

**Submission Accompanying Gateway Determination Review Application of Planning
Proposal PP_Clare_2017_007_00)
to amend Clarence Valley Local Environmental Plan 2011**

The proposal has been amended and studies, such as the noise study, undertaken at this early stage on the advice of the Department. It is supported by the Clarence Valley Council. There is some local opposition to the proposal which seems to have unduly effected the Gateway process and there have been changes in process which have severely impacted finalisation. The proposal was granted Part 3A approval, the legislation then changed, Planning Team support obtained, then Gateway approval refused then Council support for the amended proposal.

The basis of the refusal, in essence, is restricted to the impact of the proposal. Both the Planning Team Report and the refusal have included the availability of the Harwood site and the opinions and advice of unknown objectors. The proponent believes that the issue is really the suitability of the Palmers Island site and that the Harwood site is irrelevant. However, as the Harwood site features so prominently in the refusal the proponent sees no option other than responding in detail. In the proponents view the opinion and advice of unknown objectors is something that should be dealt with by way of a structured process providing procedural fairness. That is what would occur if the proposal was sent through the Gateway and a public consultation process undertaken.

The subject proposal is one of significant importance for the economic development of the Lower Clarence. It has been on foot and pursued since 2007. It is important to be aware of the history of the proposal, in order to understand the context and correctly determine the proposals compliance with the relevant Plans and Policies.

1. History of the Proposal

- a) November 2006 - Subject land at Palmers Island Purchased
- b) February 2007 - Meeting with Clarence Valley Council to discuss rezoning. CVC directed proponent to approach State Government for Part 3A approval.
- c) 2009 Part 3A approved.
- d) 2011 - Part 3A repealed.
- e) April 2011 Major Project Application submitted
- f) August 2011 Director-General's Requirements issued. Issues were addressed in detail.
- g) July 2014 – Submission to Gateway for Re-zoning
- h) November 2014 – Gateway Determination that the re-zoning should not proceed even though the Planning Team Report recommended it did proceed.
- i) 3 December 2014 - meeting with Duncan Gay MP and planning department staff in Sydney. Subsequently Andrew Jackson, Executive Director, Regions, Planning Services, sends proponent a letter suggesting that an acoustics study be undertaken, an assessment of the land use conflict impacts of the proposed development on nearby residential properties be undertaken and that then the proponent submit a planning proposal supported by this study to CVC for consideration and assessment of its merits.

- j) 1 December 2016 - the suggested studies having been undertaken, the planning proposal is re-submitted by CVC.
- k) 16 December 2016 - Letter from Department requesting updated traffic and acoustics studies to align with the new proposal requesting 40% reduction of the site to be developed.
- l) 10 May 2017 – Proposal re-submitted from CVC to Department
- m) 5 July 2017 Letter from Department requesting CVC staff seek the position and a resolution of Council on the matter to determine whether there is continued support for the proposal in it revised design.
- n) 18 July 2017 Council support for the proposal is obtained.
- o) 20 July 2017 Council staff re-submit proposal.
- p) 10 November 2017 - Gateway determination that the proposal is not considered appropriate.
- q) 20 November 2017 – CVC notify YWE of Gateway determination.

It is submitted that the history is important as it shows the lengths the proponent has gone to, to meet concerns, the shifting framework with which it has had to deal and that it not only has the support of the Local Council but had obtained Part 3A approval. It also needs to be considered in light of the 2014 determination as that determination is inconsistent with the determination under review. A comparison is attached for consideration.

