



Government of **Western Australia**  
Office of the **Appeals Convenor**  
Environmental Protection Act 1986

## Appeals Convenor's Report to the Minister for Environment

Appeals objecting to the conditions applied to Works Approval  
W6420/2020/1: Part Lot 9005 Eden Road, Nullaki Peninsula



<b>Applicant</b>	Nigel Palmer Earthmoving Pty Ltd
<b>Appellants</b>	Barry Jackson, Clare Jackson and Stephen Grimmer, Diane Evers (former MLC for the South West Region), Bernadette Santo-Spirito
<b>Authority</b>	Department of Water and Environmental Regulation (DWER)
<b>Appeal No.</b>	060 of 2020
<b>Date</b>	August 2021

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Cover image: DWER works approval – premises map

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**Acknowledgement of Country**

The Office of the Appeals Convenor acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community.

We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past, present and emerging.

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# 1 Executive summary

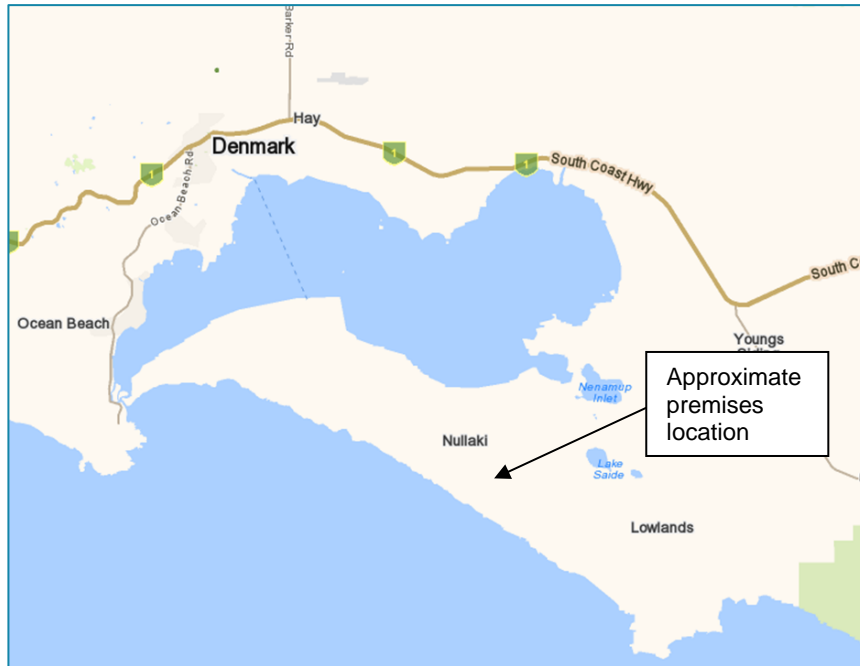
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## 1.1 Decision under appeal

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Nigel Palmer Earthmoving Pty Ltd holds Works Approval W6420/2020/1 authorising the crushing and screening of limestone within a portion of Lot 9005 on Deposited Plan 52088 (the premises) on the Nullaki Peninsula approximately 13 kilometres (km) southeast of the town of Denmark (Figure 1).

**Figure 1** Location of premises



The works approval was granted by DWER in November 2020 and allows crushing and screening a maximum of 50,000 tonnes of limestone (between 1 December and 31 March) for a time limited operation of 90 days. Beyond this works approval, the works approval holder will require further approval, in the form of a licence granted under Part V of the *Environmental Protection Act 1986* (EP Act), to authorise emissions associated with the continued operation of crushing and screening equipment.

In December 2020, four appeals were received in objection to the conditions applied to the works approval.

## 1.2 Grounds of appeal and appellant concerns

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The appellants are Barry Jackson, Clare Jackson and Stephen Grimmer, Diane Evers (former MLC for the South West Region), and Bernadette Santo-Spirito. The appellants sought for the Minister for Environment to stop activities at the premises until compliance with other approvals had been achieved; require further assessment of the premises; and strengthen the conditions. The matters raised in the appeals have been summarised under 2 main grounds as provided in Table 1.

Appellants also raised other issues about accuracy of plans, compliance with other approvals and management plans, clearing permit and road safety, which are documented in Section 3.

**Table 1** Grounds of appeal

Ground	Main concerns the appellant submitted
Noise and dust emissions	Noise and dust emissions have not been accurately assessed by DWER, further assessment is required and works approval conditions should be strengthened.
Acid sulfate soils	Acid sulfate soil risks will not be managed at the site.

