

IN THE MATTER OF the Resource Management Act 1991
AND

IN THE MATTER OF Proposed Plan Changes 82A&B, 88A-J, 109, 115, 136, 143, 144, 145,
147 & 148 - Urban and Services, as Adopted for notification by
Whangarei District Council on 18 April 2019.

STATEMENT OF EVIDENCE ON BEHALF OF NORSAND LTD.
(TRADING AS Norsand Boatyard) (Submitter No. 262)

1. QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Stephen Westgate and I appear on behalf of Norsand Ltd. I have a science degree and have worked as a self-employed resource management consultant since the introduction of the RMA in 1991.
- 1.2 Prior to 1991, for 27 years, I was employed in technical management at the Whangarei glass manufacturing operation of Pilkington Glass. I liaised closely with technical experts, and read and wrote technical reports on a wide variety of subjects.
- 1.3 For the past twenty-eight years, I have worked as a self-employed resource management consultant. In that time, I have prepared or co-authored numerous applications under the Resource Management Act 1991 for sand extraction and dredging operations, quarry operations and associated major earthworks; irrigation; moorings and boatsheds; subdivisions; stormwater discharge, air discharge, fish farming, etc. From 2000-2002, I was employed by a surveying company to write in excess of 100 subdivision Environmental Effects Assessments.
- 1.4 I have represented the Minister of Conservation on a Hearings Committee (the Opuia Wharf redevelopment in 2003), have been contracted by Northland Regional Council to assist in processing coastal consent applications, and for 5 months, I was contracted to Northland Inc as acting Project Manager for the clean-up of the Waikare Inlet oyster farms. I have had a hands-on involvement across a broad spectrum of resource consent activities.
- 1.5 I have also been actively involved with conservation organisations (Northland Conservation Board 1993-1998, and Forest & Bird branch chairman 1999-2003, Bream Head Restoration Trust trustee from 2002 to 2014. From 2005 to 2013, I was appointed to the Regional Transport Committee as the Environmental Sustainability representative. For 4 years, I chaired that committee's Stock Effluent Working Group which successfully established a network of stock truck effluent dump sites in Northland.
- 1.6 While my degree and qualifications may not be specific in any particular planning context, I consider that my technical and practical background and experience are relevant to Norsand's submissions and qualify me to make factual observations while not expressing expert opinion.

2. INTRODUCTION TO NORSAND'S OPERATIONS AND CONTEXT OF SUBMISSIONS

- 2.1 Over the past decade or so, Norsand Boatyard has established a significant international reputation for the quality and timeliness of its boat repair activities, particularly for multi-hull vessels. It is believed that the yard handles more cruising boats than any other yard in New Zealand. During the winter months, boat owners from Auckland and Tauranga bring their vessels to Norsand, while in the summer months (the Pacific hurricane season), most of the 100 - 120 boats parked up would be overseas vessels. The boatyard is not just a parking lot - all of these vessels hauled out require varying amounts of work to be carried out before they re-enter the water. The value of some of the maintenance work carried out can amount to up to one million dollars.
- 2.2 A marine industry such as Norsand Boatyard requires a waterfront location along with a large area of land, a canal and slipway, to enable boats to be hauled out of the water for repairs, maintenance and storage. While these boats are typically up to 115 tonnes in weight, shallow draft vessels up to 350 tonnes have been slipped. (See locality maps at the conclusion of this statement).
- 2.3 Norsand Boatyard's industrial marine activities make a significant contribution to the economy of Whangarei. It employs 30 qualified staff, plus contractors. It operates a marine parts store not only for the use of its own staff but also for the benefit of its own boat-owning clients who opt to undertake their own maintenance work, and to a lesser extent, for other marine industry operators in Whangarei. Retail activity is undertaken from the store but it is not practicable to isolate and to identify the relative pro-rata area attributable to retail activity.
- 2.4 For some of Norsand's boat-owning clients, especially the international ones, their boat is their home. While their boats are in the Norsand boatyard, many opt to live aboard and to utilise on-site facilities such as toilets, showers, kitchen and lounge area provided by Norsand for not only its workforce but also for use by its clients. The situation is comparable to the Town Basin where boat owners opt to live on board their vessels and utilise facilities provided by the Council or by the marina trust.
- 2.5 The availability of the yard's marine retail store, and the support facilities which enable clients to live aboard their boats, contribute substantially to Norsand's success and reputation, and hence to the reasons why overseas boat owners opt to come to Whangarei for months at a time, contributing to Whangarei's economic wellbeing.

