



Submission 1

Sabine Winton

27<sup>th</sup> September, 2011  
Standing Committee on Environment and Public Affairs  
Parliament House  
Perth WA 6000

Dear Members

**PETITION NO 131 – CEMENT OR LIME MANUFACTURING, NOWERGUP**

I represent the Lake Nowergup/Carabooda Valley Community who is concerned that the DEC has continuously granted a licence to Lime Industries Pty Ltd for Cement or Lime Manufacturing at Lot 52 on Diagram 80476, Nowergup Rd, Nowergup. I have attached a map for your information. (Attachment 1)

The proponent has no approvals or licences for lime manufacturing or quarrying activities on the site from the City of Wanneroo. Under the City's District Planning Scheme No 2 all uses falling within the category of General, Hazardous and Light Industry are prohibited uses in the Rural Resource Zoning. Furthermore Lime Industries has held no conforming use rights for any activity on the property and as such it could be concluded that activities that has been conducted on site has been unlawful. The activities on site have been in "caretaker mode" since at least 2001 and there has been no lime production during this period.

Despite what appear to be illegal activities over many years given there is no continued use rights, and more recently a period of over 10 years of "caretaker mode" of these possible illegal activities, the DEC has continuously granted Lime Industries with a licence since 1987. This licence is under Category 43 Cement or Lime Manufacturing, within Schedule 1 of the Environmental Protection Regulations 1987. Under Section 57 (4a) of the Environmental Protection Act 1986 it states that: If a decision making authority makes a decision that would have the effect of preventing a proposal the subject of a licence application from being implemented, then the CEO of the DEC does not need to determine that licence application. We believe the DEC has issued this licence continuously contrary to the the EPA Act.

Most recently these actions of the DEC has come to the attention of the community by way of the DEC publicly advertising the application for a new licence by Lime Industries in 2010. Some 80 submissions were received objecting to the granting of such a licence. Subsequently an appeal was made to the Office of the Appeals Convenor. The right of appeal could only be considered against the conditions applied by the DEC in respect to the licence issued to Lime Industries. There was no avenue through which the decision to grant a licence itself could be appealed.

Whilst the Appeals Convenor could not consider many of the concerns that are explained in this submission, he did note:

*"There is some merit in the issues raised regarding the broader operation and regulation of the premises, which perhaps should have been considered prior to the issue of the licence. It is therefore recommended that the Minister requests that the DEC give due regard to the high level of local community interest and the City of Wanneroo's comments on planning matters prior to considering the issuing of the next licence."*

The DEC's handling of the licence reissue for 2011 is extremely concerning and needs to be investigated given the recommendations and concerns expressed by the Appeal's Convenor.

In the first instance the reissue of the licence was advertised for public comment in the West Australian on the 8<sup>th</sup> August 2011, despite not having the proponent's Environmental Management Plan to distribute to interested members of the public. This was a clear breach of Section 57(2)(a)(i) of the EP Act 1986 in that the CEO had not declined to deal with the application despite the fact that Section 57 (1)(c) had not been met before publicly advertising the matter.

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The DEC's response to this breach was to readvertise the licence and did so on August 29<sup>th</sup>, 2011 in the West Australian public notices. This response to the breach has been unsatisfactory and has not sought to resolve crucial problems that the DEC's breach in effect caused. The DEC's original advertisement of August 8<sup>th</sup> received in excess of 100 submissions. Those submissions were made by members of the public without access to Lime Industries Environmental Management Plan. Those submissions specifically requested an opportunity to make additional comments when additional information is submitted by Lime Industries to the DEC. The DEC's actions to place the EMP at the local library and online 10 days into the 21 day submission period was unacceptable.

The DEC has acknowledged that it was difficult, given the size of the EMP (126 pages, 12.4 MB) to distribute this document. That is an issue for the DEC and should not be seen as a justifiable reason to not distribute the EMP to those respondents who have directly submitted an interest in the matter. This failure to distribute the EMP is even more concerning given that the EMP in most deals with irrelevant matters. Much of what is contained in the EMP relates to new activities for which Lime Industries would need to make separate applications. The consequence of such irrelevant information, and more importantly the failure by the DEC to request the proponent to correct this and submit plans and supporting documents which relate only to the licence in question, has been to restrict access to the supporting information on this licence to the public in general, and more specifically to individual submitters.

The EMP contains many factually erroneous statements. Section 112 of the Environmental Protection Act (1986) states it is an offence to knowingly submit misleading or false information. These errors should have been rectified by the proponent and the Management Plan resubmitted and advertised to ensure the true facts associated with the application for a reissue of the licence can be assessed by the community and the DEC. In particular the Noise Study is unsatisfactory in demonstrating that the proposal complies with the Noise Regulations.