### 1.3 Key issues and conclusions

This report addresses 4 appeals received in objection to the conditions applied to the works approval. We note that this works approval is limited to the crushing and screening plant, and does not include the haul road, vegetation clearing or limestone extraction, which are managed by other statutory processes. Having regard for the scope of the appeal, the key question for the appeal investigation to determine is, are the conditions appropriate? To answer this question, we have identified 2 issues at the heart of the appeals, summarised below. Section 2 of this report then details our reasoning and Section 3 provides supporting information.

The other issues raised are considered outside our scope and are discussed briefly in Section 3.

#### **Did DWER adequately assess noise and dust emissions and apply appropriate conditions to the works approval?**

We agree that the conditions of the works approval can manage noise and dust emissions during construction and time limited operations, also noting that the proponent is required to comply with the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations). Beyond this works approval, the applicant will require further approval, in the form of a licence granted under Part V of the EP Act, to authorise emissions associated with the continued operation of crushing and screening equipment.

We note that DWER did not identify two residences (approximately 2.1 and 2.5 km from the premises) within its assessment. However, as DWER based its assessment on sensitive receptors located 1.5 km from the premises, we accept DWER's advice that these two residential receptors would not materially change the outcome of the risk assessment.

In relation to wind data, we consider it reasonable that DWER would use data from the closest meteorological weather station to assess the risks of the impacts, including wind direction. DWER reviewed the data and advised that the information in the Decision Report was incorrect and the prevailing wind directions are predominantly easterly (blowing towards the ocean) and to a lesser extent south westerly (blowing towards the Nullaki Campsite). Based on the revised information, DWER reviewed its risk assessment and advised that it remains valid.

Noting the distance to sensitive receptors, the low level of risk and requirement to comply with the Noise Regulations and SAT conditions, we consider that the conditions of the works approval are appropriate to manage noise and dust emissions during time limited operations and include conditions for complaints and compliance. Any data collected during construction and limit limited operations can be used to inform future licence conditions.

## **Did DWER consider acid sulfate soils?**

Based on the available evidence, we consider it reasonable that DWER's assessment did not include the assessment of acid sulfate soils.

Although acid sulfate soils are mentioned in the Decision Report, we understand that the higher risk of acid sulfate soils is associated with floodplain areas closer to Lake Saide and is highly unlikely to extend to the elevated limestone ridge that is not subject to inundation and has a large separation distance to groundwater.

We also note that the works approval is limited to the crushing and screening plant, and the ore processing does not require groundwater dewatering.

## **1.4 Recommendation to the Minister**

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It is recommended that the appeals be dismissed.

## 2 Reasons for recommendation

### 2.1 Did DWER adequately assess noise and dust emissions and apply appropriate conditions?

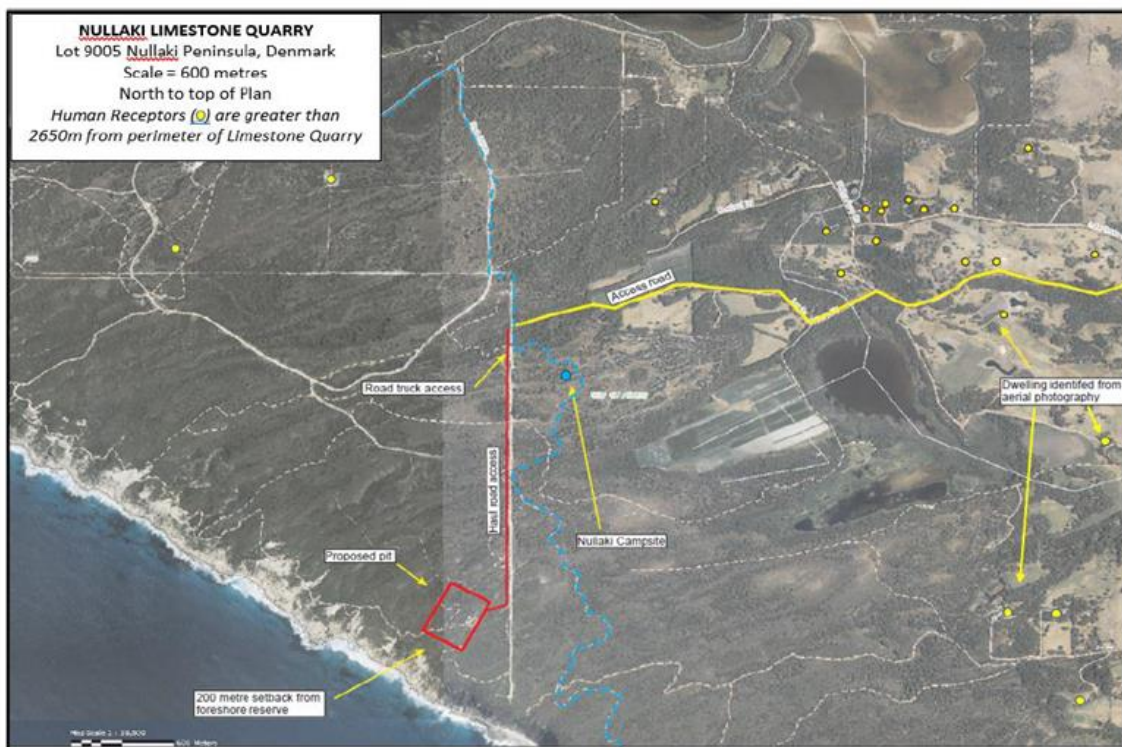
Our conclusion is that DWER has adequately assessed noise and dust emissions and applied appropriate conditions for construction and time limited operations. We explain our reasons below.