3. SUMMARY OF SUBMISSIONS ON PROPOSED PLAN CHANGES

Norsand's submissions related to (i) key ancillary activities which support and facilitate its marine repair business, having the status of 'Permitted activities' and (ii) the avoidance of unnecessary consent application costs.

3.1 Marine Retail. Rule HI-R11.

Norsand submitted that if the retail activity is integral and ancillary to the industrial activity on the site, as in Norsand's situation, there should be no limit on the GFA. Consequently, Norsand submitted that condition b. of proposed Rule HI-R11.1 "*Less than 100m² GFA per site*" should be removed in order to

- (i) generally recognise the needs of major marine industries and more specifically

(ii) to facilitate Norsand's operations rather than constraining them, or imposing unnecessary consenting costs.

3.2. Residential Activity and Visitor Accommodation. Rules HI-R21 and HI-R25

Norsand submitted that the provision of client/visitor accommodation and associated facilities ancillary to the main industrial activity on the site should be a permitted activity within the HI zone. The proposed non-complying status implies that the provision of accommodation for a boatyard's clients is inappropriate. Consequential amendments were sought to Rules HI-R21 and HI-R25.

3.3. 27 metre Setback of Buildings from MHWS. Rule HI-R3.1

Norsand submitted that the 27 metre building setback from MHWS in HI zones on the Kaituna Block should be excluded by deleting condition (d) from Rule HI-R3.1.

Each of these three submissions was recommended in the s.42A report to be rejected.

Each of these three issues will be addressed in turn by considering the s.42A report with my added observations and comments.

4. MARINE RETAIL. RULE HI-R11.

4.1 Part 5. Industry. S42A Hearing Report (The 'Report').

4.1.1 The Report states as follows:

212. Atlas Concrete, Norsand, and Heron seek the amendment or deletion of the GFA clause of various rules HI-R8 to HI-R14. Activities listed in HI-R8 to HI-R14 do have the potential to undermine the viability and availability of HI land for industrial activities. In my opinion it is appropriate to limit such activities to ancillary only with a maximum GFA within the HI, and I support the s32 evaluation conclusions. In my opinion the notified rules are an effective method to maintain a difference between LI and HI and to achieve the objectives of the HI. Atlas Concrete have sought to increase the minimum GFA limit from 100m² to 150m². In my opinion the requested increase of 50m² will not result in a significant change to the operation of industrial activities and will provide an appropriate opportunity for ancillary activities to occur.

213. ... As previously discussed, the HI must be protected for larger scale and noxious industrial activities. Trade Retail and Commercial Service activities are provided for in other zones as permitted activities. In my opinion the non-complying activity status is appropriate to avoid reverse sensitivity effects and to achieve the objectives of the HI.

4.1.2 The Report recommends Norsand's submission should be rejected, but on the basis of the submission from Atlas concrete, the permitted GFA should be increased from 100 m² to 150 m² per site.

4.2 Comments

4.2.1. The Report acknowledges that increasing the area by 50% “*will not result in a significant change to the operation of industrial activities and will provide an appropriate opportunity for ancillary activities to occur.*” This raises the questions as to (i) why an arbitrary figure of 100 m² was adopted in the first place, and (ii) why this figure was deemed to be appropriate to apply regardless of the size, scale and type of industrial activity being conducted? The arbitrary value appears to have been adopted without any understanding of, or regard to the actual needs of, major industries.

