



GOVERNMENT OFFICE
FOR THE NORTH WEST

*From the Director
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Our ref: APP/H0900/A/94/247019
Your ref: DB.CD.8.51

17 March 1997

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990
APPEAL BY UNITED KINGDOM NIREX LIMITED
PROPOSED ROCK CHARACTERISATION FACILITY ON LAND AT AND
ADJOINING LONGLANDS FARM, GOSFORTH, CUMBRIA
(LOCAL AUTHORITY APPLICATION NUMBER 4/94/9011)**

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector, Mr C S McDonald MA DMA LMRTPI concerning the above appeal. Between 5 September 1995 and 1 February 1996 Mr McDonald, assisted by Mr C Jarvis LLB and by an assessor, Mr C V Knipe BSc CEng CGeol MIMinE MIMM FGS, held a public local inquiry into the appeal, which was made by your company, United Kingdom Nirex Limited ("Nirex"), under Section 78 of the Town and Country Planning Act 1990, ("the 1990 Act") against the decision of Cumbria County Council to refuse planning permission for a Rock Characterisation Facility (RCF) on land at and adjoining Longlands Farm, Gosforth, Cumbria.

ISSUES SET OUT IN THE SECRETARY OF STATE'S "RULE 6" STATEMENT

2. On 27 February 1995 the Secretary of State issued a statement under the provisions of Rule 6 of the Town and Country Planning (Inquiries Procedure) Rules 1992 of the issues on which he particularly wished to be informed for the purpose of determining the appeal. The issues set out in that statement, which are also set out in paragraph 1.5 of the Inspector's report, are:

- (1). **The relationship of the RCF proposal to the policies and proposals in the existing development plan for the area.**

The existing development plan for the area comprises:

the Cumbria and Lake District Joint Structure Plan First Alteration, approved on 16 December 1987, and
the Mid Copeland Local Plan, adopted on 23 March 1990.

- (2). **The relationship of the RCF proposal to the policies and proposals in emerging development plans for the area.**

The emerging development plans are:

the Cumbria and Lake District Joint Replacement Structure Plan, and
the Copeland Borough Plan.

- (3). **In determining the appeal, the weight that should be attached to emerging plans, having regard to the advice set out in Planning Policy Guidance note PPG1.**
- (4). **The environmental impact of the RCF proposal.**
- (5). **The impact of the RCF proposal on the local highway network and the works, if any, required directly to accommodate additional traffic arising.**
- (6). **The results available so far from studies and surveys of the geology and hydrogeology of the area; the additional information that might become available only from the RCF, if developed; and the benefits to be gained from obtaining that additional information, if any, weighed against the possible impact the RCF might have on the site and the surrounding area.**
- (7). **The question of whether any planning permission which may be granted should be subject to any conditions and, if so, the form they should take.**
- (8). **Any other issues which the Inspector considers relevant to the determination of the appeal.**

3. **At the inquiry the description of the development was amended by agreement and is now as described by the Inspector in paragraph 1.2 of his report, namely:**

Construction of 2 shafts (5m diameter, not exceeding 1020m depth), galleries (none exceeding 5 m height & width and 975m length), exploratory drilling from underground; construction of engineered platforms and associated buildings and works for the purpose of carrying out searches and tests of the Borrowdale Volcanic Group (BVG) and overlying geological strata, including use for carrying out scientific investigations, measurements & experiments in and from the said shafts & galleries; storage of topsoil & subsoil, deposit of underground spoil, internal access road, services, landscaping & restoration.

4. It is also noted that, in his description of the site and of the proposals at Chapter 2B of his report, the Inspector has recorded, at paragraph 2B.16, that a decision to proceed with the deep waste repository (DWR) could be taken by Nirex at the earliest about halfway through Phase 1 of the RCF programme.

5. INSPECTOR'S RECOMMENDATION

5.1 A copy of the Inspector's and of the Assessor's report is enclosed. A copy of the Inspector's conclusions is appended to this letter, at Annex 1. The Inspector recommended that, in view of the considerations expressed in paragraphs 8.1 to 8.61 of his report, the appeal be dismissed.