#### DWER's risk assessment identified sensitive receptors

Appellants contend that DWER did not correctly identify sensitive receptors in its assessment of impacts.

DWER advised that the receptor map in the Decision Report (see Figure 2) was generated by DWER, and residences were identified by aerial photography.

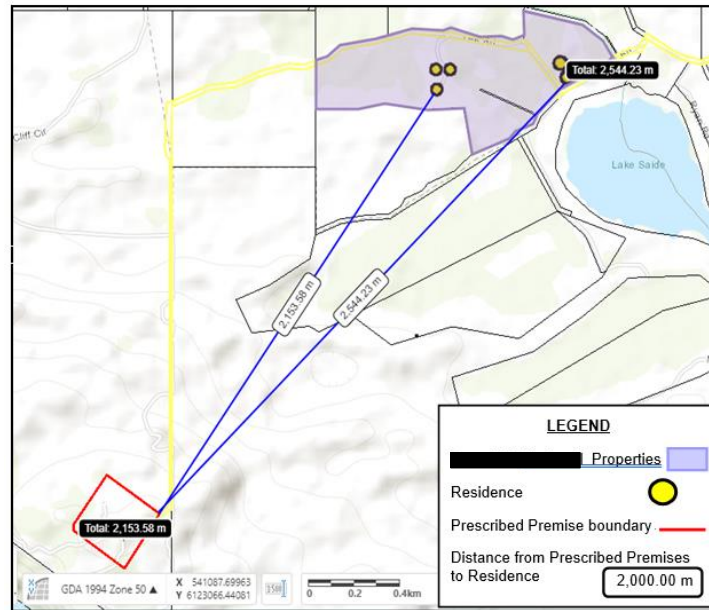
**Figure 2** Distance to sensitive human receptors



(Source: DWER Decision Report)

DWER acknowledged that there are properties that were not identified in its Decision Report. In response to the appeals, DWER undertook a database search, which identified two further properties at Lee Road and Browns Road, Youngs Siding. DWER provided Figure 3, which shows the distances of these properties in relation to the premises boundary for the works approval (shown in red).

**Figure 3** Location of two further residences



(Source: DWER section 106 report)

DWER advised that:

- the distances to the residences are approximately 2.1 and 2.5 km respectively
- the residences are located closer than the 2.6 km to nearest residences stated in the Decision Report.

Although not identified in the Decision Report, we understand that DWER used the Nullaki Campsite on the Bibbulmun Track located 1.5 km away, as the basis for assessing potential impacts of emissions from the crushing and screening plant on sensitive receptors (refer to risk assessment in Tables 5 and 6 Decision Report).

DWER advised that the residual risk for noise and dust emissions during construction and time limited operation were determined to be low, largely because of the separation distance of at least 1.5 km to the nearest sensitive receptor. On this basis, we consider it reasonable that additional residential receptors located more than 1.5 km away would not materially change the outcome of the risk assessment.

DWER also acknowledged minor differences in the route of the Bibbulmun Track between the Bibbulmun Track website and the figures used in the Decision Report, as noted by the appellants. However, DWER advised that the distance to the Nullaki Campsite from the prescribed premises of approximately 1.5 km remains unchanged.

### **DWER's risk assessment identified environmental receptors**

Appellants considered that the information in Table 3 of the Decision Report (see Section 3.2 for further details) was incorrect in relation to the following:

- Western ringtail possums – no recorded sightings within the limestone pit, but sightings on the Wilson Inlet floodplain.
- Australasian bittern – located 2.7 km northeast in Lake Saide, however is not a preferred habitat and species widely distributed over hundreds of SW wetlands.



The appellants submitted that the Torbay Catchment Committee has recorded the Western ringtail possum locally, and the Department of Biodiversity, Conservation and Attractions has recorded the Australasian bittern at Lake Saide.