2. There were four reasons given in the Gateway Determination dated 10 November 2017 that the proposal should not proceed. These were:
 - a. There is no demonstrated need for additional zoned land in this location; and
 - b. It is inconsistent with
 - i. The Clarence Valley Industrial Lands Policy; and
 - ii. The North Coast Regional Plan 2036; and
 - iii. The Marine Based Industry Policy – Far North Coast and Mid North Coast NSW.
 - c. It is inconsistent with SEPP 71 – Coastal Protection, and s117 Direction 1.2 Rural Zones; and
 - d. The potential noise and visual impacts on the amenity of the surrounding locality are considered unacceptable.
3. Before dealing with each of these reasons, there are three issues that the Applicant asserts contaminate the assessment of the proposal. These three issues are:
 - i. The review of the proposal, on any reasonable reading of both the determination and the determination report, has been conducted more on the basis of determination of a development application as opposed to a gateway proposal. Perhaps the two best examples of this are the findings that there is an unacceptable acid sulfate soil risk and that noise cannot be sufficiently attenuated.
 - ii. The applicant is of the clear understanding that the purpose of a gateway

proposal is to seek whether or not a proposal might succeed to a development approval, not whether or not it should be granted development approval. In short whether the proponent has a reasonable chance of success. It is not the purpose, on the applicant's understanding, of the gateway process to determine whether or not, on the available material, compliance issues are likely or unlikely to be met. The comprehensive acoustic report clearly states that measures are available that would enable the proposal to operate within acceptable limits. That should be sufficient to satisfy the gateway assessment. At a later stage in the process, assessment of a development application would require satisfaction that it would be met. It was not an issue for final determination at the gateway stage. At the gateway stage, what needed to be shown was that noise *could* be attenuated in an overall sense.

As to acid sulfate soils, it would obviously be part of the development application process that proper and effective preventative actions be implemented to prevent deleterious effects be both identified and certified. There are numerous developments undertaken which would require acid sulfate soil attenuation. In terms of the amount of land that will be disturbed, it is a very small part of the proposal, and most of the proposal requires filling which would be a temporary disturbance. It is properly a matter to be addressed at the development application stage and not at the gateway stage. It is submitted there is no basis at all to conclude otherwise and if there is the applicant has not been told what it is and not given any opportunity to respond to it.

The issues that have been used as a basis for refusal could have been referred back to the applicant with request for further study or amendment rather than refusal. Instead a decision was made for refusal. This was inappropriate and effectively skewed the process.

By way of comparison the Harwood site was considered without addressing many of the issues the applicant has been required to address or in far less detail. An analysis of the Harwood Planning Proposal Report June 2015 (copy attached) shows the following matters were left to the development application stage;

- a) "The development of the site for marine industries will have impacts on surrounding properties in relation to noise, traffic and amenity. These matters should be able to be adequately addressed at development application stage" (p7)
- b) "Council has resolved to require a road upgrading staging plan when a development application is submitted". (p11)
- c) Impact on Palmers Village
 "Measures to mitigate noise, light spill and other factors will be addressed at development application stage. This approach I considered appropriate". (p15)
- d) Council has resolved to require further flora and fauna assessment at the development application stage when greater detail of the proposal is known". (p15)
- e) "It is considered logical to enable the expansion of an existing facility rather than force the establishment of a new facility in an alternative location. The flooding acid sulfate soil, agricultural land and land use conflict constraints of the subject site will be

common issues for other potential sites for such a facility along the banks of the Clarence River”. (p16)

- f) “It is considered that any potential negative impact on water quality in the Clarence River can be adequately mitigated with appropriate infrastructure and operational practices and this can be specified through conditions of consent for future development of the site”. (p18)
- g) “It is considered that the potential disturbance of any acid sulfate soils on the site can be adequately managed so as not to have an adverse impact on water quality in the Clarence River”. (p18)

“On 27 February 2013 the Director General agreed that the inconsistencies with section 117 directions 1.2 Rural Zones, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land, were justified...”;

The applicant would suggest that the approach taken with the Harwood site was the appropriate approach and not the approach taken with the subject proposal.