6. MATTERS RAISED BY THE INSPECTOR IN HIS REPORT

(i) Planning Inquiry Commission

At paragraph 1.18 of his report the Inspector draws the attention of the Secretary of State to the request by The National Trust that, on receipt of the report, he reconsider the establishment of a Planning Inquiry Commission into the appeal. The Secretary of State remains of the view that a normal planning inquiry is the correct mechanism. It provides adequate opportunity for interested parties to make their views known and for relevant issues to be fully explored and carefully appraised before a decision is reached.

(ii) National Policy

The Secretary of State agrees with the Inspector's summary of national policy as set out in paragraphs 2A.6 to 2A.10 of his report. That current policy, which is set out in White Paper Cm 2919 ("Review of Radioactive Waste Management Policy, Final Conclusions") is to find a suitable site for a DWR for intermediate level radioactive waste and that once such a site is found a DWR should be constructed as soon as reasonably practicable. However, the onus is on Nirex to identify a site and prepare proposals which are consistent with that broad policy and which comply with all the regulatory requirements and which succeed in obtaining any necessary permissions/authorisations, including planning permission.

(iii) Role of the Nuclear Installations Inspectorate

It is agreed that, as noted by the Inspector at paragraph 2A.17 of his report, the Nuclear Installations Inspectorate of HSE does not so far have any statutory role in the proposals as regulations have yet to be made to specify that a DWR requires a licence under the provisions of the Nuclear Installations Act 1965.

(iv) The Development Plan

Section 54A of the 1990 Act requires the Secretary of State to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. The Secretary of State agrees with the Inspector that, in this case, the statutory development plan applicable to the appeal site is the Cumbria and Lake District Joint Structure Plan 1991 - 2006, which was adopted in July 1995, and such parts of the Mid Copeland Local Plan, adopted in 1990, as are in general conformity with the structure plan (IR 2C.1, 8.11 and

8.17). It is also agreed that it is necessary to take into account policies contained in the previously approved structure plan which are saved pending the adoption of relevant local plans (IR 2C.2 and 8.18).

The Copeland Local Plan is also of relevance (IR 2C.26 to 2C.41 and 8.19 to 8.25). It is now at a very advanced stage following the consideration of objections at a public inquiry and the publication of proposed modifications, the drafts of which were presented to the appeal inquiry. The Secretary of State has directed that policy IMP1 in that plan should be modified to bring that policy into line with Government policy on planning obligations as set out in Department of the Environment Circular 16/91 and since updated in circular 1/97. The Council has not yet adopted the plan and so Section 54A of the 1990 Act does not apply to it, but it should be taken into account as a material consideration, bearing in mind the advice in paragraph 48 of PPG1 (Revised) February 1997.

It is noted that, since the close of the appeal inquiry, Cumbria County Council has placed on deposit the proposed Minerals and Waste Disposal Local Plan for those parts of the County outside the National Parks. However, as an inquiry has not yet been held into that plan little weight can be accorded to it in the determination of this appeal.

(v) The Lake District National Park Management Plan

Notwithstanding that this plan is not a statutory development plan, it is considered that the Inspector was right to consider what it says, given that the appeal site lies right alongside the National Park boundary, and the fact that the proposals could affect the National Park and its purposes (IR 2C.42 and 8.26).

(vi) Nature of the project and relevance of the repository, alternative sites and the need for and availability of further information (IR Chapter 3A)

The Inspector has provided, at Chapter 3A of his report, a summary of the arguments put to him about the relationship between the RCF and any DWR proposed for the site; the Inspector's opinions on this set of issues are at IR 3A.17 to 3A.24 and 8.4 to 8.10).

The Secretary of State does not accept in their entirety the Inspector's views on this issue. In the Secretary of State's view the RCF can be regarded as a separate project, but he accepts that there is a relationship between the RCF and a DWR, although it may not easily be defined. The Secretary of State has considered whether or not, given that relationship, he should require Nirex to provide further information on that relationship together with such further information as the company may have on the available alternatives to and the alternative locations/sites for a RCF/DWR and the suitability or otherwise of those sites for the development of an RCF and, subsequently, a DWR, including such information as can be compiled now on the potential environmental impacts of alternative sites considered for such uses. However, he has concluded that, for the reasons set out below, the provision of such further information would not influence his determination of this particular appeal. But in any future application for a RCF (or any other major development proposal that represents a milestone towards the design and construction of the repository itself) the Secretary of State would expect the Environmental Statement to address the question of alternatives and to explain and justify why a particular location had been chosen in preference to others.

