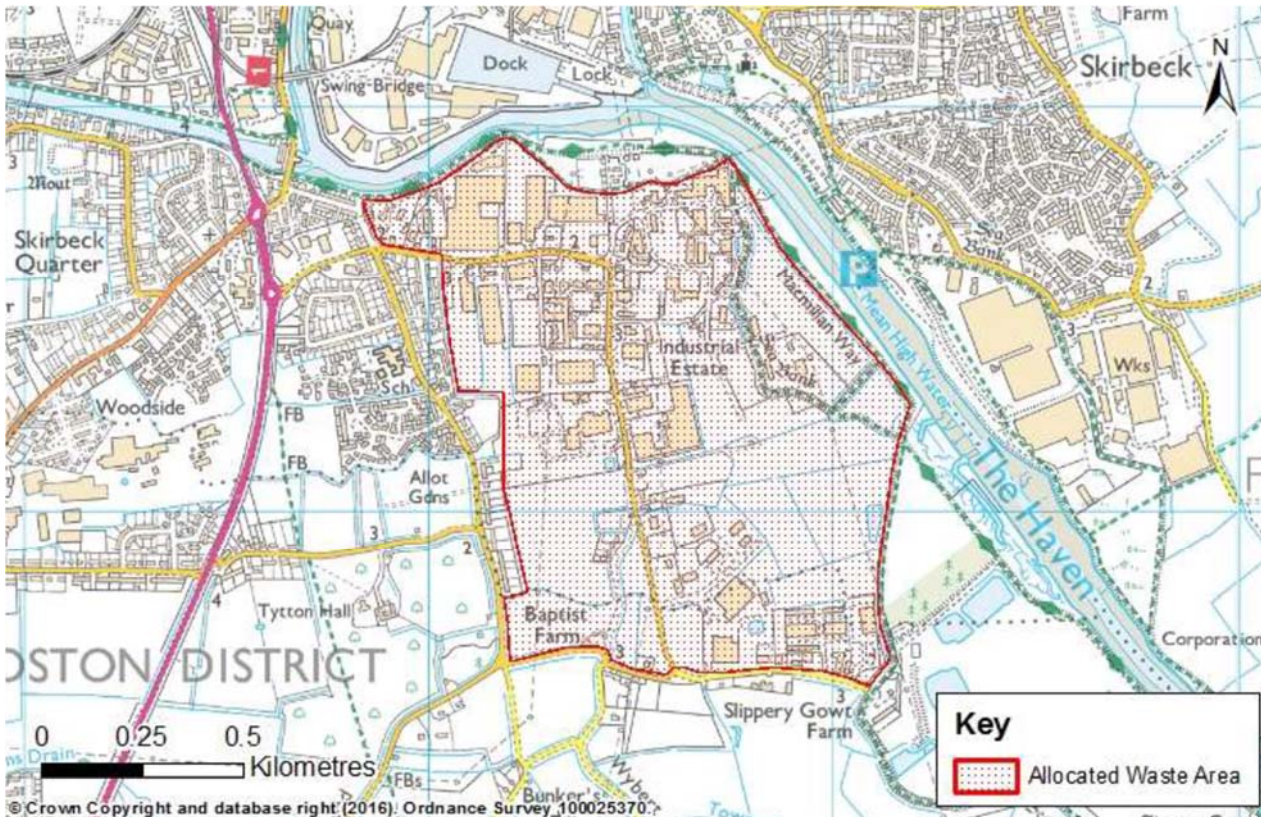
- 3.4.34 The Lincolnshire Mineral and Waste Local Plan (LMWLP) (Lincolnshire County Council, 2016) Core Strategy and Development Management Policies promotes the reduction in waste disposal to landfill, and an increase in waste prevention/minimisation, ensuring waste is reused, recycled, composed or subjected to energy recovery. In accordance with Planning Practice Guidance, the Council will not prescribe waste management technologies to deal with specific waste streams, to allow flexibility in the development of new and emerging waste technologies.
- 3.4.35 The majority of the policies of the LMWLP relate to waste management facilities (defined in the Plan as “Facilities associated with the processing and disposals of waste materials”). The purpose of the proposed Facility is to generate energy using RDF as a feedstock. Given that the feedstock comprises residual waste

material, the following policies in the LMWLP are of relevance:

- Policy SL3: Waste Site and Area Allocations.
- Policy W3 Spatial Strategy for New Waste Facilities.
- Policy W4 sets out locational criteria for new waste facilities.
- Policy DM1 states that the County Council will take a positive approach in favour of sustainable development contained in the National Planning Policy Framework.
- Policies DM2 to DM16 (inclusive) identify subject-specific requirements for new waste development, such as emissions, heritage assets, landscape and townscape, biodiversity and ecology etc.

3.4.36 The Lincolnshire Minerals and Waste Local Plan Site Allocations document adopted in December 2017 identifies the Application Site as falling within 119 ha of land allocated as WA22-BO: Riverside Industrial Estate Waste Area. The allocation identifies a range of potential uses for the site comprising: Resource Recovery Park; Treatment Facility, Waste Transfer; Materials Recycling Facility; Household Waste Recycling Centre; Metal Recycling / End of Life Vehicles; Reuse Facility; Construction and Demolition Recycling; and Energy Recovery. The allocated area is identified in **Plate 3.1** below. Therefore, the criteria for Policies SL3, W3 and W4 are met.





