

Thank you for your email of 15 October 2020.

It is not uncommon for an Applicant to amend order limits during the Consultation period in response to new information obtained.

As stated in [our advice to you on 10 September 2020](#), we advised that earlier rounds on non-statutory consultation are used by the applicant to help inform the final project.

The Applicant carried out its statutory consultation exercise between 27 July - 21 September 2020. The project, as depicted in the information and documents during the statutory consultation, should be considered as representative of the project as it currently exists. The Applicant may amend their proposal based on responses receive during the statutory consultation.

The Applicant has a statutory duty to have regard to all consultation responses received and this should be demonstrated in the Consultation Report as part of their DCO application.

In his [letter of 9 May 2014](#), the Secretary of State for the Ministry of Housing, Communities and Local Government (MHCLG) gave a direction that the proposed project can be treated as a Development for which development consent is required under the Planning Act 2008 because the proposed development met the requirements set out in the Planning Act 2008 and Regulation 2 of the Infrastructure Planning (Business or Commercial Projects) Regulations 2013.

"Section 35 Directions in relation to projects of national significance

(1) The Secretary of State may give a direction for development to be treated as development for which development consent is required.

This is subject to the following provisions of this section and section 35ZA.

(2) The Secretary of State may give a direction under subsection (1) only if—

(a) the development is or forms part of—

(ii) a business or commercial project (or proposed project) of a prescribed description..."

The letter of the 9 May 2014 also stated that the substantial physical size of the proposal was relevant to his decision that the project is of national significance.

As previously stated in [our advice to you on 23 July 2020](#), the Inspectorate is not the body responsible for making a Direction under s35 of the Planning Act 2008.

The project is therefore considered to fall under the nationally significant infrastructure regime. Once a project has been directed into the regime in this way, it is for the applicant to take it forward to submit an application under the provisions of the Planning Act 2008 (as amended).

If you believe that the Secretary of State needs to reconsider the Direction under section 35 of the Planning Act 2008, then we would advise you to contact the Secretary of State directly.