Norsand’s submission was that a GFA limit of 100 m² could impose unnecessary constraints on the operation of its store which also operates as a minor retail operation. The store’s current area is of the order of 100 m² and Norsand is looking to expand this in future to cater for an increasing demand for its marine services. The Report’s statement acknowledges that an increase in floor area to 150 m² will facilitate (“*provide an opportunity for*”) ancillary opportunities, and does not identify any adverse effects. This proposed increase is seen by Norsand as a step in the right direction, and goes some way to meeting Norsand’s concerns for the time being.

4.2.2. The Report states: *Activities listed in HI-R8 to HI-R14 do have the potential to undermine the viability and availability of HI land for industrial activities.*

However, District Plan text, HI Chapter, Policy HI-P4, Non-industrial activities states the following:

To avoid non-industrial activities, including sensitive activities, except for activities that:

- 1. Support and are ancillary to the operation of industrial activities within the Zone, and are necessary to be located as part of the industrial activity.*
- 2. Would not undermine the integrity of other Business Zones.*
- 3. Do not generate reverse sensitivity or increased risk effects.*
- 4. Do not have the potential to hinder or constrain the establishment of activities otherwise anticipated within the HI.*

Policy HI-P4 clearly differentiates between activities in general and ancillary activities, and acknowledges that certain ancillary activities are necessary to support an industrial activity.

4.2.3 (i) The operation of a store/retail area that is ancillary to the site’s activity and not only stocks goods for the activity’s own use, but which are also made available to other persons (retail and non-retail), is consistent with each of these four conditions of exception.

(ii) The store/retail operation, being a key component of, and ancillary to, the industrial activity, can only support the activity rather than undermine the activity’s viability as the Report suggests. So my response to the Report’s statement about “[*undermining*] the viability and availability of HI land” is that while this may be true of those listed activities in general, this is not so if the activity is an integral part of, and directly ancillary to, the principal activity.

4.2.4. What is it that this proposed rule HI-R11 is seeking to achieve or to give effect to?

(i) The **HI Chapter Overview** notes:

“While industrial activities are the primary focus within the HI, the Zone also provides for activities which are inherently a part of industrial activities, such as small scale food and beverage activities and ancillary offices and retail activities, but only to the extent that they are required to facilitate the operation of industrial activities.”

- (ii) The relevant objective in the HI Chapter is:

HI-O3 – Ancillary Activities

Ancillary and supporting activities are controlled to ensure that industrial land supply is not compromised. This objective acknowledges that industrial activities often involve or require ancillary activities. However, it is important that non-industrial activities are managed to protect industrial land supply.

- (iii) I suggest that the blunt-instrument approach of adopting an arbitrary fixed area for a permitted ancillary store/retail operation regardless of the scale and extent of the main activity, in order to *protect industrial land supply*, is an inappropriate means of achieving the objective.
- (iv) I further suggest that a fixed GFA for ancillary retail activities, regardless of site area and type of activity, fails to recognise, and is inconsistent with, “*the extent that they are required to facilitate the operation of industrial activities*” as set out in the HI chapter Overview.

- 4.2.5. (i) The proposed minimum area for an HI property is 7000 m². As proposed, the GFA retail area would apply whether the site area is 7000 m², or as in Norsand’s case, 44 000 m². The now-recommended figure of 150 m² equates to just over 2% of a 7000 m² site, but only 0.3% of Norsand’s site.
- (ii) It is reasonable to assume that a store/retail area would need to increase in proportion to the size and scale of the activity but this rule makes no provision for the scale of the activity.
- (iii) If 2% of a site area allocated to ancillary retail activity is considered to achieve the purpose of protecting land supply for HI, why is it necessary to restrict the percentage to only 0.3% for a larger site?

4.2.6. The s.32 report notes that the proposed non-complying status of an ancillary retail activity would result in consenting costs where the GFA rule for a permitted activity is not complied with. These costs would typically be of the order of several thousand dollars.

4.3 Relief Sought

A ‘one size fits all’ approach ignores the practicalities of operating a large-scale HI business.

While Norsand has submitted that there should be no GFA limit on ancillary retail space, in order to avoid any unnecessary constraints or added costs to its principal activity, Norsand’s second preference would be for an equitable *pro rata* area limit.