As is evidenced by Attachment 1 there are over 40 residences within 1000 metres of the premises. Furthermore Attachment 2 clearly shows land uses within 2000 metres and demonstrates that the urban areas fall within this distance, including the proposed new railway station. It is quite clear that the DEC has failed to adequately take into account the EPA's Guidance Statement No 3 – Separation Distances Between Industrial and Sensitive Land Use(2005) in continuously granting a licence. The Statement of Planning Policy No 4.1 State Industrial Buffer Policy is also of relevance and needs to be fully considered. This policy clearly states that buffers, once defined, variations to buffer distances will not be allowed unless justified through scientific study. There are a significant number of landowners, who through decisions by the DEC in relation to allowing a licence for industrial land use are having their rights as property owners severely impacted on.

We urge the Standing Committee on Environment and Public Affairs to fully and properly investigate the DEC in regard to how it is acceptable to continuously grant a licence to activities that have been clearly conducted illegally and/or in a prolonged period of inactivity. Furthermore we urge the Committee to consider whether the DEC has adequately considered all the concerns as addressed in this submission and in particular whether such a licence is an appropriate land use in an area with such a high density of residences. I would very much welcome the opportunity to speak to the committee in person to provide further detailed information and supporting evidence in relation to this matter. Please don't hesitate to contact me if you have any questions or need further information to inform your preliminary investigations into this matter. The matter has also been referred to the Ombudsman.

For your interest, I have also included my submission on the licence reissue to the DEC as Attachment 3.

Yours sincerely  
Sabine Winton



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Attachment 1

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Attachment 2

Department of Environment and Conservation Booragoon  
Locked Bag 104  
Bentley DC 6983  
16<sup>th</sup> September, 2011

**SUBMISSION ON CEMENT OR LIME MANUFACTURING: LIME INDUSTRIES PTY LTD (Dunstan Lime Kilns), NOWERGUP RD, NOWERGUP (L8441/2010/2)**

To Whom it May Concern

This submission objects to the DEC reissuing Lime Industries with a licence for Cement or Lime Manufacturing on Lot 52 on Diagram 80476, Nowergup Rd, Nowergup.

**Failure by the DEC to give due regard to the level of community interest.**

This matter is of some considerable community concern with over 80 submissions received as a result of the advertisement for public comment on the licence in 2010. Subsequently an appeal was made to the Office of the Appeals Convenor, appealing the conditions of licence 8441/2010/1 which was granted in 13<sup>th</sup> May 2010.

Given the considerable level of community interest last year, and the recommendations made by the Appeals Convenor in relation to the granting of this licence, the actions thus far by the DEC in dealing with the reissue of the licence this year strongly suggests a continuing failure by the DEC to take this matter seriously.

The application for reissue of the licence was advertised for public comment in the West Australian on the 8<sup>th</sup> August, 2011. When seeking the application information from the DEC in response to this advertisement, the only document available to inform submissions was last year's licence. In discussions with Jessica French it was clearly indicated that the proponent had been asked to submit an Environmental Management Plan. This in itself was the DEC's response to the concerns raised about the DEC's handling of the issuing of the licence in 2010.

This premature advertising of the application for a reissue of the licence was a clear breach of Section 57(2)(a)(i) of the EP Act 1986 in that the CEO has not declined to deal with this application despite the fact that Section 57(1)(c) has not been met before the application was publicly advertised on August 8<sup>th</sup>, 2011 in the West Australian public notices.

The DEC's response to this breach was to readvertise the licence and did so on August 29<sup>th</sup>, 2011 in the West Australian public notices. This response to

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the breach has been unsatisfactory and has not sought to resolve crucial problems that the DEC's breach in effect caused.

The DEC's original advertisement of August 8<sup>th</sup> received in excess of 100 submissions. Those submissions were made by members of the public without access to Lime Industries Environmental Management Plan. Those submissions specifically requested an opportunity to make additional comments when additional information is submitted by Lime Industries to the DEC.

The DEC's response to this situation has been to write to those submitters on September 7<sup>th</sup> advising them that Lime Industries' Environmental Management Plan was now available for viewing at the public library and available online. This is clearly inadequate. Firstly this letter is some 9 days after the readvertising occurred. The DEC should have sent each of these submitters a copy of the EMP as was specifically requested by them in their submissions. This should have been done on the day the licence was readvertised, August 29<sup>th</sup>. Informing submitters that the EMP was available on September 7<sup>th</sup> effectively compromised the public comment period because the full 21 days was not available to respond to the EMP and furthermore access to the EMP was restricted and would cause difficulty for many of those who had made original submissions.

The DEC has acknowledged that it is difficult, given the size of the EMP (126 pages, 12.4 MB) to distribute this document. That is an issue for the DEC and should not be seen as a justifiable reason to not distribute the EMP to those respondents who have directly submitted an interest in the matter.

This failure to distribute the EMP is even more concerning given that the EMP in most deals with irrelevant matters. The licence covers:  
"the operation of Lime Industries Pty Ltd located at Lot 52 on Diagram 80476 Nowergup Rd, Nowergup and incorporates the manufacture of quicklime using updraught kilns."