(vii) Marine discharges (IR Chapter 3C)

The Secretary of State notes and agrees with the Inspector's conclusions (IR 3C.18 to 3C.23) regarding the concerns of the Irish Government and other parties and agrees that the people of Ireland have a legitimate interest in any proposal for a repository for radioactive waste near the Irish sea coast. He is acutely aware of the Government's obligations to other states which are set out in various international obligations in respect of the sea and the environment more generally.

(viii) Conformity with the statutory development plan (IR Chapter 4A)

The Secretary of State notes the Inspector's thorough appraisal of the RCF proposal in relation to the statutory development plan for the area. He agrees that the conformity of the basic DWR concept with sustainability principles has been settled nationally in the White Paper Cm 2919 ("Review of Radioactive Waste Management Policy, Final Conclusions") (IR 4A.43). He agrees that as the RCF is a large development proposed for a site immediately adjacent to the National Park boundary. He considers that, having regard to the provisions Section 11A(2) of the National Parks and Access to the Countryside Act 1949 (as amended), its impact on the appearance and character of the Park are material to the determination of the appeal. He considers that the qualities of the Lake District National Park are nationally important, and its much celebrated natural beauty, wildlife and cultural heritage can be regarded as being of international interest. He also agrees most strongly that the transitional or temporary nature of the development proposed cannot excuse an unnecessarily poor standard of design (IR 4A.57).

(ix) Conformity with retained and emerging development plan policies (IR Chapter 4B)

The Secretary of State agrees with the Inspector's conclusion that the transitional development plan policies retained from the 1980 Structure Plan do not differ significantly from policies in the emerging local plans and their approach to any interest of acknowledged importance (IR 4B.23 and 8.18).

(x) Visual impact (IR Chapter 5A)

The Secretary of State agrees with the Inspector that the Potential Repository Zone, within which the appeal site lies, is located in an area of relatively uncluttered open countryside adjacent to the National Park, and that there is a continuum in the relatively open landscape across the A595(T) (IR 5A.60); that the site contains topographical features which are attractive in their own right, notably the woodland and the small and secluded valley (IR 5A.61); and as regards its place in the broader perspective, in the sweep of the view downward from the fells, across the fairly narrow coastal strip and out to sea (IR 5A.62). He agrees with the Inspector that the development is not trivial in comparison with the Sellafeld Works (IR 5A.62), that the development would be noticeable and, indeed, intrusive when viewed from the adjacent countryside, highways and vantage points (IR 5A.63 to 65). He further agrees that the development proposed would certainly cause harm to its immediate setting, and that the buildings would look palpably out of place (IR 5A.67). He shares the Inspector's reservations about the visual impact of the proposed spoil heaps (IR 5A.69). He agrees that the RCF development and activities would fail to remain subordinate to the existing landscape (IR 5A.69), and would harm the appearance of the National Park (IR

5A.76). The Secretary of State also agrees that in respect of its design the RCF proposal does not conform with Structure Plan Policy 25.

The Secretary of State notes the Inspector's concern regarding the longer term evolution of the Sellafield Works in relation to the DWR site and its potential impacts (IR 5A.87). However, he attaches no great weight to that concern in the determination of this appeal.

(xi) Socio-economic impact (IR Chapter 5B)

The Secretary of State notes that the development promises modest employment and related benefit (IR. 5B.97). The nuclear industry is a considerable industry in the West Cumbrian economy, but the Secretary of State does not agree that its economy is "over dependent" on that one industry (IR 5B.86).

The Secretary of State notes the Inspector's conclusions that the development of the RCF would involve social detriment in that the amenity of a significant number of local residents would be injured by genuine apprehensions about the project, mainly relating to health and safety; that in economic terms there could be noteworthy effects on tourism, fisheries and inward investment in business, plus possibly agriculture (IR 5B.97 and 98); and that Nirex could acknowledge and mitigate such effects. The Secretary of State respects these concerns. He considers that there could be socio-economic benefits as well as some socio-economic detriment which are capable of being mitigated in part. Nirex, however, has not done enough to acknowledge and mitigate those effects. He readily acknowledges that such a sensitive application needs to be convincing to all parties, especially to people living in the locality, and all those with a legitimate interest in the development and its actual and potential impacts. There would also, in the Secretary of State's view, be benefits to be gained for the nation from identifying and confirming a suitable site for long term, safe, reposition of intermediate level radioactive waste.