(iii) Clearly other unidentified people or bodies have submitted information and it would appear plain that objectors have been able to have input. For example, there has been reliance placed on the opinion of Mr Roberts of Harwood Slipway, who clearly is not in a position to give unbiased advice. The applicant has had no opportunity to respond to his input and has never been informed precisely what his input was. The applicant does not understand that to be part of the gateway process, but rather the public exhibition process. The legal framework, as the applicant understands it, is devoid of any public consultation process during the gateway assessment. The description of the process on the Departments website bears this out. Clearly the original determination was effected by irrelevant material that should not have been before the decision maker;

The original determination has taken into account material to which the proponent has not had the opportunity to respond. When a copy of the determination report was obtained, it was still without any of the attachments which would appear to include the technical reports that were relied upon and never shown to the proponent and which the proponent was never given an opportunity to consider. This and the preceding issue appear to amount to significant failures not giving the proponent procedural fairness. If the review is to proceed on the basis of this material that the proponent has never seen the proponent should:

- a. Be given copies of the material;
- b. Be advised of the source of the material;
- c. Be given an opportunity to respond to the material prior to any decision being made.

The proponent’s legal advice has indicated that these denials of procedural fairness given rise to rights to take legal action. At this point in time, the proponent does not intend to do so but does reserve its position.

In response to the reasons given in the Notice of Determination, the Applicant makes the following submissions:

There is no demonstrated need for additional zoned land in this location;

4. This is the first time this issue has been raised. It is something that was not addressed in any detail by the applicant. It is based on an assumption that the Harwood land is both available and suitable. The reality is the Harwood site is neither available nor is suitable. The reasons for this are:
 - a. The only other land is the land at Harwood. The applicant provided evidence from an appropriate expert as to why its business could not relocate there. That has been rejected by the original decision maker, based on opinions and enquiries the applicant was never allowed to challenge. The applicant was never advised what was asked to obtain the opinions or the means by which it was done. The position is maintained by the applicant, but the applicant wishes to go into further detail as to the inappropriateness of the Harwood land.
 - b. The Harwood land currently has no suitable road access. Current access along River Street East, Harwood is subject to riverbank erosion and is not suitable to service future development. Council resolved that the proponent provide a Road Upgrading Staging Plan with any DA for new construction of the site, based on Option 1 which utilises existing roads and road reserves. As to the existing roads and road reserves, the majority of the roads are gravel and will require full reconstruction and sealing for a distance of 5.8kms. (see attached road plan). No costings have been made available, if they exist at all. The costs would be in the millions. The route is not direct and involves eight right angle turns which would need to be designed and constructed for use by semi-trailers. Additionally, approx. 250 metres of existing River Street East immediately joining the riverfront and adjacent to the existing slipway will require engineered erosion protection works, again at a currently unknown cost.
 - c. The proponent did have discussions, years ago, with the owner of the land who indicated that the full cost of the road works would have to be borne by the proponent. That alone makes the proposition of the proponent moving to the Harwood land untenable.
 - d. Council has clearly stated from the publicly available documents that it will not be consenting to any major development on the land until suitable road access has been constructed. YWE's proposal would be classified as major development and would trigger the need for road construction.
 - e. The existing slipway is not designed for a travel lift and as such it is not suitable. The slipway is privately owned and there is no guarantee it would be available even if YWE could alter its operations to make it usable. Even if it were available there would be unacceptable conflicts as to who could use it and when. To construct vessels and then crane them to the slipway is simply not possible. The travel distance would be at least 500 metres and across a formed road. Even if a system could be designed it would be so cost prohibitive that the business would not be viable.