Yet much of what is contained in the EMP relates to new activities for which Lime Industries would need to make separate applications. The consequence of such irrelevant information, and more importantly the failure by the DEC to request the proponent to correct this and submit plans and supporting documents which relate only to the licence in question, has been to restrict access to the supporting information on this licence to the public in general, and more specifically to individual submitters.

Given the extent of the interest in this matter, the very least which would have been reasonable and proper was for the DEC to acknowledge the difficulties with the EMP submitted by Lime Industries, and direct submitters to the actual parts of the EMP which are in fact relevant.

The Minister in his response to Appeal Report 068 of 2010 clearly recommended that the DEC have due regard to the high level of community interest. Clearly the DEC has failed to do so.

## **Concerns with the content of Lime Industries' Environmental Management Plan**

This EMP contains many factually erroneous statements. Section 112 of the Environmental Protection Act (1986) states it is an offence to knowingly submit misleading or false information.

These errors should be rectified by the proponent and the Management Plan resubmitted and advertised to ensure the true facts associated with the application for a reissue of the licence can be assessed by the community and the DEC.

For example:

*"The site has been used continuously since the 1970's"*

This is incorrect. The DEC itself has stated that the premises are in caretaker mode and have been so since at least 2001. Attached please find Appendix 1 to 7 being statutory declarations from 7 adjacent landowners clearly stating that there has been no evidence of lime manufacturing on this site since 2001.

*"There are also three adjoining residences located on Gibbs Rd."*

This is incorrect. There are more than 3 adjacent properties, and furthermore the 3 identified each contain 2 separate residences.

There are more adjoining properties than this statement. There are in excess of 40 residents within 1000 metres of the premises. Attached see Appendix 8, clearly identifying all the residences within 1000 metres.

*"It has been an active quarry for the last 60 years."*

This is not true. There has been no quarrying in over 20 years.

Furthermore what is omitted is of critical importance.

The proponent has no existing approvals for any activities both extractive and industrial with the City of Wanneroo. The proponent does not declare this and I believe is being misleading by way of omission.

The site is within the Rural Resource zoning of the City of Wanneroo's District Planning Scheme No 2. Under the City's District Planning Scheme No 2 all uses falling within the category of General, Hazardous and Light Industry are prohibited uses in the Rural Resource Zoning. Again, the proponent's failure to declare the correct zoning is I believe misleading by way of omission.

## **Scoping**

Scoping of licences is recommended by the DEC. Scoping is an effective means of ensuring an application submitted by a proponent under Part V of the EPA Act is in an acceptable form and contains the information required by the the DEC.

Did the DEC prepare an Application Assessment Framework to determine the form the application must take, the information and supporting documents required, and the approach the DEC will take to its assessment?

Did the DEC provide the proponent with Application requirements setting out the CEO's requirements the proponent must address in the application?

The Act requires the CEO to decline to deal with an application if it lacks sufficient information to enable it to be assessed. The Act also requires the CEO to be satisfied that an application contains the necessary information and is in the correct form before seeking comments from public authorities and other third parties and before advertising the application. It appears that the EMP clearly is not in a form which focuses on the matters for consideration of the licence.

The only parts of this EMP which should be of relevance to the DEC's deliberations is comments made in relation to the manufacturing of quicklime using updraught kilns.

Under the EPA Act 1986 Section 57(2) we request that the CEO of the DEC decline to deal with the application until such time as the proponent is made to resubmit an EMP which is correct and relevant to the licence renewal application.

## **Lime Manufacture through kilns**

There is limited and incomplete information in relation to its operations in this regard.

For example, on piii it is stated that "it is anticipated that one kiln a week will be used."

On pv it is stated " 2-5 times a month when the kilns are used."

On page 21 it is stated that "they are proposed to be used intermittently"

This is ambiguous and clearly does not allow the DEC to set the right conditions.

Clearly with such a lack of commitment in terms of production it makes this proposal possibly have significant environmental impacts if the kilns were to be used weekly.



It would be difficult for the DEC to condition this licence appropriately given the conflicting advice by the proponent in relation to the frequency of operating the lime kilns.

Whilst it is acknowledged that the Appeal Decision stated that "the current conditions adequately regulate the emissions and discharges associated with the current scale of the operations on site" those "current scale of operations on site" are being proposed to be increased.

It is clear that the conditions previously were on a licence that was in "caretaker, maintenance mode." Given that there are changes to the proposed level of activities on site, it is reasonable to expect that conditions are added that reflect

- 1) the proposed increased use of the site to use the kilns
- 2) the fact that in excess of 40 residences are sensitive receptors by way of being within the minimum 1000metre buffer area for lime manufacturing as stated in Guidance no 3.

The DEC in May 2004 prioritised existing industry licences to focus inspections and the licence review process on those that are of the highest priority. Given that in 2006 the DEC reissued the licence for a period of 5 years expiring in November 2011 it can be assumed that the DEC gave this licence a Licence Priority Category of Low. (See Duration of Industry Licences Prior to Review Policy, DEC)

I request that if the DEC grant Lime Industries a renewal on licence 8441/2010/2 than it does so for a period of 12 months. This would be consistent and responsive to the continued community and local government interest in the use of this site for industrial purposes, outside of the current zoning.