We note that in the Decision Report, DWER's risk assessment for dust and contaminated stormwater/runoff stated that there are no threatened ecological communities, priority ecological communities, fauna or environmentally sensitive areas identified within 800 m, and no wetlands, National Parks and Nature Reserves within 2 km of the premises boundary for the lime pit.

In summary the risk assessment concluded:

- dust (risk rating: n/a): DWER considered that SAT planning approval for the lime pit contains sufficient regulatory controls for management of sensitive flora and fauna associated with the site, therefore no additional regulatory requirements will be included on the works approval, as a means of avoiding regulatory duplication.
- contaminated stormwater/runoff (risk rating: low): DWER concluded that minimal runoff is expected due to limestone porosity, land elevation and depth to water table. Operations will only occur during summer months (1 December to 31 March each year). Minimal rainfall is expected during this period therefore no conditions required.

Based on the information provided by the appellants in relation to the Western ringtail possum and the Australasian bittern, DWER advised that the flora and fauna surveys relating to land clearing referenced by appellants do not change the risk assessment undertaken for the works approval. We accept DWER's position.

### **DWER's risk assessment used appropriate meteorological data**

The appellants objected to the use of meteorological data from Albany, located 52 m above sea level, to assess the risks of noise and dust from the premises. The appellants advised that as the premises is located at 160 m above sea level, DWER has underestimated the potential impacts.

In response, DWER advised:

- when data sets are not available for specific sites surrogate meteorological information is used.
- The closest meteorological weather station is the Bureau of Meteorology station (009500) located in the City of Albany about 40 km east of the premises
- taking into account the distance to the nearest receptors and the source of the emissions (noise and larger particulate dust), DWER considered that the Albany meteorological data were appropriate to characterise general weather and climate patterns in the local area.

The Decision Report states that the prevailing wind direction is southerly, with no receptors within this direction. However, on review of the risk assessment in response to the appeals, DWER advised that the prevailing wind direction, referred to in the Decision Report, was not correct. DWER reviewed the wind rose data (December to March) and advised that the prevailing wind directions are predominantly easterly (blowing towards the ocean) and to a lesser extent south westerly (blowing towards the Nullaki Campsite).

Based on the corrected prevailing wind direction, DWER reassessed the risk of noise and dust emissions and advised that the risk assessment remains valid, which found the risk of dust emissions to be low.

DWER considered that the combination of the works approval holder's controls for managing noise and dust emissions as outlined in section 5.4 of the Decision Report and the conditions of W6420/2020/1 remain adequate to protect receptors from dust and noise emissions (these are discussed in more detail below).

### **Noise emissions can be managed**

Appellants were concerned about the management of noise emissions from the premises.

DWER identified the following sources of noise emissions in its Decision Report: placement of screener/crusher and associated equipment including vehicle movements (reversing beepers); screening and crushing activities; unloading, loading and storage of material; and vehicle movements within the premises.

Noting the distance of the nearest sensitive receptor, SAT conditions and the requirement to comply with the Noise Regulations, DWER found the overall risk from noise emissions to be low. Condition 6 of the works approval requires the management of noise emissions. Appellants raised concerns regarding noise emissions from vehicles, in this regard we note that condition 6 requires:

- Crushing and screening plant: operations limited from 1 December to 31 March the following year
- Bulldozer, excavator, front-end loader, light vehicle and haulage trucks: warning light reversing alarms to be fitted to minimise noise (as opposed to audible alarms or beepers)
- Bulldozer, excavator, front-end loader: maximum manufacturer sound power level on machinery not to exceed 103 decibels at 12 metres
- Light vehicle and haulage trucks: Speed limit in the premises boundary not to exceed 20 km per hour

One appellant considered that there should be conditions that prohibit the use of compression release braking and the use of the fire break on the eastern boundary as a haul road.

We understand from the Decision Report that the works approval holder engaged Herring Storer Acoustics to review the noise that would be received at the Nullaki Campsite from up to 20 trucks travelling to and from the proposed quarry, and compare it for compliance with the Noise Regulations. We understand that noise modelling was undertaken, and the highest noise received at the Nullaki Campsite from a truck with tonal components and during worse case conditions, was calculated at 45 dB(A).

In the Decision Report, DWER advised that this noise level will comply with the noise limits applicable under the Noise Regulations. The Delegated Officer noted that the movement of trucks in and out of the premises does not meet the description of category 12 screening etc. of material and was therefore not considered further.