- f. The Harwood expansion provided for some 175 metres of additional waterfront and working waterway. In the absence of anything even approaching a meaningful concept plan, it is assumed that this is to allow for either another basin or slipway to be built. There is no indication of how that small amount of waterfront is to be used for the whole of the new area. The development of that area would raise all of the environmental and impact issues that have been addressed at the Palmers Island site and successfully so. They have not been dealt with even in the most rudimentary fashion for the Harwood site. It appears to simply have been deferred to the Development Application stage. In the absence of such, there is no way to assess the likelihood of a suitable development ever taking place. Without a basin development the site is useless to YWE.
- g. This is the position as at December 2017, some 2 ½ years after the rezoning was approved. A copy of the planning proposal report is attached. Notably on page 7 of that report, the statement “the development of the site from marine industries will have impacts on the surrounding properties in relation to noise, traffic and amenity. These matters should be able to be addressed at development application stage”. This further amplifies the point made in the introductory comments as to how the YWE application has been treated.
- h. Also on this issue, an extract is attached is of the Clarence River and Approaches chart of the river showing depth. If the subject proposal was to operate at the Harwood site then:
 - i. The use of the existing slipway would not be possible for the reasons given above and therefore;
 - ii. A basin would be required which would also require significant dredging. The 2015 Harwood Planning Proposal Report states “The proposal does not propose any specific dredging for the river” (p18). As a result, there has been no assessment of the impact of dredging which would be required to provide deep water access to a basin. The well-known level of heavy metal contamination of the riverbed prohibits there being any dredging. In recent years, operators at that site have been charged with offences by the Environmental Protection Authority for pollution caused by attempting minor dredging works. The site having been used for so long when lead based paints were in common use, the river has to be left undisturbed to prevent major pollution incidents. Even if this hurdle were overcome there would be other significant environmental issues such as the effect on the nearby mangroves;
 - iii. The Harwood site having such limited river access would cause significant difficulties to the use of waterfront access.
 - iv. To operate properly YWE needs unfettered waterfront access. If YWE were to have this then the next business requiring the same would need further land to be developed.

- i. Council's strategy acknowledges the need for multiple sites if the marine industry is going to expand in the Lower Clarence. The model that Council recognises as being the optimal model for marine industry in Lower Clarence is for multiple sites, due to the need for every significant operator to have control of the site, particularly the waterfront.
- j. Further in relation to this issue, the business model of the Harwood owner is not known. He may be intending to only lease portions of the land, or sell small portions or sell en-globo. This again detracts from the concept of availability. The applicant did not pursue this level of detail after discovering that the applicant would have to pay for all the access road works.
- k. The assertion that the Harwood land is unsuitable virtually proves itself. The approval has been in place for some two and a half years, yet there has not been any development of it at all. There has been no progress of any kind in that time.
- l. The point attempted to be made by all of the above is, quite simply, that a statement that there is existing available land is, as a generalisation, technically true, is in reality an illusion.
- m. Further, if the subject proposal is to be transferred to the "available land" at Harwood, then it would take up so much of the available land and all the waterfront, so that there would then be an immediate need to rezone further land.
- n. There is no merit in the determination that there is not a demonstrated need for this proposal. To use the Harwood land would require years of development as it was made available with no end use in sight, apart from "marine industry". The applicant's proposal is "shovel ready". The Harwood site is not available in the true sense. Even if it were available and was used then, if other major participants came to the Lower Clarence, it would require a further re-zoning of land to accommodate the industry as there would be no further land available.

Suitability and Availability of the Palmers Island Site

- 5. The Palmers Island site is consistent with and appropriate for the proposed development. The relevant plans and policies are subjective and need to be considered in the appropriate context and with the overall objectives at the forefront of the decision makers mind. With subjective policies it is always possible to construct a negative argument and a proper decision can only be made on a balanced view while focusing on the objectives.

The objectives can be simply stated as promoting and facilitating the growth of marine industry in the Lower Clarence without unacceptable adverse effects. The three primary negative findings in the determination were clustering, noise and visual impact. For the reasons already given the decision maker did not properly understand or fail to apply the clustering concept as envisaged in Councils "Clarence Marine Cluster Assessment" which is their direct marine industry strategy. The applicant believes that the following statements taken from the determination were all wrong for the reasons

set out.