### **Conditions on Licence**

#### **Nominal Rate Throughput**

The licence states that the quantity of lime processed to be 1500 tonnes per year. (shall not exceed 10 000tonnes)

This needs to be corrected.

For example, Susac Lime Supply hold a licence with a nominal throughput of 5000 tonnes per year.

Lime Industries Osborne Park operations hold a licence with a nominal throughput of 20 000 tonnes.

It is ambiguous what is actually meant in these licences as to "Quantity of lime processed."

In Susac Lime Supply and Lime Industries Osborne Park a major part of those operations relate to the hydration process of lime manufacturing. There is no such stage on the Nowergup site and there has never been any hydration occurring.

The production of quicklime, as opposed to lime processed is what more correctly should be stated on the licence.

On average a kiln would produce about 40 to 50 tonnes at best of quicklime. Given at most that the proponent is going to be firing the kilns once per week, production could not expect to exceed about 2000 tonnes of quicklime at most.

This should be reflected and stated in the licence.

The wording as it is does not make it explicit as to what they are being licenced to produce. Hydration of lime is quite different and separate to the production of quicklime by kilns, as is what has historically occurred on site, and for which the DEC has continuously granted a licence.

Given the fact that over 40 residences are within 1000 metres of the premises, given that it is unclear as to the regularity of kiln firing, given that historically this site has many previous complaints made against it when firing the kilns, I request that:

the proponent should complete an annual audit compliance report as part of the conditions for this licence.

Furthermore the proponent should also provide the DEC with an annual monitoring report containing the monitoring data.

This requirement of a similar licence by Susac Lime Supplies in which updraft kilns are fired would show consistency of requirements by licence holders.

We also believe that the premises should be conditioned such that it informs the DEC of each time it uses the kilns.

### **Screening and Crushing**

We believe that this activity is a new use proposed on the site and therefore should be subject to public consultation by way of allowing submissions.

The advice given to me in making enquiries on this licence was that it was a reissue application of the existing licence. There is no screening and crushing registered on the existing licence. Whilst it might be the DEC's position that it is not under any obligation under the Act to advertise this new use, we object strongly and demand that it be removed from the licence application. The reasons for this include:

Failure to declare that this activity was being included. All those who made submissions would have done so on the activities as stated on the licence given the advice was that it was a licence renewal and not a licence amendment.

Furthermore, it is unacceptable that the DEC would grant registration for screening and crushing on a property which holds no development approvals for quarrying nor has an extractive industry licence. Screening and crushing is of "extracted material". There is not sufficient stockpiles to justify granting this activity.

We would like to know whether the City of Wanneroo were made aware that screening and crushing was to be included into the licence and whether or not the City of Wanneroo have been able to respond to confirm our advice to you that the proponent does not hold any extractive licences to make use of a screening and crushing plant.

Furthermore the noise study has not included the screening and crushing activities, even though that is the only matter of relevance in relation to noise for the DEC's contemplations.

The DEC's correspondence to me of September 11 where it was indicated that the DEC has asked Lime Industries to apply for a category 70 screening registration to capture the prescribed activities taking place on site is flawed. There has been no screening and crushing activities occurring on site, nor could it reasonably be expected to do so given that the proponent has no extractive industry approvals. Furthermore the DEC itself has acknowledged that the proponent has not fired the kilns in a very long period of time, therefore contradicting the possible need for crushing. Additionally, a similar operation by Susac Lime in Carabooda, where the kilns are regularly fired, does not have screening or crushing on its licence.

It is the DEC obligation in considering screening and crushing to gain feedback from the City of Wanneroo to see if the proponent has an extractive licence or development approval for an extractive industry?

We request that the screening and crushing activity not be placed on this existing licence.

### **Buffers**

As is evidenced by Appendix 8 and 9, there are over 40 residences within 1000 metres of the premises. Furthermore Appendix 9 showing land uses within 2000 metres clearly shows that the urban areas to the west fall within this distance, including the proposed new railway station.

### **Statement of Planning Policy No 4.1 State Industrial Buffer Policy**

It provides for the safety and amenity of surrounding land uses while having regard to the rights of landowners who may be affected by residual emissions and risks. This policy is of direct relevance in consideration of this licence renewal application.

Again, the proponent is misleading, by omitting to include this policy in its list of relevant Key Environmental Policies.

This policy clearly states that buffers, once defined, variations to buffer distances will not be allowed unless justified through scientific study. The proponent doesn't even acknowledge the existence of the number of residences which are of relevance, so to suggest that the EMP in any way has mitigated the offsite impacts is unacceptable.

This policy also is of relevance to the adjacent landowners, who through decisions by the DEC in relation to allowing a licence for industrial land use are having their rights as property owners severely impacted on.

The City of Wanneroo's District Planning Scheme caters well for industrial land use in its associated zonings. Industrial is not permitted in the Rural Resource zoning, and the landowners need to be compensated, as is made provision for in SPP 4.1.