In relation to the appellants' concerns that the haul road is closer to the Bibbulmun Track than assessed, DWER advised that the haul road is not part of the prescribed premises but will be managed under the Development Approval issued by SAT (conditions 12 to 26).

The prescribed premises boundary (as shown in Schedule 1 of the Works Approval) depicts the authorised area for construction and operation of the category 12 infrastructure, and includes only a very small portion of the haul road, with the majority of the haul road and all of the access road being located outside of the premises boundary. On this basis, DWER

advised that the assessment of impacts from the haul road, including compression release braking, is therefore outside the scope of the assessment for the works approval.

Notwithstanding, we note that DWER has applied conditions to the works approval to manage noise, there is a legal requirement for the operator to comply with the Noise Regulations and that SAT condition 29 requires a noise compliance assessment when operations commence to ensure compliance with the Noise Regulations, to the satisfaction of the City of Albany (see Section 3.3 for further details).

### **Dust emissions can be managed**

Appellants raised concerns that dust emissions from limestone stockpiles would not be adequately managed.

Sources of dust emissions were identified by DWER in its Decision Report as: placement of screener/crusher and associated equipment; screening and crushing activities; unloading, loading and storage of material; and vehicle movements within the premises.

Noting the distance of the nearest sensitive receptor and SAT conditions, DWER found the overall risk for dust emissions to be low and we note that condition 6 of the works approval requires:

- Water cart: Must be available at all times at the premises during operation phase to suppress generated dust
- Sprinkler system: Must be available at all times at the premises during construction and time-limited operations phase to suppress dust generated via earthworks, construction and operation of the crushing and screening plant, and vehicle and machinery movements

The works approval restricts time limited operations between 1 December to 31 March and conditions 9 to 13 specify compliance reporting and recordkeeping, including complaints management. In addition, we note that SAT conditions 1, 32 to 34 include dust management measures and annual auditing requirements, see Section 3.3 for further details.

We note that the works approval holder has made the commitment in its management plan (June 2018), which relates to management of stockpiles:

- minimise the number of stockpiles
- maintain stockpiles in sheltered areas
- reduce the elevation of stockpiles
- limit the drop height to stockpiles and loading
- provide a readily auditable trigger of no visible dust to cross the property boundary
- provide a comprehensive visual monitoring program.

We understand that beyond this works approval, the works approval holder will require further approval, in the form of a licence granted under Part V of the EP Act, to authorise emissions associated with the continued operation of crushing and screening equipment.

## **2.2 Did DWER consider acid sulfate soils?**

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Based on the evidence presented in the investigation we concluded that DWER was justified in not including acid sulfate soils in its assessment of the works approval for a crushing and screening plant. Below we provide our reasons why.

## **Risk of acid sulfate soils is low**

The appellants were of the view that DWER had not adequately assessed and managed risks from acid sulfate soils at the site.

We note that in relation to acid sulfate soils, the Decision Report states:

The acid sulphate soil mapping indicates that the limestone quarry lies, and other parts of Lot 9005 are within both class one and class two risk areas. Class one risk areas are areas identified as a moderate to high risk of acid sulphate soils occurring within three metres of the natural soil surface (DWER, 2020) and are aligned to the Wilson Inlet floodplain. The limestone quarry is identified as a class two risk, which have moderate to low risk of acid sulphate soils occurring within three metres of the natural soil surface. The proposed crushing and screening operations in the quarry aren't vulnerable to possible acidification.

In response to the appeal, DWER noted that the acid sulfate soil mapping indicates there may be a higher risk of acid sulfate soils occurring in floodplain areas closer to Lake Saide, located 2.3 km north east and Wilson Inlet located 3.3 km north of the premises boundary. DWER considered that this was unlikely to extend to the limestone quarry, which is located on a ridge around 160 to 170 m above sea level with depth to groundwater being more than 100 m below ground level.

DWER advised that the assessment of the works approval application did not include the potential for acid sulfate soils as:

- acid sulfate soils commonly occur in coastal wetlands and waterlogged soils and sediments containing iron sulfides and are highly unlikely to extend to the elevated limestone ridge that is not subject to inundation and has a large separation distance to groundwater
- the placement and operation of the crushing and screening plant does not require the exposure and excavation of material down to 3 m
- the processing of ore requires no dewatering of groundwater
- the crushing and screening plant will be placed and operated within the quarry pit and the limestone material stockpiled before and after crushing and screening is alkaline in nature and will therefore not lead to any potential for acid leachate
- the extraction of the limestone is regulated under the Development Approval issued by SAT and is therefore beyond the scope of the assessment of the crushing and screening plant.

Based on the information above, we consider that it was reasonable for DWER not to include acid sulfate soils in its assessment.