If a size limit is to be imposed on permitted ancillary retail activities, that size limit should at least be in proportion to the site area in recognition of the greater needs of larger scale industries, for example:

“150 m², or 1% of the site area, whichever is the greater.”

5. RESIDENTIAL ACTIVITY AND VISITOR ACCOMMODATION. RULES HI-R21 AND HI-R25

5.1 Part 5. Industry. S42A Hearing Report (The ‘Report’).

5.2.1 The Report states as follows:

163. Norsand request that HI-R21 (Residential Activities) and HI-R25 (Visitor Accommodation) have a permitted activity status because the provision of client/visitor accommodation and associated facilities ancillary to the main activity should be a permitted activity within the HI.

164. The protection of the LI and HI for the primary use of industry and trade retail is a key matter addressed throughout the s32 evaluation. LI is often situated in close proximity to the HI. Residential activities have the potential to result in reverse sensitivity effects within the LI and the HI which could compromise the intended use of the LI and proximate HI. Applicants are not prevented from seeking consent for working accommodation (prohibited activity is not recommended), in my opinion a non-complying activity status enables a case by case consideration of each proposal.

The Report recommends the rejection of Norsand’s submission that ancillary residential activity and visitor accommodation should be a permitted activity. The Report discusses worker accommodation but does not specifically address client accommodation. It addresses “potential” reverse sensitivity effects but does not address the actual reality of boatyard client accommodation.

The proposed ‘non-complying’ status implies that on-site accommodation for boatyard clients is inappropriate. Norsand disputes this assertion for the following reasons.

5.2 Comments.

5.2.1. As noted in the previous discussion, the District Plan text. HI Chapter, Policy HI-P4, Non-industrial activities states the following:

To avoid non-industrial activities, including sensitive activities, except for activities that:

- 1. Support and are ancillary to the operation of industrial activities within the Zone, and are necessary to be located as part of the industrial activity.*
- 2. Would not undermine the integrity of other Business Zones.*
- 3. Do not generate reverse sensitivity or increased risk effects.*
- 4. Do not have the potential to hinder or constrain the establishment of activities otherwise anticipated within the HI.*

Policy HI-P4 clearly differentiates between activities in general and ancillary activities that support an industrial activity. It will be demonstrated that allowing for on-site client accommodation is consistent with these four exceptions.

5.2.2. Norsand’s submission noted that:

“For some of Norsand’s boat-owning clients, especially the international ones, their boat is their home. While their boats are on the hardstand, they opt to live aboard and to

utilise on-site facilities such as toilets, showers, kitchen and lounge area provided by Norsand for its workforce but which are also available for use by its clients. The situation is comparable to the Town Basin where boat owners opt to live on board their vessels and utilise facilities provided by the Council or by the marina trust.”

- 5.2.3. International cruising boats serve as the permanent home of yachtspeople for prolonged periods at sea and on land. When yachts are hauled out in boatyards, whether in Whangarei or overseas, for repair and maintenance, many yachtspeople choose to continue to live in their ‘homes’, from where they are on hand to assist in carrying out some minor maintenance on their vessels in support of skilled tradespeople such as Norsand’s. They are fully aware of the boatyard environment. They are hardly likely to protest about boatyard activities, or neighbouring HI activities, from a reverse sensitivity perspective. They accept the nature of the HI environment when they choose to remain in their ‘homes.’
- 5.2.4 Norsand boatyard provides facilities such as showers, toilets, laundry and lounge facilities for their clients who choose to continue to live ‘aboard.’ Regional council resource consent conditions ensure that such residential activities do not result in the discharge of contaminants. This situation has operated at Norsand boatyard without a problem for about 15- 20 years. There is no reason to believe that this won’t continue. No valid reason for changing the existing rule as it applies to boatyards has been provided.
- 5.2.5 Boat repair and maintenance for international yachts is an internationally-competitive business. Restricting such residential (or visitor accommodation) activities by applying costly and restrictive resource consent requirements would quite possibly send international clients elsewhere, thereby depriving Whangarei of significant economic activity. Norsand directly employs over 30 tradespeople and others come on site as required. The clients also contribute to the local economy by way of purchasing their groceries for day-to-day living, patronising restaurants and takeaways, etc.
- 5.2.6 All that Norsand is seeking is that temporary residential (or visitor accommodation) activities directly involving their boatyard clients, be allowed to operate as a permitted activity. There is no suggestion that accommodation facilities should be made available to the general public or on a permanent basis.
- 5.2.7 There are times when it is not practicable to live aboard a yacht undergoing maintenance work in a boatyard. This could be, for example, when interior maintenance is being undertaken or when a yacht goes into a shed for spray painting. In the future, Norsand envisages the provision of temporary, possibly cabin-type accommodation for its clients during such periods in order to remain competitive with overseas boatyards in terms of the provision of supporting services. Any such proposal would still be subject to a building permit application and the usual building conditions such as building height, setbacks from boundaries, etc.