### **Guidance Statement No 3 – Separation Distances Between Industrial and Sensitive Land Uses (2005)**

Other than acknowledging that the EPA Guidance Statement 3 states a generic 1000 to 2000 metre buffer for lime manufacturing (use of a furnace or kiln) there is no attempt to address or mitigate the fact that there are at least 40 residence within the minimum 1000metre buffer from the lime manufacturing area.

Interestingly though it has undertaken a site specific noise assessment and management measures pertaining to noise and dust, in its attempts to demonstrate compliance with Guidance Statement 3, in relation to limestone extraction. This is not the subject of the licence reissue, so is irrelevant. Nonwithstanding that fact, it is clear that despite the flaws in its study, and the fact it did not even include screening and crushing, which apparently is the subject of the licence reissue, the proponent cannot adequately mitigate the noise to be in compliance of the Environmental Protection(Noise)Regulations(1997)

See a discussion of this under Noise Study.

There is no discussion in relation to how the proponent is going to mitigate its impact on the significant number of residences and impacted land uses within the 2000 metre buffer distance listed under Guidance Statement No 3 in relation to lime manufacturing.

Given that this licence reissue application is for lime manufacturing(use of a furnace or kiln) it is extremely misleading and erroneous to only include a noise study of relevance for mining activities, which is not subject to this application.

This study in no way addresses the fact that there are in excess of 40 sensitive site receptors located within the minimum generic buffer zone from lime manufacturing, which is the subject of this licence renewal. Without such detailed site specific studies it is impossible for the DEC to accurately assess whether it is appropriate to renew a licence for lime manufacture, and secondly makes it impossible to condition the premises given the likely impacts on the 40 plus sensitive receptors has not been studied or investigated.

#### **Statement of Planning Policy 2.4 Basic Raw Materials.**

The proponent lists this policy as relevant. It has no relevance to the DEC's deliberations on this licence reissue application. The DEC is now considering giving a screening and crushing licence to the proponent even though it has not development approvals or extractive licences for limestone quarrying from the City of Wanneroo or the WAPC.

Of interest to the DEC should be the City of Wanneroo's District Planning Scheme No2 in which it has created Rural Resource Zoning to address SPP2.4.

Within this Rural Resource Zoning extractive industry means:

“the extraction of sand, gravel, clay, peat, soil, rock, stone, minerals or any similar substance from land, and includes the manufacture of products from those materials when the manufacture and storage is carried out on the land from which any of those materials is extracted or on land adjacent thereto.”

Where does the DEC believe the proponent will get the required limestone to supply its kilns given that the proponent holds no extractive approvals? Under the Rural Resource zoning it clearly states that materials cannot be brought in from off site. The proponent fails to address this.

Furthermore it would be appropriate for the DEC to accept that the City of Wanneroo in considering any proposals for quarrying will do so in terms of the long term planning for the site and surrounding area.

Infact, the quarry approval that Lime Industries is so keen to constantly alert the DEC to as being adjacent, does not hold clearing permits nor Federal Environmetnal Approval. Furthermore, the City of Wanneroo in its approval placed strict conditioning on the site and limited the life of the proposal, and insisted the proponent include satisfactory planning for the use of the land after the 10 year quarry proposal is complete. The City of Wanneroo has actioned longer term planning for this area in line with the recommendations of the Future of East Wanneroo 2008, by way of proposing a Scheme Amendment for Lnadscape Enhancement Zoning.

To allow a continued Industrial landuse in this area is totally at odds with the plans in place of City of Wanneroo and is in effect inconsistent with the intent of SPP2.4 which exists to extract priority resource before longer term planning is executed. Industrial land use, as proposed by Lime Industries, whereby they would need to bring in raw materials from outside for their long term continuence is contrary to the intent of the SPP2.4

### **Licence Reissue Should be on an Annual Basis**

Given the extent of the community concern in relation to this licence, and given the City of Wanneroo’s previous and current position in relation to this land use for this licence it is highly appropriate to only grant this licence on an annual basis.

The premises does not have any current approvals or licences with the City of Wanneroo or the Western Australian Planning Commission.

Given that under the EPA Act, the DEC is required to take account of other decision making authorities it would be highly inappropriate to grant a reissue of a licence for an extended period of 5 years.

It has been a requirement by the DEC for proponents to provide an Evironmental Assesment Report since 2003. Yet the DEC reissued the licence in 2006 for another period of 5 years without any such report being submitted.

The DEC set this level without any documentation or studies as to the impacts of this premises.

Since 2010 it has become abundantly clear that there are significant concerns in relation to this licence. I request that the DEC reprioritise this licence to high to reflect such community and local government concern and consequently give the minimum licencing period possible. This will allow a full monitoring and response to this situation to occur by the DEC.

It is acknowledged that the premises are at best currently in caretaker mode.

### **No Local Government Approvals**

The proponent has no approvals for lime manufacturing or quarrying activities on the site. In 2010 the City of Wanneroo indicated this fact to the DEC and is resubmitting this position in this public submission period.