It is inconsistent with The Clarence Valley Industrial Lands Policy

6. This document supports the expansion and clustering of marine businesses with the preferred area for marine sector development and marine support services being the Lower Clarence close to existing industry, a skilled labour force and with access to the Clarence River.

The report to Council prepared by CVC staff (Item 14.108/16 – Attachment 2) states:

“The proposal is considered to be consistent with this local strategy as it is for expansion of a marine industry in the Lower Clarence requiring a river access site.” (p3)

In 2009, Council adopted the Clarence Marine Cluster Assessment which built on the Clarence Valley Economic Development Strategic Plan (2006) and the Industrial Lands Policy (2007). It states:

“The Clarence Marine Precinct presents a market first in that it is not limited to a single geographical site, rather, the precinct is the Clarence River itself with existing marine industry located from Yamba and Iluka on the coast to the River City of Grafton, some 32 nautical miles upstream.”

The Policy recognizes that there are only limited areas of riverbank where such development could take place due to wetlands and other natural prohibitors. The subject site is one of the limited sites available.

The Policy also recognizes that development within the Precinct will most likely take place in a number of small areas.

The proposal is consistent with the Policy when construed in the proper context, as was done previously, and not in the narrow context of the determination under review.

This Policy was in place when the 2014 determination was issued. No mention of inconsistency was made then. Two points arise from this. Firstly, the inconsistency between the determinations is unfair. Had anything been identified earlier, it could have been addressed. Secondly, YWE would have had the opportunity to take alternative action to achieve its aims of both staying in business and in the Lower Clarence rather than having spent huge sums of money to be told that what was not previously a problem is now a fatal one.

It is inconsistent with The North Coast Regional Plan 2036

7. The Gateway Determination Report NSW Planning & Environment states:

“The development of this Palmers Island site for a marine based industry is not consistent with the Clarence Valley Industrial Lands Strategy as it fragments the marine industry in the Lower Clarence, it is also inconsistent with the North Coast Regional Plan 2036 which also supports clusters of economic activity, and promotes development in accordance with the local strategy”.

The opinion of the CVC planning staff, supported by Council, is that the proposal is consistent with the Clarence Valley Industrial Lands Strategy as the Lower Clarence is the precinct as stated in 6 above (Item 14.108/16 – Attachment 2). In this view the proposal is consistent with the Regional Plan as it promotes development in accordance with the local strategy ie. Clustering marine industry in the Lower Clarence precincts and not necessarily a single site.

This is a very good example of what was previously said regarding the plans and policies being open to subjective interpretation. It would appear that CVC planning staff, CVC council and the PTR staff have one view and the author of the determination another. It is hard to understand how the Department can reject the Council's staff view of how its own policy was intended to operate.

It is inconsistent with The Marine Based Industry Policy – Far North Coast and Mid North Coast NSW

8. The Gateway Determination Report states:

“The Marine-Based Industry Policy encouraged councils to strategically plan for opportunities for marine-based industry. It states the work should use the locational criteria and apply them strategically with a view to identifying sites or precincts which are most suited to marine-based industry. The Policy also states that if more than one enterprise is likely to be established, they should be clustered into a precinct rather than scattered along the waterway's edge. This encourages maximising efficiency of infrastructure and minimising environmental impacts. This is supported by the outcomes of the Clarence Valley Industrial Lands Policy.”

The Marine-Based Industry Policy states:

“Ideally, if more than one enterprise is likely to be established, they should be clustered into a precinct rather than scattered along the waterway's edge, with a view to maximising efficiency of infrastructure and minimising environmental impacts.”

The applicant stresses that the Policy states “Ideally, they should be clustered”, not, “They must be clustered.” The clear intent was to allow some flexibility in an appropriate case. The applicant submits that its proposal is exactly the type of situation the flexibility was intended for, a contention that is supported by the Councils support for it.