5.3 Relief Sought

Norsand proposes that its submission that residential / visitor accommodation which enables Norsand to cater for its clients who choose to live on board or in close proximity to their vessels, i.e. allowing or providing accommodation that is directly ancillary to its principal activity of boat repairs and storage, i.e., should be a permitted activity.

6. 27 METRE SETBACK OF BUILDINGS FROM MHWS. RULE HI-R3.1

6.1 Part 5. Industry. S.42A Hearing Report (The ‘Report’).

6.1.1 The Report notes:

f. Setback from Water/Ecological Buffer

134. Submission Information Heron and Norsand Limited trading as Norsand Boatyard (Norsand) seek the amendment of HI-R3 to delete the 27m setback from Mean High Water Springs (noting that Heron also sought amendments policy HI-P6). Heron is opposed to the requirement as it is impracticable and effectively prevents the development of HI zoned land that has an interface with the coastal marine area (CMA) as a permitted activity. Norsand state that as there is no esplanade area to safeguard for the Kaituna Bock the 27m setback on the Kaituna Block should be excluded.

Discussion

137. I agree with submitters that certain activities permitted within the HI require access to the CMA to operate (such as Marine Industry). The HI provides for marine industry as a permitted activity, with the HI being mapped along Port Road Whangarei where HI is adjacent to the CMA particularly to recognise existing marine industry activities.

138. In my opinion the following national and regional policy [sic] are of relevance:

a. Section 6(d) of the RMA, the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.

b. The New Zealand Coastal Policy Statement (NZCPS), in particular policy 6, Activities in the coastal environment. This policy requires the recognition of both the need to “maintain and enhance the public open space and recreation qualities and values of the coastal marine area” and “recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places”.

141. I do not support the deletion of the setback from MHWS from HI-R3 and HI-P6, which in my opinion would be inconsistent with the higher order policy. In my opinion it is appropriate to consider the ability to maintain or provide access to the CMA on a case by case basis. I consider that it is efficient and effective to maintain a discretionary activity status due to the need to consider wider effects beyond the site, particularly with respect to connectivity of access, legal mechanisms, ability of the proposed activity to function, and the risk to people’s health and safety. Furthermore, maintaining a discretionary activity will allow applicants to engage with the CA policy as appropriate.

6.2 Comments.

I suggest that the s.42A Report, in terms of the sections quoted from the RMA, NZCPS and RPS, is very selective, and lacking in objectivity.

The reasons stated for retaining a discretionary activity status are questionable and, in fact, appear to contradict some higher order policies.

6.2.1 RMA

- (i) Section 6(a), which precedes Section 6(d), states:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

Clearly, by zoning this area of land of the Kaituna Block as HI, Council has recognised that the natural character has already been compromised by development that is considered appropriate in the circumstances.

- (ii) In relying on Section 6(d) of the RMA, “*the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers*”, the Report appears to contradict the Whangarei District Plan, which states as follows:

“The Whangarei District Plan District Plan, Part C – Policies – Riparian and Coastal Margins, 11 Riparian and Coastal Margins.