(xii) Traffic impact (IR Chapter 5C)

The Secretary of State agrees with the Inspector's conclusion that in the absence of a detailed assessment of a road link between the Sellafield Works and the PRZ it is not possible to conclude that a surface rail link would not be feasible (IR 5C.36). Consequently, he agrees with the Inspector that, on the face of it, there is a national policy objection to retaining an access from the PRZ onto the A595(T) (IR 5C.37). The Secretary of State agrees with the Inspector that the unavoidable local community use and the safety record of this stretch of all-purpose trunk road militate against the retention, contrary to national policy, of the direct access to the road notwithstanding its apparent physical capacity to accommodate more local and freight vehicular trips (IR 5C.42). He agrees with the Inspector that the proposal fails to accord with several policies in the development plan; that there is no planned provision for cyclists and pedestrians (IR 5C.42 and 43); and that criticism of the excessive provision of car parking on the site has not been answered (IR 5C.43).

(xiii) Noise and vibration effects (IR Chapter 5D)

The Secretary of State agrees with the Inspector's conclusions on issues relating to noise and vibration (IR 5D.25 to 33)

(xiv) Other environmental effects (IR Chapter 5E)

The Inspector reviews the Environmental Statement and notes that the Environmental Statement provides no assessment of the effects from the DWR on the marine environment or elsewhere (IR 5E.1).

The Secretary of State agrees with the Inspector that there is a link between the RCF and the DWR. The Secretary of State concludes that the RCF should not be considered without reference to the effects of the DWR. The Secretary of State agrees with the Inspector that the presence of a protected species is a material consideration if the development would be likely to cause harm to the species or its habitat (IR 5E.26). In this case it is clear that the proposed spoil disposal operations would harm the habitat of the Lingbank badger clan, for the operations would take place over most of the clan's principal feeding ground, which raises further doubts about the conformity of the development proposed with the development plan (IR 5E.26). He agrees that it is particularly important to sustain this clan since it seems to be the only one in the locality to have survived human persecution. The Secretary of State considers that development planning and site planning alike can and should strive to respect protected species and habitats and to maintain bio-diversity. His policy on those matters is clearly set out in Planning Policy Guidance Note PPG.9. The Secretary of State agrees with the Inspector that the best solution would be to identify another spoil disposal area altogether (IR 5E.27). He has considered whether this might be achieved by way of planning conditions but has concluded that this would not be satisfactory given the likely impact on the landscape of the locality and the National Park.

(xv) Basic repository locational criteria (IR Chapter 6A)

The Secretary of State agrees with the Inspector that your company has failed to appreciate that it is for the local planning authority and not the regulators to review the choice of location, and that the local planning authority is entitled to reach its own view about the acceptability of risk so long as it does not substitute its own detailed risk assessment for that of the regulators (IR 6A.67).

(xvi) Site selection process (IR Chapter 6B)

The Secretary of State notes with some concern that your company's site selection process for the potential repository zone ("PRZ") has singularly failed to impress the Inspector in terms of its transparency and the rigour of its technical and scientific logic (IR 6B.85 to 105).

(xvii) Science and technical programmes (IR Chapter 6C)

The Secretary of State also notes the concerns expressed by the Inspector that your company failed to present reasoned projections on the potential disturbance from RCF construction to the PRZ.

(xviii) Model development (IR Chapter 6D)

The Secretary of State notes the depth and extent of the Inspector's concerns about the model development associated with the RCF proposal. He agrees with the Inspector that your company should not contemplate RCF shaft sinking, risking long-term perturbation of the

centre of the hydrogeological system, until the modelling issues identified by the Inspector have been at least addressed and, where necessary, resolved (IR 6D.71).