The opinion of CVC planning staff, supported by Council, is that:

“Although the state policy clearly encourages enterprises to be ‘clustered into a precinct’ it does not define the parameters of a ‘precinct’ and also encourages Council to address this in its local growth strategies”.

The Clarence Marine Cluster Assessment (2009) builds on the 2006 Economic Development Strategic Plan and the 2007 Industrial Lands Policy and defines the Clarence River itself between Yamba / Iluka and Grafton as the precinct.

The Gateway Determination Report goes on to states:

“The subject site does not meet the two specific criteria of the Marine Based Industry Policy; it is affected by acid sulfate soils, and if the proposal is approved, will lead to land use conflict. The policy also encourages ‘clustering’ of marine precincts rather than individual developments being scattered along the water’s edge.”

The Gateway Determination Report and the Council both agree that the class 2 and 3 ASS present could be sustainably managed or ameliorated and the proponents anticipate that a ASS Management Plan would need to be prepared prior to public exhibition.

The issue of land use conflict is subjective, though both the Gateway Determination Report and Council acknowledge that noise can be sufficiently attenuated. No consideration, let alone professional study, has been directed to noise coming from the Harwood site to surrounding properties and Palmers Island village and tourist parks across the river. The Harwood planning report notes there were objections received from the Palmers Island village and surrounding areas including tourist parks. It would appear unarguable that the noise impact from YWE moving to the Harwood site would be greater than at the proposed site. This is a result of sound travelling across water which will direct noise across to Palmers Island village and tourist parks compared to YWE’s proposal to protect surrounding residences by directing sound across the river to Turkey Island where there is one residence with periodic use, which is far removed from the waterfront and not directly opposite YWE’s site.

Engineering aspects of traffic can be addressed through the provision of a roundabout in the future and Council has resolved to undertake a study at the Yamba Road intersection, Yamba Road and its future traffic control requirements. The impact of the daily traffic movements on the School do not need to be mitigated. The Industrial Park is proposed to operate from 6am to 6pm and the majority of traffic movements are staff going to work and going home. The movements will occur outside of school hours. Truck movements are calculated as approximately 6 per week, considerably less than generated by cane harvesting. The School is also located on busy Yamba Road. Many schools are on main roads. For example, the Yamba Public School is directly opposite the Yamba Industrial Area, (in fact, directly opposite YWE’s current location). Woodburn Public School is on the Pacific Highway and Ulmarra Public School is on the Pacific Highway. The list is next to endless. This issue has been greatly overstated.

The Gateway Determination assessed potential visual impacts on the Concept Plan which accompanied the Proposal, which is understandable. The Concept Plan was prepared for acoustic and traffic modelling purposes and is of a ‘worst case scenario’ scale so that there could be no claims in the future that it had been deliberately ‘downsized’. It is highly unlikely that development of this scale will occur, and if it does it will be very much in the future. This is an issue which should be assessed at DA stage based on the actual development proposed and recommended ameliorative measures such as dense plantings.

The Determination concludes that there will be significant visual impacts. This would appear to be the primary grounds for refusal as it is the only potential land use conflict that has not been addressed in detail in the proposal. The proposal refers to the use of planting to provide visual screening and rightfully in our opinion, states that this will be addressed in detail at a future Development Application stage. This would be consistent with the approach taken with conflict and amenities issues at Harwood ie.,

deferred to Development Application state.

The statement is difficult to understand. Firstly, visual impact from where? The section of the site to be developed will require raising up to 1.5m, but from School Road it can still be well screened, from the frontage through fencing and plantings and from the sides, from dense plantings. These plantings along the southern and northern boundaries of all buildings will also provide screening for all residences. In the case of the northern side, the development area is located between 77metres and 127metres from McConnells Lane. This creates a 10 hectre area which can be fully vegetated, say, by a macadamia plantation as is occurring on a number of properties in the vicinity. This leaves only the view from the river which would be the same as if the new site at Harwood would be utilised.