Policy 11.4.7 Public Health and Safety

To avoid the creation of esplanade reserves on sites where the provision of an area for public access would impair public health and safety.

Explanation and Reasons: In some instances, allowing public access in some coastal or riparian areas would endanger people’s health and safety. This is especially so around heavy industrial activities, such as ports. Three port areas, defined in Appendix 5, have been exempted from the esplanade requirement, even though they are within the coastal environment.”

- (iii) It is acknowledged that the Norsand site lies just to the north of, and is not included in, the Whangarei Port area which is currently exempt from building setback and esplanade requirements, as noted in the Report. However, I would suggest that a matter of relevance is the fact that when part of Norsand’s present site was sold by the Council to Norsand in about 2008, the usual requirement for an esplanade reserve was waived, due presumably to recognition of the need for the general public to be excluded from heavy industry (B4, now HI) sites for health and safety reasons. At that time, the Council implicitly abandoned the notion of *enhancing public access* in the locality. I suggest that it is no longer appropriate to rely on Section 6(d) as valid justification for not exempting Norsand’s site from the 27m setback requirement when the site already has *de facto* exemption from esplanade requirements.

- (iv) The s.32 report notes that “*The HI is not anticipated to experience significant changes in land use patterns.*” It is reasonable to assume that there will not in the foreseeable future any evacuation of industries within the existing HI zone. Hence restrictions on public use and access can reasonably be expected to remain.

6.2.2 NZCPS

- (i) Policy 6 of the NZCPS states:

“Policy 6 Activities in the coastal environment

(1) In relation to the coastal environment:

.....

(f) consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;

.....

(i) set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment; and

.....

(2) Additionally, in relation to the coastal marine area:

(a) recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, :

(b) recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;“

- (ii) I suggest that Policy 6 (2) (b) as quoted in the Report should not be read as a stand-alone policy but needs to be read in the context of the preceding sub-clauses.

In relation to Policy 6(1)(f), it is clear that the reclamation and HI zoning of the Kaituna Block, and the existing buildings within 27m of MHWS, have already resulted in a change in character.

In relation to Policy 6(1)(i), it is clearly not practicable to set back a marine industry such as Norsand's in order to *“protect the natural character, open space, public access and amenity values of the coastal environment.”*

In relation to Policy 6(2)(a), allowing a boatyard requiring waterfront access as a permitted activity within a waterfront HI zone, recognises the *“potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area.”*

- (iii) The average width of the Norsand site is 127 metres from the shoreline, so that restricting buildings within 27 metres of MHWS would unreasonably constrain development, or add to building costs via consenting charges, over 21% of the property. As noted in the s.32 report, requiring a resource consent for a discretionary activity for a building within 27m of MHWS as proposed would involve additional consenting costs.

6.2.3 RPS

- (i) Policy 5.1.2 of the RPS, as quoted in the Report, enables development which *“ensures sufficient development setbacks from the CMA to maintain and enhance public access, open space and amenity values and to allow for natural functioning of coastal processes and ecosystems”*.

- (ii) As previously noted, within an HI zone, public access is inappropriate, while open space and amenity values are of little relevance (although it should be noted that Norsand has undertaken planting in native species along much of its water frontage).

The natural functioning of coastal processes and ecosystems is not affected by buildings within 27m of MHWS.

Hence the two reasons given for requiring development setbacks would not appear to be applicable in this instance.

6.3 Relief Sought

Norsand proposes that its submission that HI properties on the Kaituna Block which do not have an esplanade reserve for health and safety reasons as demonstrated, should be exempt from the 27 metre building setback restriction. Failing that, the exemption area currently extending from Whangarei Port to just south of the Norsand site should be extended to include the Norsand site.