## 3 Supporting information

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### 3.1 Premises description

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The premises is located on the southern edge of the Nullaki peninsula, within Lot 9005, Nullaki, Lee Road reserve, Browns Road reserve and Lake Saide Road reserve, Youngs Siding. The Nullaki peninsula is largely undeveloped, and was previously used for agriculture and zoned Rural, but is now zoned Landscape Protection.

The premises is prescribed under Category 12: Screening etc. of material: premises on which material extracted from the ground is screened, washed, crushed, ground, milled, sized or separated (50,000 tonnes per annum).

The prescribed premises has a footprint of 8 hectares, which includes areas of disturbance for extracting limestone.

### 3.2 Works approval history

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The works approval is valid between 20/11/2020 to 31/12/2021. It allows crushing and screening of a maximum of 50,000 tonnes of limestone for a time limited operation of 90 days, to occur between 1 December and 31 March.

Beyond this works approval, the works approval holder will require further approval, in the form of a licence granted under Part V of the EP Act, to authorise emissions associated with the continued operation of crushing and screening equipment. Final sand and limestone product will be removed from site as required by haul trucks and transported offsite.

### 3.3 Other approvals

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The Nullaki Lime Pit proposal was referred to the Environmental Protection Authority (EPA) in January 2017. In August 2017, the EPA decided not to assess the proposal, as dealt with under Part V Division 2 of the *Environmental Protection Act 1986* (EP Act).

In January 2019, the State Administrative Tribunal (SAT) granted conditional development approval for limestone extraction activities at the premises.

In June 2020, a clearing permit was granted to Mr Graeme Robertson (CPS 8392/1) for the clearing of up to 15.19 hectares of native vegetation for the purpose of establishing the Nullaki Lime Pit and constructing/upgrading access roads. Thirteen appeals were received in objection to the clearing permit, with those appeals partly upheld by the then Minister for Environment in October 2020. The then Minister determined that the permit could be granted but directed that it be subject to additional conditions for mitigating potential impacts to black cockatoos and the western ringtail possum.

### 3.4 Sensitive and environmental receptors

Section 2.1 refers to sensitive receptors, below is Table 3 from DWER's Decision Report.

**Table 3: Sensitive human and environmental receptors and distance from prescribed activity**

Human receptors	Distance from activity or prescribed premises
Nullaki Campsite – Noise sensitive premises – Bibbulum Track camping site outside Denmark townsite.	Campsite is 1.5km from quarry boundary and 300m from Lot 9005 haul road. Noise Assessment indicates compliance with Noise Regulations.
Environmental receptors	Distance from activity / prescribed premises
<u>Estuary system:</u> Wilson Inlet and Nenamup Inlet (Wilson Inlet Management Area)	Directly north west of premises boundary, located 3.3 km upgradient of groundwater flow direction.
<u>South Coast Significant Wetland:</u> Lake Saide	Located 2.7 km north east of quarry boundary
<u>Threatened ecological communities (TEC's):</u> No state or commonwealth listed TEC's occurring within the Premises.	N/A
<u>Priority ecological communities (PEC's):</u>	
Subtropical and Temperate Coastal Saltmarsh, Melaleuca spathulata/Melaleuca viminea Swamp Heath, Flora surveys completed over the limestone quarry did not record any priority flora. Vegetation condition within the limestone quarry is considered ' <i>pristine with no obvious signs of disturbance</i> ' (Keighery, 1994).	Located 800m north of the quarry boundary. Located 1.5km north of the quarry boundary.  N/A  Noted
Western Ringtail Possum (WRP) (Pseudocheirus occidentalis) (DBCA, 2020b). Southwestern Snake-necked turtles or Long Necked Turtles (Chelodina colliei) on red list of threatened species (DBCA, 2020b). Australasian bittern may occur in the vicinity of the quarry boundary. (Threatened Species Scientific Committee, 2019). Main's assassin spider (MAS) (Zephyrarchaea mainae) (DBCA,2020b)	No recorded sightings within limestone quarry but sightings on the Wilson Inlet floodplain.  Located 2.6km north east of quarry boundary on the Wilson Inlet flood plain.  Located 2.7km north east in Lake Saide however is not a preferred habitat and species widely distributed over hundreds of SW wetlands.  No species located within quarry boundary.