If a definitive statement on land use conflicts cannot be made, then this cannot be used as grounds for concluding that the Proposal does not comply with the Marine-Based Industry Policy.

It is inconsistent with SEPP 71 – Coastal Protection

9. The Gateway Determination Report goes on to state:

“It is considered that the proposal is inconsistent with Clause 2(k) of the SEPP which seeks to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area.”

Clause 2(k) is a fine aspiration but, how practical is it when there are a number of strategies and policies which acknowledge that marine-based industries often need to be located on navigable rivers and often in rural areas? Strict application of SEPP-71 would mean that there would be no marine industry or waterfront industry in rural areas

It is acknowledged that the development will be of a type, bulk, scale and size significantly greater than anything else in its immediate vicinity, and that it will not improve the scenic quality of the area. But mitigation measures can be established relative to the actual development, for assessment at DA stage.

This is again a subjective assessment where it would appear the decision maker has taken a view different to that of the Council. It is not a basis for rejecting the proposal.

It is inconsistent with s117 Direction 1.2 Rural Zones;

10. The Gateway Determination Report goes on to state:

“A planning proposal may be inconsistent with the Direction if the inconsistency is justified by a strategy, a study, or is of minor significance”. The North Coast Regional Plan 2036 identifies the potential need for marine based industry precincts to be located in rural locations and provides for the development of criteria for their consideration through the Marine-Based Industry Policy. The proposal to rezone the subject land is considered to be inconsistent with the criteria contained in the Marine Based Industry Policy. It is therefore considered that the inconsistency with the Direction is not justified.”

The stated inconsistencies with the Marine-Based Industry Policy are the presence of acid sulfate soils and land use conflicts. Both of these have been addressed above. If these inconsistencies do not exist or cannot be assessed at this stage, then the Proposal is consistent with the Regional Plan based on its consistency with the Marine-Based Industry Plan and with Councils Strategic Plans as stated by Council planning staff.

The inconsistency is therefore justified as being, “justified by a strategy.”

The potential noise and visual impacts on the amenity of the surrounding locality are considered unacceptable.

11. The determination that the visual impacts would be unacceptable cannot be maintained. We repeat what was said in 9 above. This is perhaps best explained by way of an example. The example the applicant would use is the burgeoning macadamia industry in the Lower Clarence Valley. There would be nothing preventing a property, such as the subject property, being turned into a macadamia farm with processing shed, storage sheds, equipment sheds and silos being built within exactly the same shape and size of the structure proposed. Further, as stated above, the visual impact can be very easily ameliorated, if not completely negated. The only place that the development would be visible from would be the river. The river in this general area has major structures on it such as the Harwood Slipway, the Harwood Sugar Mill, the Goodwood Island wharf the Harwood Sailing Club and an assortment of farm buildings. The visual impact has been overestimated and can be dealt with at the development application stage.
12. The comprehensive acoustic report of TTM accompanied the original proposal. Firstly, there does not seem to be any basis except entire speculation that there would be any noise impacts on the tourist parks to the south and north-east both more than 2 kilometres away. The tourist park to the east is closer to the currently under construction Pacific Motorway than to the site. The highway noise is far more likely to affect it when the new bridge is completed. There is no more evidence that the applicant is aware of that the tourist park will be in any way effected. This tourist park is also approx. 600 metres diagonally across the river from the Harwood site, while the Palmers Island site is 3 times further away.
13. The concerns in the report in relation to compliance and ongoing maintenance costs are again, speculation. They are issues which can be dealt with at the development approval stage. The fact is that the only known evidence (from the applicant’s perspective) is that the industrial noise policy requirements can be met.
14. The conclusion that “based on the sensitivity of the residential and tourism receptors and the potential loss of patronage at the tourism parks, the ongoing costs of mitigation which is in compliance, and the broader impacts of the traffic in the locality, it is considered the noise remains a significant issue with this proposal” is a statement which seems designed to have its origins in seeking to refuse to allow the proposal to move forward. There is no sensible indication of what “the sensitivity of what the residential and tourism receptors” is, and properly conditioned at development application stage, the “potential loss of patronage at the tourism parks” will not only be considered but be ensured not to occur.