(xix) Radiological protection and safety assessment (IR Chapter 6E)

In Chapter 6C of his report the Inspector considers the topic of radiological protection and safety assessment in relation to conditions after closure, or withdrawal of control from, the disposal facility. He makes the point that, as the Assessor comments, with the multi barrier concept there are opportunities to feed back lessons from the preliminary assessments into the design of the waste packaging and emplacement and the detailed engineering and layout of a repository, as well as into more basic decisions on its location. This in turn can have implications for the detailed design of the RCF and the nature and choice of investigations and experiments within it. The Inspector also notes that the Assessor is firmly of the opinion that, whilst the timing of the detailed modelling and other work on the requisite back-filling and sealing of excavations would be late, it would confirm that appropriate materials and techniques are already available (IR 6E.72). The Inspector concludes that the RCF proposal is premature (IR 6E.87). The Secretary of State agrees with that conclusion.

(xx) Role of the RCF and promise of the PRZ (IR Chapter 6F)

The Secretary of State notes that the radiological performance of the site could be affected by the RCF (IR 6F.40).

The Inspector acknowledges the general quality and innovation of Nirex's scientific and technical work to date, but concludes that it is too optimistic about the situation it has reached. (IR 6F.50). He concludes that your company does not understand the regional hydrogeological system well enough and it is not planning to give the remainder of its investigatory programme sufficient scope to remedy the discrepancy. Also it does not fully comprehend the extreme complexity of the PRZ and over-estimates its own knowledge and understanding in critical respects, and it is much too hopeful about the speed and confidence with which it could reliably process information and make firm decisions in constructing and operating the RCF (IR 6F.52). He concludes, therefore, that Nirex should not be allowed to proceed with the RCF in its current state of inadequate knowledge, for that would cause needless damage to the PRZ. Also, that it would make it very difficult for anyone to predict the consequences of Nirex's actions and result in a confusing outcome (IR 6F.53 and 8.56).

Secondly, he concludes that it is difficult to credit that Nirex has optimised the location of the RCF, because it has not equipped itself with the knowledge to do this. The Inspector suspects that the RCF could not, except by coincidence, be the confirmation of the suitability of the most stable, understandable and impermeable volume of rock for a DWR (IR 6F.53). He notes that the Assessor advises that the RCF would be unable to provide information on about half of the principal hydrogeological units which make up the current regional transport model (IR 6F.54). The Inspector and the Assessor are sceptical of Nirex's ability to make a decision halfway through Phase 1 to proceed with a DWR application since they would not be far enough into the rock and would not have enough additional information for such a decision point to be realistic (IR 6F.55). He also considers that Nirex remains unduly optimistic about its model development and validation programme, and warns that there is a serious risk of basing successive predictions on inadequately refined models, in turn

producing output of insufficient reliability (IR 6F.55). He concludes that to go ahead now with the RCF would be seriously premature (IR 6F.59).

The Secretary of State notes the Inspector's considerable concern on these points and agrees with his conclusion that more scientific and technical work is required before the development of an RCF. He considers that it is a matter of overriding national interest that a PRZ, however it is selected, should not be damaged by exploration based on anything other than a fully sound and convincing technical and scientific case.

(xxi) Mitigation of environmental effects (IR Chapter 7A)

The Secretary of State agrees with the Inspector's conclusions on the mitigation of environmental effects as set out at IR 7A.7 to 7A.12.

(xxii) Ensuring scientific and technical benefits (IR Chapter 7B)

The Secretary of State notes that the Inspector considers it is necessary to secure the scientific and technical benefits of the RCF. The Inspector suggests that, in order to achieve adequate control of the scientific and technical aspects of the development, there should be a binding agreement between Nirex and the Environment Agency (IR 7B.9). Should planning permission be granted for the development of the RCF in the absence of such an agreement then, he considers, Cumbria County Council, as local planning authority, must regulate all aspects of the RCF (IR 7B.10).

It is a matter of some concern to the Secretary of State that there is lack of certainty about how scientific and technical benefits are to be achieved, since the lack of controls to ensure this could increase the risk of uncalled for harm to a potential DWR location. He considers that Nirex could have submitted an agreement setting out the full arrangements for providing information to the full range of interested parties and statutory bodies, and firm commitment to, and clear arrangements for, independent peer review. He has considered whether or not to require that now, but has concluded that it would not affect the outcome of his determination of this particular appeal.

(xxiii) Inspector's final conclusions (IR Chapter 8)

The Inspector rehearses his opinions on the connection between the RCF and the DWR and the need to look at alternative sites for a RCF/DWR. The Secretary of State's view on this is set out at paragraph 6(vi) above.