### 3.5 Planning conditions

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As discussed in Section 2.1, the SAT conditions relating to the proposal, include the following conditions for management of noise, dust and compliance reporting:

#### NOISE

29. All activity at the site is to comply with the *Environmental Protection (Noise) Regulations 1997 (WA)*. The applicant will undertake a noise compliance audit when operations commence to ensure compliance with the *Environmental Protection (Noise) Regulations 1997 (WA)*, to the reasonable satisfaction of the City of Albany.
30. Standard high pitched reversing beepers are to be removed from all excavation vehicles used on the site and alternative warning measures such as flashing lights or broadband reversing alarms known as 'croakers' (subject to compliance with the relevant Australian Standard and any Worksafe codes) are to be fitted to these vehicles instead.
31. No blasting of material is permitted as part of extraction operations, unless a separate written approval has been obtained from the City of Albany.

#### DUST

32. The developer shall prevent the generation of visible particulates (including dust) from access ways, trafficked areas, stockpiles and machinery from crossing the boundary of the subject site by using where necessary appropriate dust suppression techniques including but not limited to the installation of sprinklers, utilisation of water tankers, mulching, or by the adoption and implementation of any other suitable land management system in accordance with the Department of Environment and Conservation's dust management guidelines dated March 2011 and the City of Albany Prevention and Abatement of Sand Drift Local Law 2000.
33. Verification of the efficacy of the measures to control dust proposed in the Excavation and Management Plan submitted by the applicant will be subject to auditing as part of the annual Compliance Report and the City may require alternate actions if the measures prove ineffective.
34. The landowner shall ensure that all loads leaving the site are to be enclosed or completely covered by a secured impermeable tarpaulin or some other effective mechanism used to prevent dust nuisance.

## COMPLIANCE REPORT

43. The applicant shall submit an annual compliance report to the City of Albany by 30 May each year. The annual compliance report shall include:

- (a) an internal compliance audit of all the development and licence approval conditions and Management Plan requirements undertaken by a suitably qualified person to the reasonable satisfaction of the City;
- (b) details of all community complaints and complaint responses;
- (c) annual tonnage of extracted material in the previous calendar year;
- (d) log of cartage trucks to and from the site recorded on a daily basis during period of operation; and
- (e) other information reasonably requested by the City relevant to management of any impact arising from the operation of the extractive industry.

44. In the event the City:

- (a) is not satisfied with any audit contained in an annual compliance report; or
- (b) receives a complaint from a member of the public indicating that the applicant has failed to adequately implement measures contained in a Management Plan,

then the City acting reasonably may by notice in writing require the applicant to take the action stipulated in the notice in order to ensure the approved Management Plans are complied with. The applicant shall promptly comply with any notice issued by the City pursuant to this condition.

## 3.6 Other issues

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Appellants also raised matters in the appeals that were not directly related to the conditions of the works approval. However, for completeness, the appellants' concerns in relation to these matters are noted below, together with DWER's advice. We have not considered them further because these matters are beyond the scope of appeal.

### **Accuracy of plans and compliance with other approvals**

Appellants submitted that plans and documents submitted for the application for the works approval include errors and omissions, including an incorrect applicant name in a revised Management Plan.

Appellants considered that the Decision Report therefore also includes errors and omissions and that the works approval should be revoked or suspended. Broadly appellants submitted that:

- areas of disturbance (Figure 1 of Decision Report) show only three stages. If only two hectares can be open at any time and the pit area size is 8 hectares in size, there should be four stages
- the upgrades of haul roads required by SAT conditions 14 to 16 are yet to commence



- the works approval is issued for 50,000 tonnes, which conflicts with SAT condition 17, allowing for trucking of 20,000 tonnes of limestone
- SAT condition 10 prohibits washing of excavated material on the development site
- submissions to DWER were for a screening licence and not a works approval
- the documentation for the works approval refers to a greenfield site, while the landowner confirmed that the site has previously been used as a lime pit for road construction.

The appellants sought for works to be halted until evidence is provided that all SAT and clearing permit conditions have been met and an investigation undertaken for the provision of false and misleading information and appropriate action under the EP Act.

### DWER

DWER stated that works approvals under Part V Division 3 of the EP Act are assessed and determined in parallel to other statutory approvals. DWER advised that the works approval holder is responsible for compliance with the legal obligations of the requirements of all statutory approvals in relation to its operations. DWER does not delay issue of works approvals pending compliance with conditions of development approvals or clearing permits.

DWER advised that Figure 1 in the W6420/2020/1 Decision Report is included for location context only, land clearing and quarrying staging and operation was not authorised through the works approval. DWER considered that the flora and fauna surveys relating to land clearing referenced by appellants do not change the risk assessment undertaken for the works approval.

Although category 12 activities can include washing of excavated material, DWER advised that no washing was proposed or approved for this premises under W6420/2020/1.