15. The issue of noise should have been left to Development Application stage, noting that the acoustic report states that the proposal can comply with relevant guidelines subject to readily available attenuating methods. The Harwood site was re-zoned without anything approaching a comprehensive report but noting that standards would have to be met before a development would be approved. There are many reasons this is the correct approach and one obvious reason is that in the unlikely event that an insurmountable difficulty was discovered (none having been found to date) YWE could take appropriate action to make the development comply. As has been stated previously, the concept design was prepared on the basis of maximum possible development to ensure that neither the Department or any other concerned person was not misled. In one sense it appears YWE is being punished for detailed planning and transparency.
16. In summary, there is no reasonable basis in fact for a conclusion, at this point in the planning process, that potential (as opposed to real or substantial) noise and visual impacts on the amenity of the surrounding locality should be considered unacceptable. The evidence available, absent baseless speculation, is that there will be no unmitigated visual impacts from the river, noise will be within acceptable and established limits and the amenity of the surrounding locality will not be altered in any significant way.

Economic Impact

17. The Determination discusses this topic in a total of nine lines, which the applicant believes demonstrates that the economic effects have been grossly understated.
18. Attached are the Business Evaluation Action Plan and the Business Financial Analysis of the applicant prepared by the Federal Department of Industry, Innovation and Science. They were prepared independently of the applicant. Current estimates are that for the current financial year gross revenue for the business will be in excess of \$10,000,000.00. To date these estimates are being realised and there is no reason to suspect they will not be met. If further or detailed financial records/information is required it can be made available subject to appropriate confidentiality assurances.
19. The impact that has to be considered is not simply the benefits if the proposal proceeds but also the detriments if it does not.
20. The applicant cannot continue its operations at its current site. To do so would mean to continue to be unable to take on work on larger craft than it is currently able and to operate inefficiently. The continuing growth of the business at a rate in excess of all forecasts exacerbates this problem and the inefficiencies are now threatening YWE's future. The applicant cannot move to the Harwood land for the reasons given above and due to the quality controls, which apply to its business. As the brief chronological history shows the applicant has been attempting to relocate within the Clarence Valley. If that is not possible then the only alternatives open to the applicant are to dispose of the business (which would see the business move from the Clarence Valley) or to move interstate, as South-East Queensland has multiple sites either available or "shovel ready". The applicant wishes to remain in the business, in the lower Clarence, but simply cannot without the approval sought. The applicant acknowledges this is not a determinative consideration but does want the full impact to be given appropriate weight.

Conclusion

21. YWE seeks a Gateway approval, not a development approval. It has met every necessary standard and provided far more detailed information than has been required for other similar applications.

YWE should be treated in the same way that Harwood was which is to say on the basis of a Gateway determination rather than a final determination.

The planning landscape is by necessity complicated and subjective. This makes it more important than would normally be the case to avoid circular arguments. There does appear to be some circularity to the arguments concerning compliance to the policies and plans. The Gateway assessment has determined that the land use conflict results in non-compliance with the Marine Based Industry Policy which in turn, in their opinion, results in non-compliance with the North Coast Regional Plan 2036 and which in turn, in their opinion, renders it inconsistent with Section 117, Direction 1.2 Rural Zones as unjustifiable. Noise and traffic have been assessed as acceptable. Therefore, the conflict is limited to visual impact. Based on that conclusion the determination concludes that it does not comply with the Marine Based Industry Policy which means in turn it does not comply with the North Coast Regional Policy 2036. Visual impact can only be assessed at Development Application stage when the true nature and scale of the proposal is submitted.

The determination to refuse the proposal should be reversed.