Under Section 57 (4a) of the Environmental Protection Act 1986 it states that: If a decision making authority makes a decision that would have the effect of preventing a proposal the subject of a licence application from being implemented, then the CEO of the DEC does not need to determine that licence application.

The DEC, therefore must refuse to deal with this licence renewal application. To do otherwise would seriously be a breach of the act and surrounding landowners would avail themselves of compensation on the impacts of any such breach of the Act by the DEC.

### **Noise Study**

The Noise Study is unacceptable on any number of levels.

Firstly its findings is based on a desk top study. No site specific testing has occurred.

Also of critical importance is the flawed methods in identifying the land uses.

Figure A2 in Appendix A is incorrect. Lots 1, 51, 57 and 4 all have a second residence which has not been identified as nearest potential noise sensitive premises. Furthermore there are more residential properties within 450 to 500 metres of the proposal which should also be considered as potential noise sensitive premises. The Noise Study needs to be redone to include these premises.

“For the purposes of the assessment, the land use for the Lime Industries site has been take as being an “industrial” land use. This is incorrect. Just because it has maintained a licence for lime manufacture, and has been in caretaker mode for a considerable time does not allow them to class this land as industrial. Similarly, the site has not been an active quarry for the past 60 years. There are no approvals, nor has there been any quarrying activity in the last 20 years.

Furthermore we take great exception to the following comments:

“although from observation the majority of land use appears to be intensive farming, such as market gardening. Therefore, although classified as noise

sensitive premises, it could be assumed these surrounding premises would produce their own noise emissions due to the nature of their industry. "

This is false. The majority of landholdings are small rural lots supporting the existence of over 40 residences within 1000metres of the proposal. To suggest that we live in anything but what would be classified as noise sensitive premises is exceptionally misleading.

The calculation of the Influencing Factor is therefore incorrect.

Detailed here are some other questions in relation to the details provided in the Noise Study.

### 3.1.1

Main disturbance factors only dust and noise, smoke is also seen by residents as a major disturbance factor

States 5 residences within 300 metres. This is incorrect.

### 5.1.1

Kilns used intermittently – what does intermittently mean?

### 5.1.2

Primary fuel is coke. When would wood be used and why?

Given that kilns are a primitive technology, does proponent have a fire management plan?

### 5.1.3

There are no market garden activities on the west side of Gibbs Road and noise from Wanneroo Road is not heard at all by residents of the valley so there is no background noise.

### 5.13

Site upgrade not yet undertaken. If correctly designed noise can be mitigated – why has design not been done so that it can be assessed?

Crusher will not be used all the time.

When will it be used – surely this has been determined and modelled.

### 15.13.1

Loader and dozer in active pit.

There is no development approvals or extractive industry licence from the City of Wanneroo to approve this activity.

### 5.1.4

Dust topography lowest score one.

Check type of material – likely to cause dust?

### 5.1.5

No approval for excavation works.

Existing pit preferred?

## 2. BACKGROUND

Site is not currently in operation.  
The kilns are not operational, nor is a quarry.

Operating hours Mon-Sat 5-7

## 3. CRITERIA

Active limestone quarry for past 60 years – not true.

Not all residences identified.

Majority of land use on Gibbs Road is residential, not market gardeners.

Has noise taken into account noise from ripping excavations, use of explosives?

Appendix D - Acoustic Report.  
Tonal component should be included.

No noise background or otherwise heard from Wanneroo Road

	Lime Industries	Lot 1
Truck	105	105
Loader	?	113
Dozer	109	113
Crushing Plant	?	112

No provision has been made for combined effect of all operating at the same time?

WA Limestone in its proposal for a quarry operation had very similar measurements for trucks and dozers despite there being considerable distances between the two proposals.



WA Limestone's proposal, if it proceeds, has been conditioned to not operate after 12pm on Saturdays. A similar restriction on operating hours should prevail.

Another critical flaw in the Noise Study and Management Plan is the notion that noise regulatory compliance can be achieved as described in Section 5.1 Noise Control. There is no pit floor and so a noise study that more accurately reflects the noise omissions before the floor pit is established needs to be modelled and analysed.

### **Hydration Plant**

The EMP describes the proposal to establish a hydration plant on site. This is not the subject of this licence renewal application. I have been informed by the DEC that the proponent would need to make a separate application which would allow for public submissions to be made at such time.

I do want to take this opportunity to make some comments on the proposal for such a plant despite it not being subject to this licence application.

A hydration plant on this site would be a new and significantly increased industrial land use of this land. Whilst some might argue the case that the DEC can continuously reissue a licence for the historical kiln activities that have occurred on site, the consideration of a hydration plant is a separate and significant change to the existing licence.

Firstly, there has never been hydration activities on the site. Hydration activities would require the supply of quicklime. The only access to quicklime on site would be through the lime kiln operations. This operation at best is historical, and is not economically or environmentally viable. So to allow the establishment of a hydration plant would require the sourcing of quicklime from off site, which is clearly not an intended land use within the rural resource zoning.