Works approval W6420/2020/1 authorises screening of up to 50,000 tonnes of limestone per year. DWER advised that this is consistent with the quantity of limestone approved by the SAT Development Approval to be extracted in any 12-month period (condition 17 of the SAT Development Approval). DWER noted that Condition 16 of the SAT Development Approval relates only to the amount authorised to be trucked each year, prior to the specified upgrading of local roads that is managed under the Development Approval.

After submission of an Environmental Compliance Report as required by condition 2 of W6420/2020/1, DWER advised that the works approval holder may submit an application for a licence to authorise ongoing screening of material beyond the time limited operations authorised in the works approval. This will be advertised and all stakeholders who made submissions in response to the works approval will be notified and have the opportunity to make further submissions.

The only identified reference to a 'greenfield' site is in the validation summary in Appendix C of the Decision Report completed by DWER at the time of validation, not by the works approval holder. DWER acknowledged that it incorrectly noted in the validation summary that the premises is a 'greenfield' site. DWER advised that whether or not the site was previously developed does not change the risk assessment or conditions of W6420/2020/1.

### **Opportunity to comment on amended clearing permit**

Appellants submitted that the appeal and subsequent Ministerial determination were for Clearing Permit CPS 8392/1, not CPS 8392/2. Appellants raised concern that Clearing Permit CPS 8392/2 had not been made available for public comment before release.

## DWER

DWER advised that the then Minister for Environment's determination of appeal 031 of 2020 against CPS 8392/1 allowed the grounds of appeal in part and Clearing Permit CPS 8392/2 incorporates the amendments required by the Minister's determination. DWER stated that the Minister's determination is final and there is no further public comment period on determinations.

We note that in March 2021, CPS 8392/2 was amended and that CPS 8392/3 is also the subject of a separate current appeal investigation.

### **Compliance with management plan**

Appellants submitted that vegetation clearing has already taken place within the 8-hectare pit area, which makes compliance with the management plan submitted by the work approval holder impossible. Appellants sought for the works approval to be revoked.

## DWER

DWER advised that the assessment of a works approval under Part V Division 3 of the EP Act can only consider emissions and discharges relating to the prescribed activity, in this case category 12 – screening etc. of material. DWER stated that clearing is outside the scope of this assessment and addressed under the assessment for Clearing Permit CPS 8392/1, and the appeal determination resulting in CPS 8392/2.

Management plans provide background to DWER's assessment, however, controls that are identified in the risk assessment as being necessary to regulate environmental risk will be included as specific conditions, where not adequately regulated under other legislation or approvals. DWER advised that the management plan is not a condition of this works approval.

### **Road safety**

An appellant submitted that the position of the haul road on a steep incline increases safety risks, noting no provisions for an arrester bed or emergency escape route in the lime pit. The appellant sought for the works approval to be conditional on the addressing of safety risks.

## DWER

DWER advised that it has no role in regulating road safety and cannot impose conditions to control risks outside the scope of its Part V EP Act assessment for the category 12 prescribed activity of screening etc. of material. DWER noted that there are conditions under the Development Approval issued by SAT (10 January 2019) that relate to safety on the haul route.

## Appendix 1 Appeal process

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### The Minister assesses the merits of a decision

Environmental appeals follow a merits-based process. This means the Minister can consider all the relevant facts, legislation and policy aspects of the decision and decide whether it was correct and preferable.

For appeals relating to the conditions of a works approval, the Minister can only consider whether the conditions of the works approval are adequate or appropriate to control the environmental impacts of the design, construction and commissioning of the premises. Consistency with previous Ministerial appeal determinations also need to be taken into account.

A merits review cannot overturn the original decision to grant a works approval. But if the appeal is upheld, the works approval conditions might change.

### We report to the Minister, as does the decision-making authority

To decide an appeal's outcome, the Minister for Environment must have a report from both:

- the Appeals Convenor [see section 109(3) of the EP Act], and
- the authority that originally made the decision under appeal [see section 106(1)].

This document is the Appeals Convenor's report to the Minister. The Appeals Convenor's investigation of the appeals included:

- a review of the appeals, DWER's Decision Document and the conditions of the works approval
- a review of the responses to the appeals provided by the works approval holder
- a review of the section 106 report from DWER
- meeting with the proponent and appellants
- reviewing other information, policy and guidance as needed.

See Table 2 for the documents we considered.

**Table 2** Documents we reviewed in the appeals investigation

Document	Date
Nigel Palmer Earthmoving Pty Ltd and Graeme Robertson, response to appeals prepared by Landform Research	January 2021
DWER Decision Report W6420/2020/1	November 2020
Excavation and Rehabilitation Management Plan, Proposed Agricultural Lime Quarry, Lot 9005 Nullaki Peninsula, City of Albany	June 2018