The Secretary of State notes the Inspector's conclusion that the Environmental Statement contains no information about the possible environmental effects of abnormal incidents at the RCF. However, he has concluded that, for the reasons set out below, the provision of such further information would not influence his determination of this particular appeal.

The Secretary of State agrees with the Inspector's appraisal, at IR 8.11 to 8.27, of the RCF proposal against policies contained in the statutory development plan for the area and in emerging local plans as they were at the close of the inquiry and with his appraisal, at IR 8.28 to 8.41, of the degree of adverse environmental effects and the extent of conflict with policies. Since then Copeland Borough Council have refined and published the modifications

which the Council proposes to make to the emerging Copeland Local Plan and, further, the Secretary of State has directed that one of those policies, IMP1, should be further modified. He considers, however, that the main thrust of the plan insofar as it applies to sites such as the appeal site remain largely unaltered since it was discussed at the inquiry and that the Inspector's conclusions remain valid. Since the close of the inquiry the emerging Cumbria Minerals and Waste Local Plan has been amended and placed on deposit. However, as an inquiry has not yet been held into that plan it is considered that relatively little weight should be accorded to it in the determination of this appeal.

On the question of the suitability of the site, the Secretary of State agrees with the Inspector's conclusion (IR 8.47) that your company does not appear to have selected this site in an objective and methodical manner and, further, does not appear to have fully appreciated the limitations of its understanding of the site (ie groundwater conditions in and around the site and the extent and variability of faulting in the rock). He also notes, with some concern, that your company appears to be unduly optimistic in that it does not appear to plan to take all the steps which appear to be necessary to put right those deficiencies (IR 8.50). He notes, with concern, the Inspector's conclusion that the indications are that this site is not suitable for the proposed repository and that investigations should now be moved to a more promising site elsewhere. The Secretary of State has considered whether or not these concerns are themselves sufficient grounds for reopening the inquiry to address these matters in greater detail, but he has reached the view that the deficiencies of this application are so numerous and extensive that reopening of the inquiry would not be an appropriate step before proceeding to determine the appeal.

The Secretary of State considers that exploratory investigations to inform choice and design of a satisfactory repository is potentially of great environmental benefit to the nation. However, such potential benefits may be put at risk by ill-considered exploratory development within a promising site. And the prospect of considerable potential benefit to the nation from such development cannot of itself justify overriding or sweeping aside all other planning considerations. In this case, the Secretary of State agrees with the Inspector's conclusions that, on balance of benefits and adverse effects, your company should not be allowed to proceed with the development of the RCF.

7. THE TECHNICAL ASSESSOR'S REPORT

The Secretary of State has also considered most carefully the Technical Assessor's report which concludes, at paragraph G.52, that

"The voluminous technical evidence submitted to the inquiry within my field of interest has led me to conclude that the setting of the Sellafield site is geologically and hydrogeologically much less simple and more complex than would be expected of a choice based principally on scientific and technical grounds, and does not match any of the theoretically favoured types. It therefore suffers from the disadvantages which led to its not being generically chosen in the first place. As a consequence it and the surrounding district are proving difficult to explore and characterise. In particular the actual basement rock chosen is exceptionally difficult to characterise due to the nature of its eruptive volcanic origins. This and the frequency of significant faulting means that potential repository sites within this area will be severely constrained and may require compromise on layout and orientation. The geosphere uncertainties have increased the importance of engineered barriers so that there is high reliance on an

artificial containment concept which is itself complex and untried. The preliminary safety case is certainly not a patent failure, but nor is it so clearly within targets as to command any substantial degree of confidence. Because of all the foregoing factors, the eventual achievement of a satisfactory standard of proof for this locality is especially problematic and uncertain. Nirex acknowledges there are likely to be radiologically better sites available around the UK, and in my view some probably have simpler geology and hydrogeology and therefore would be more readily investigable and characterisable."

8. MATTERS RAISED SINCE THE CLOSE OF THE INQUIRY

Following the close of the inquiry the Secretary of State has received a large number of representations from interested third parties in relation to the appeal. For ease of reference these are recorded in the schedule attached to this letter at Annex 2 which excludes, however, letters of a purely procedural nature.