A hydration plant is not complimentary to any existing uses on the site. Furthermore it should be noted that whilst the proponent makes some comment about rehabilitation of the site post quarrying, as is required under the SPP2.4, its intention clearly is to keep the hydration plant once quarrying activity is completed. Again it clearly shows the intent to industrialise this site over the long term despite the long term planning for this area post extraction.

It is absolutely and totally unacceptable for the DEC to consider allowing an extension of this licence by way of a processing plant.

### **Other Considerations in the EMP**

I am not commenting on many of the sections in the EMP because they clearly do not relate to the licence application deliberations. I reserve the right to make further comment if Lime Industry make further application to make changes to this licence by way of adding additional elements to the updraft lime kiln operations.

The proponent has gone to great lengths to discuss the flora and fauna on the site.

A detailed analysis of these sections of the EMP is not necessary in this submission, given I am responding only to the continuing of the existing licence for kiln use.

However the DEC might well do to familiarize itself with the application by WA Limestone, so frequently referred to by Lime Industries as a "quarry that has been approved."

WA Limestone has made an application for a clearing permit, a decision which is pending. The issues contained in that proposal are of high relevance to Lime Industries adjacent property as they share the environmental attributes. It is therefore not incorrect to assume that Lime Industries too would face similar difficulties and restrictions when confronted with getting the required DEC environmental approvals. Additionally the WA Limestone proposal has been made a Controlled Action by the Federal Environment Department, due to its impacts on environmental attributes as protected by the Federal Environment Act. It is obvious that Lime Industries will face similar hurdles.

Further to this is the significant threat to bush fires by such operations. The site is within a dense tuart woodland and native vegetation and in close proximity to the Neerabup National Park. The fire risk is significant. This business will generate significant levels of noise through its operation of machinery, front end loaders and crushers. The suggested time that front end loaders are not allowed to operate being between 2200 and 0600 is unacceptable.

Lime Industries do not have an extractive licence and would therefore need to transport limestone onto the site. This would cause significant increased local traffic and the accompanying noise and dust would be enormous. Such an operation requires significant water for production and dust suppression. Lime Industries should first establish that they have sufficient water before being licenced for such an industry. The DEC could not feel confident in the applicant's ability to comply with any dust suppression conditions set.

The location of the site in relation to Neerabup National Park and its close proximity to Nowergup Lake Fauna Sanctuary must be addressed. This industry has the potential to seriously impact on the environmental assets of this area as well as diminishing the amenity of the area as a recreational site.

It is clearly unreasonable for the DEC to continue to licence premises that has been in caretaker mode for over 10 years. It is reasonable for the community to expect that the DEC refuse this licence renewal and request for Lime Industries to make an application for a new licence at such time when it is going to start production. The current situation has a detrimental affect on the whole locality, impacts on individual landowners and the value of properties with the constant threat of industrial land use which is not permitted under the current zoning.

### **Future Land Use**

The applicant has not had an extractive industry licence for many years and there is no evidence that any attempt has been made to rehabilitate the land as was required by that licence. Currently the applicant is using the site as a Mining Machinery Driver Instructor School without local government approval. The applicant has not got a good record of compliance and abiding by local laws. Their preferred land use is industrial which is not consistent with other planning studies of the area. It also brings in to question the commitment of the applicant to comply with any conditions set on a licence. There is much anecdotal evidence amongst locals that there were many complaints when the proponent last operated on site.

### **Visibility**

The site is directly adjacent to the Ocean View Tavern, and it would have front row seats at the theatre to this industry. The smoke, noise and dust would also be visible along Gibbs Rd and minor roads as well as Wanneroo Road.

### **Security/Fencing/Location**

The property is not fenced and it is difficult to ascertain exactly where on site the plant is operated. There are many children in the neighbourhood and I request that the DEC place a condition on the licence that it is to be fully fenced.

### **Hours of Operation**

The only comment that I can make relates to the front end loaders being able to operate between 0600 and 2200 as stated in the draft licence. This is totally unacceptable and I request that the DEC undertake community consultation in establishing more acceptable operation hours.

### **Amenity of the Area**

The area bounded by Gibbs Road and Wanneroo Road has been identified in several planning studies as worthy of preserving for its natural beauty, including landforms, remnant Tuarts, caves and karstic features and water courses, and for potential tourism opportunities. The immediate locality includes Nowergup Lake and the associated Fauna Sanctuary. Gibbs and Nowergup Roads are frequented by walkers, joggers bicycle and horse riders. Environmental reports indicate the habitats on an adjacent site are generally in good condition and likely to support a relatively intact community of native

fauna species, which includes 8 species of amphibian, 48 species of reptile, 94 species of birds and 22 species of mammal, 6 of which are of Conservation Significance 1 and 6 of Conservation Significance 2.

The location of a lime manufacturing premises in this location is completely inappropriate and should be refused.