**Plate 3.1 Allocation of Riverside Industrial Estate (WA22-BO)**

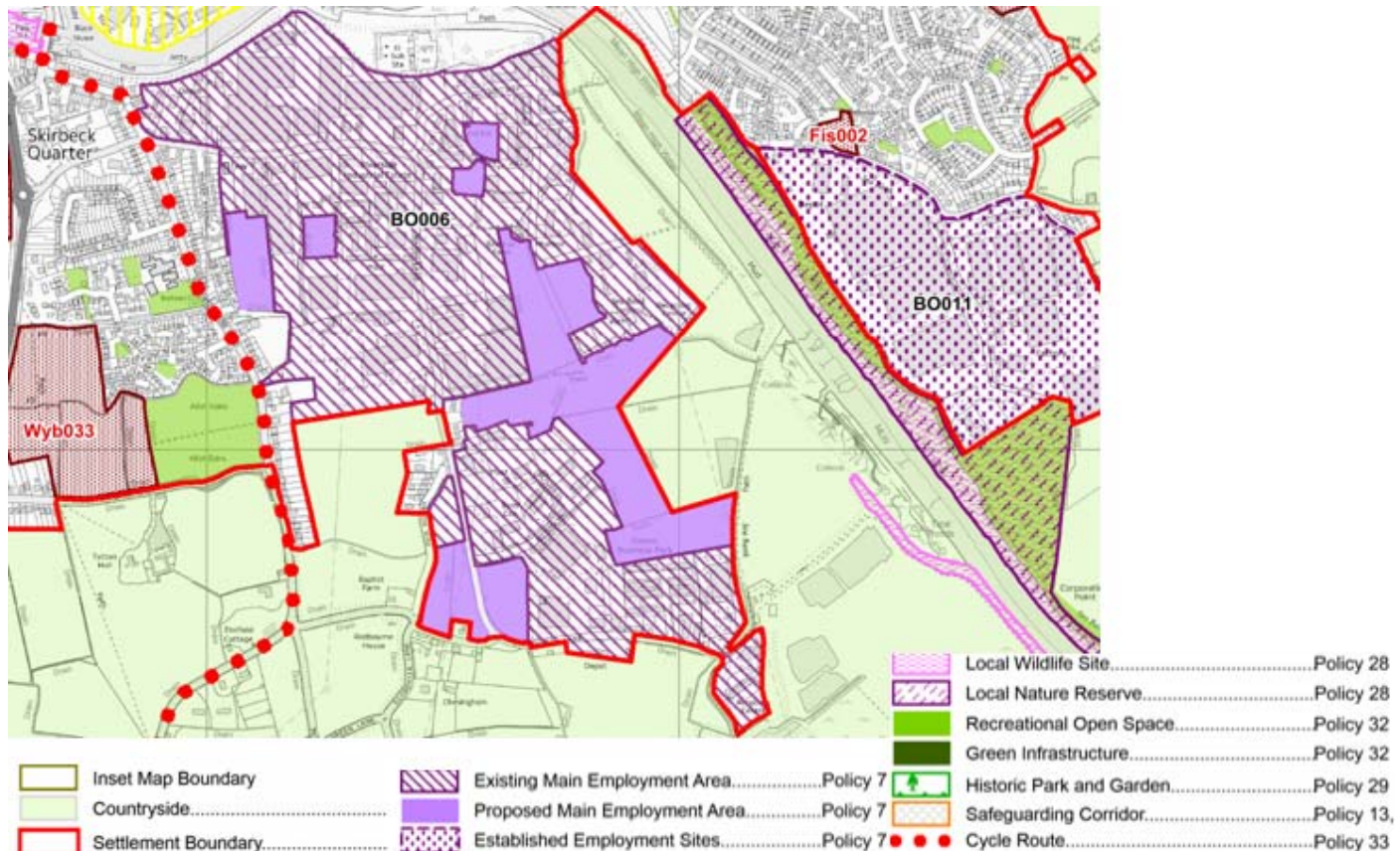
3.4.37 The accompanying Sustainability Appraisal undertaken for the ‘Site Locations’ report confirms that the site is suitable for potential waste uses including Energy from Waste projects. National Policy Statement EN-3 identifies gasification as similar process to that of combustion in deriving Energy from Waste (EN-3 Paragraph 3.4.3, bullet 4).

#### South-East Lincolnshire Local Plan

3.4.38 The South-East Lincolnshire Local Plan (SELLP) was produced jointly by Boston Borough Council, South Holland District Council and Lincolnshire County Council (collectively known as the South-East Lincolnshire Joint Strategic Planning Committee). The South-East Lincolnshire Local Plan was adopted on 8 March 2019 and will guide development in South-East Lincolnshire over the next twenty years.

3.4.39 The adopted Plan states that the Infrastructure Delivery Plan, produced to consider the infrastructure requirements relating to the growth aspirations detailed in the SELLP, identifies that energy supply is a critical service need. As part of the SELLP, the South-East Lincolnshire Joint Strategic Planning Committee has a requirement to monitor the number of planning applications approved for renewable and low carbon energy.

3.4.40 It is identified that 89.7 ha of the Riverside Industrial Estate is allocated for purposes of Business (B1), General industrial (B2) and Storage or distribution (B8). Part of the Application Site fall within this Local Plan allocation, with the remainder designated as countryside. The Riverside Industrial Estate is identified as site BO006 in the SELLP. The allocations for the site are identified below in **Plate 3.2**.



**Plate 3.2 SELLP Allocation for Riverside Industrial Estate, BO006, (South-East Lincolnshire Joint Strategic Planning Committee)**

3.4.41 Policy 31 of the SELLP (Climate Change and Renewable and Low Carbon Energy) states that the development of renewable energy facilities will be permitted where they do not result in significant harm to the environment, highway and aviation safety and agricultural land take (South-East Lincolnshire Joint Strategic Planning Committee, 2019).



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