On 5 February 1997 an internal Nirex memorandum, dated 10 December 1996, and certain papers concerning that memorandum, were copied to the parties for comment. At the same time the inquiry parties were given an opportunity to comment on a report, entitled "Economic assessment of the timing of the Nirex deep repository", by Mike Sadnicki and Gordon MacKerron, which had been submitted by Friends of the Earth.

The responses received from the inquiry parties to that letter, and the representations received from other parties opposed to the development, indicate their belief that the memorandum supports their view, expressed at the inquiry, that the site is difficult to characterise and may not be a safe place in which to consider constructing a deep repository for radio active waste. They suggest that the appeal should be dismissed or at least held in abeyance until more information is made available by your company, particularly report "Nirex 97" which it has been suggested will be published later in the year. Parties who support the development argue that the memorandum contains nothing new to suggest that the development should not be allowed to proceed. You argue that the Sadnicki and MacKerron report is wrong in suggesting that sufficient information could be obtained from surface research to establish whether the site might be suitable for a repository and that the report's conclusion that it might be better and cheaper to wait and research rather than proceed now with the RCF is not based on sound methodology.

In addition to the Sadnicki and MacKerron report mentioned above some of those who have written mention particularly other reports and letters which are listed at Annex 3 to this letter. The Haszeldine/Smythe report draws together into one document only reports which were presented to and debated at the inquiry and contains nothing new. The two HMIP reports were published before the inquiry and, indeed, extracts from them were submitted to the inquiry. The view is taken that they too contain no new information. The two Nirex science reports which were published in December 1996 have been considered and the view is taken that they do not provide any new information which requires that inquiry parties should be provided with an opportunity to comment on them before the appeal is determined. The RWMAC report sets out the Committee's views on the ways by which Nirex publish information and seek peer review of their ongoing work and contains no new information which has a bearing on the determination of the appeal. The letter from Sir John Knill has been considered alongside the other representations received since the close of the inquiry.

The majority of other representations received before and since the letter of 5 February was issued express general concerns about the nuclear industry generally and about further expansion of the industry in the Sellafield area; and suggest that waste should be stored at the place of origin and in a way in which it can be monitored rather than disposed of by deep underground disposal.

For those reasons it is considered that representations and reports submitted since the close of the inquiry do not raise any issue requiring reference back to the parties, either under the Town and Country Planning (Inquiries Procedure) Rules 1992 or otherwise in the interests of fairness, before a decision is issued on the appeal. Details about how any of the representations and reports recorded in Annex 2 to this letter may be inspected are set out at paragraph 11 below.

9. SECRETARY OF STATE'S CONCLUSIONS AND DECISION

The Secretary of State has considered the available evidence and material considerations and taken into account the possible advantages and disadvantages of the proposed development. He agrees with the Inspector's conclusions and reasons, except where indicated elsewhere in this letter. The proposed development does not accord with all the policies of the adopted development plans and the material considerations which exist (including the emerging draft development plan policies) do not indicate that planning permission should be granted on this appeal.

The Secretary of State is satisfied that the poor design, layout and arrangements for access and the adverse impact on visual amenity, a protected species and the natural beauty of the National Park caused by the surface elements of the proposed RCF are serious and in themselves warrant refusal of the application. The Secretary of State cannot conclude that wider considerations justify these planning matters being overridden in the present circumstances. **For those reasons the Secretary of State dismisses the appeal.**

Further, the Secretary of State also remains concerned about the scientific uncertainties and technical deficiencies in the proposals presented by Nirex, which would also justify refusal of this appeal.

He is also concerned about the process of the selection of the site and the broader issue of scope and adequacy of the environmental statement which again would justify refusal of this appeal. These matters are mentioned in section 6 of this letter.

10. RIGHT TO CHALLENGE THE DECISION

A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.

11. INSPECTION OF INQUIRY DOCUMENTS AND POST INQUIRY REPRESENTATIONS

The same note also explains the arrangements for inspecting the documents listed in the Appendix to the Inspector's report and in Annex 2 to this letter.

12. DISTRIBUTION OF THIS LETTER

A copy of this letter has been sent to Cumbria County Council and other parties who appeared at the inquiry or asked to be advised of the decision.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P.C. Spycche', with a long horizontal flourish extending to the right.

P C SPYCHE

Authorised by the Secretary of State for the Environment
to sign in that behalf