### **Heritage Listing**

The site in question is currently on the City of Wanneroo Municipal Heritage Inventory as Site No 56 Lime Kilns Dunstan's (28-32, 42;46), 90 Nowergup Rd, Nowergup, Category 1. This is the highest rating used by the City of Wanneroo. In the City of Wanneroo's Heritage Places Local Planning Policy it states that Category 1 listings are recommended for entry into the State Register of Heritage Places. This site is also listed in the Heritage List of the City of Wanneroo's District Planning Scheme No 2. These measures provide maximum encouragement to the owner to conserve the significance of the place.

In the City of Wanneroo's District Planning Scheme No.2 it is stated that planning approval is a requirement for all developments involving places on the Heritage List. Clause 6.1.1. The DEC should request that the applicant first gain planning approval before consideration of a licence for this site by the DEC is even entertained

Furthermore the applicant should be required to explain to the DEC how this site will not be negatively impacted on and conditions imposed which will ensure the heritage ranking of this site will be protected and preserved.

### **Indigenous Issues**

The Department of Indigenous Affairs (DIA) has conducted a review of the immediate area and advises that the site appears to overlap with a place that has been raised as a site that might meet the terms of Section 5 of the Aboriginal Heritage Act, 1972 (AHA). This place is recorded on the Register of Aboriginal Sites (the Register) as:

DIA 3366 (DUNSTAN'S QUARRY)

In addition, it is possible that there are sites that have not yet been reported to the DIA and entered on the Register. The AHA protects all Aboriginal sites in Western Australia, whether they are known to DIA or not. DIA advises that it would be prudent for all proponents to ensure that they have sufficient knowledge of the Aboriginal heritage values within the area so that they do not commit an offence under the AHA.

As it stands, developers need to be cognizant that the area is located in close proximity to DIA Site 17450 (Nowergup Lake) and need to be aware that any impact to a site will require prior permission from the Minister for Indigenous

Affairs under section 18 of the AHA to avoid committing an offence under section 17 of the AHA. Any indirect impacts to the Nowergup Lake could constitute disturbance under the AHA. The dust, noise and smoke impacts on these sites has not been considered by the applicant.

I request that the DEC request that the applicant explains how such sites will not be impacted on.

### **Neerabup National Park, Nowergup Lake and Nowergup Fauna Sanctuary**

Of further specific interest to you should be the Nowergup Lake and Nowergup Fauna Sanctuary. This site is adjacent to the proposed development. It is a fragile environmental area and a full independent environmental impact study needs to be undertaken to determine the likely impact on flora, fauna and the water quality of this lake by an industry that will impact significantly with smoke, dust and noise of this lake.

This significant site is less than 150 metres away and would be severely impacted on by the smoke, dust and noise. We believe that the environmental, social, tourism and possible future commercial opportunities for this lake and surrounding reserve will be severely compromised by a lime manufacturing premises that will dominate the environment.

This significant area is listed under the National Heritage Register with the Department of the Environment, Water, Heritage and the Arts. It is reserved for Parks and Recreation in the Metropolitan Region Scheme. It is also on the Wanneroo Municipal Heritage Inventory.

This application poses direct environmental threats and restricts future access to this Lake area. The noise, smoke and visibility of the daily lime manufacturing industry is not complimentary to the adjacent parks and recreation site becoming a future highly utilized recreational area. Nowergup Lake is a magnificent public asset that should be preserved and made available for all to enjoy. Allowing the proposed development in such close proximity to the lake would be extremely short sighted and show a lack of vision.

Neerabup National Park is extremely close to these premises. This National Park is a relatively undisturbed example of coastal plain vegetation. It has the popular Yaberoo Budjara Heritage Trail, a 28km trail that stretches from Yanchep National Park to Joondalup. It comes very close to Wanneroo Rd and actually passes within 300 metres of the premises. We should be protecting and promoting our environmental assets. A lime manufacturing plant in such close proximity to walk trails is not a compatible use.

It is a significant part of the network of the 95 Heritage Trails in Western Australia and comes within 300 metres of the quarry. The Heritage Trails were established jointly by the Commonwealth and State Governments to

highlight the important heritage sites in each region of Western Australia and to foster greater community awareness of their natural and cultural heritage.

The Yaberoo Budjara Trail has proved extremely popular with many people using the trail and experiencing the natural and cultural values of the Swan Coastal Plain.

A full and proper environmental impact study needs to be undertaken on the human, fauna and flora impacts of the Neerabup National Park being so close to these premises.

### **Community Consultation**

Prior to this advertising period by the DEC, there has been no community consultation. Certainly the applicant has never consulted with local residents. I request that the DEC requires the applicant to engage in community consultation as described in the regulatory framework. Furthermore I request that officers responsible for assessing this licence application meet with local residents to allow the community become genuinely engaged in the process.

I request that the DEC refuse to issue a licence for such an industry on this site.

I request that you keep me informed of the process for assessing this application after the closing of the public comment period.

Yours sincerely

Paul Winton

**PUBLIC**