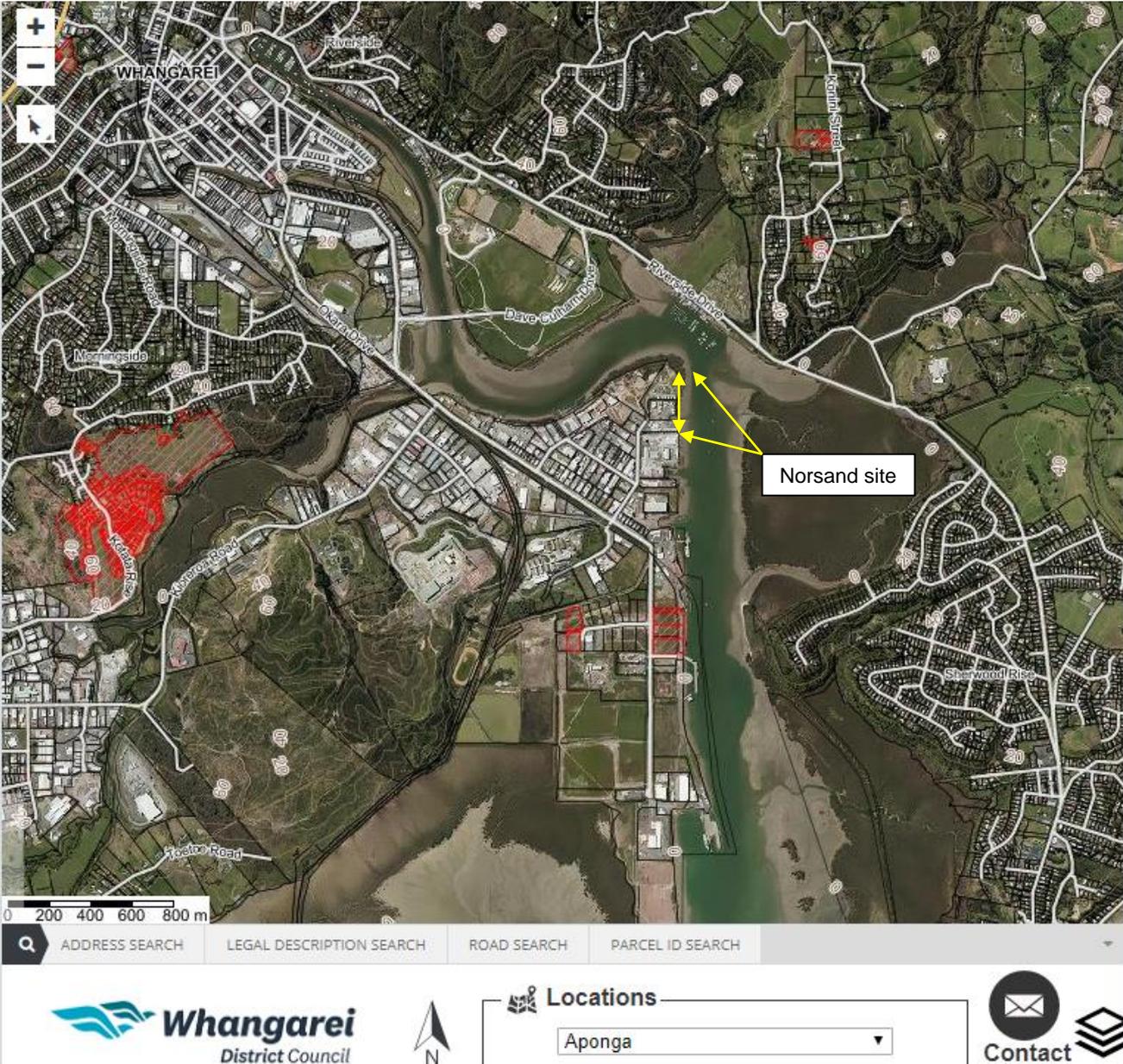
7. Conclusions

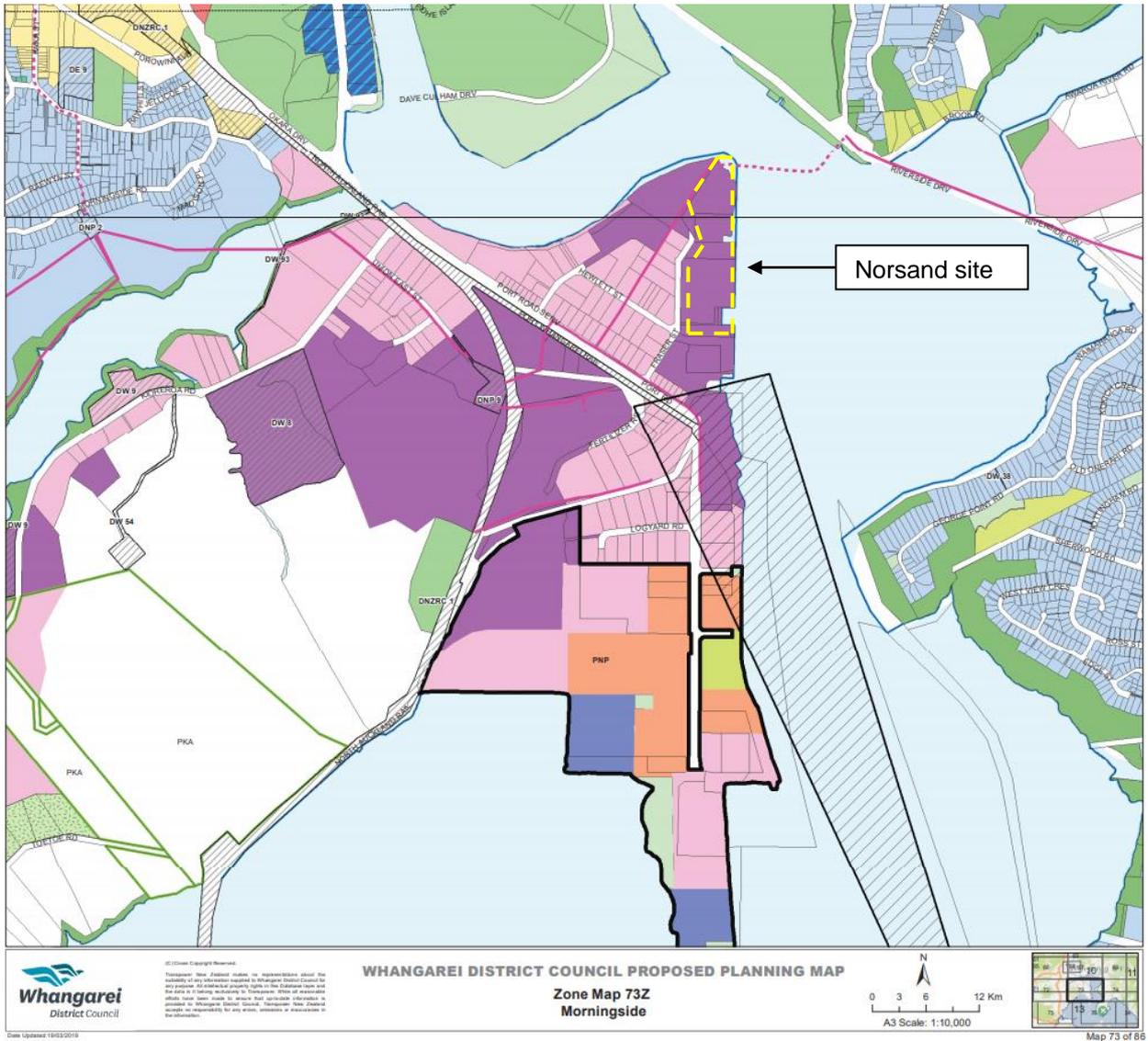
Norsand seeks the adoption of appropriate rules in the district plan that:

- (i) recognise the needs of specific industries such as the marine repair activity;
- (ii) do not unreasonably constrain key ancillary activities which support and facilitate its marine repair business; or
- (iii) add unnecessary consent application costs.

Stephen L Westgate
(for Norsand Ltd)
10 November 2019

NORSAND LOCALITY MAP





Proposed planning maps 73Z with part of 67Z superimposed, showing the Norsand site outlined thus (dashed yellow line).

