Auckland Council
Te Kaunihera o Tāmaki Makaurau

Councillors' Office

22 April 2016

Hon Dr Nick Smith
Minister of Building and Housing
Parliament Building
Wellington

Re: Special Housing Area (SHA), 1 Kelmarna Avenue, Herne Bay, Auckland

Dear Minister

I write in regard to the above Special Housing Area (SHA) (Tranche 9). I wish to bring to your attention important aspects of the SHA at 1 Kelmarna Avenue that may not have been brought to your attention.

Since the enactment of the Housing Accords and Special Housing Areas Act 2013 (HASHA), a total of 154 Special Housing Areas (SHAs) have been recommended to you by the Auckland Council. This is the first occasion I have had cause to write to you in regard to any SHA.

First of all in August 2007 the Environment Court (KJR Properties v ACC: ENV-2007-000663 (Decision No A 088/2008), declined consent for a similar but smaller scale development on the same site due to concerns about the combined effects of bulk and location of proposed buildings.

The decision of Judge McElrea identified '*the dominance of the development produced by the high level of site coverage, the lack of buffer yards on the northern and eastern boundaries, the loss of direct sunlight to residential properties in Kelmarna Avenue.*' The Judge commented '*in another context this development might be admirable. In this location it seems out of place with considerable detrimental effects.*' These same concerns are triggered by the current SHA proposal, the effects of which will be commensurately greater with the development's almost 30% greater height. To compare the two proposals:

- the previous proposal had a tavern, retail, 14 office units, 4 townhouses and 4 apartments
- The current SHA is for 3 retail units and 70 apartments
- The previous application had 56 car parks on one level
- The current SHA has 98 car parks on 2 levels
- The previous application was for a height of 3 storeys - the SHA is 4 storeys
- the previous application did not build right to every boundary and included an open planted area
- The current SHA will be higher, bulkier and have greater site coverage.

The Waitemata Local Board which formally opposed this SHA, pointed out the while the development would permissible under proposed zoning changes under the Proposed Unitary Plan this zoning has not yet been settled under the Unitary Plan and there are 17 extant submissions against increased height and density in the area and at that specific site. The Board referred to the decision of the Environment Court, noting:

'There is a proven record of considerable community opposition to further development of the site that would be thwarted by the SHA process.'

Considering the two applications it would appear in terms of environmental affects and the extra traffic generated by it, the proposed SHA development, or 'over development' to quote Judge McElrea, is likely to have even greater adverse affects on the neighbouring environment and therefore more difficulties in 'internalising' these effects, than the proposal declined by the Environment Court.

Over-riding the civil rights of neighbouring property owners who have live submission before the Unitary Plan Independent panel should have given the Auckland Council pause – but this was before the high-handed out-of-scope upzonings sparked a residents' revolt and a back-down by the Council in February this year.

However, my principal concern in writing to you is a matter that has so far received scant attention but is very relevant to s16(3) of the HASHA.

s16(3) *The Minister must not recommend the making of an Order in council ... unless the Minister is satisfied that – (a) adequate infrastructure to service qualifying developments in the proposed special housing area either exists or is likely to exist, having regard to relevant local planning documents, strategies, policies, and any other relevant information.*

My primary concern relates to the question of the provision of adequate infrastructure to cater for the extra storm water and wastewater (sewage) that will be generated by this SHA.

As you would be aware, the wastewater and storm water collection system in this part of Auckland is over 100 years old and designed to be collected in a single pipe. According to Watercare the combined sewer network in this area *does* have sufficient capacity for the present level of wastewater flow – in dry weather. However, as it rains quite frequently in Auckland, combined storm water and sewage flows which exceed the capacity of the pipes overflow into the Waitemata Harbour. The situation is now chronic. As Watercare Services advises: '*Currently, there are around 50 constructed points in the combined sewerage system that discharge to the environment more than 52 times per year – most of which now spill every time it rains.*' This means raw sewage is discharged into our waterways and the Waitemata Harbour more than 52 times per year.

While Watercare management has indicated that construction of holding tanks under the SHA would largely arrest any extra storm water flows, nothing can be done to arrest the discharge of sewage and grey water from the 70 dwellings and 3 retail units. During heavy rain events this discharge would be added to the normal overflows. Therefore while arresting the storm water in holding tanks may mitigate the potential for greater magnitude of overflows, adding this level of sewage which cannot be arrested will mean greater concentration of pollutants, therefore the overflow will be more polluted, exacerbating the adverse effects on the environment.

It is worth pointing out that Watercare plans to construct a Central Interceptor which when completed will largely avert wastewater overflows but start of construction according to Watercare is still some way off – presently 2018 and on this timeline commissioning will not take place until at least 2025. Therefore until that time, at least 9 years away, existing storm water/wastewater infrastructure will most definitely not be adequate to cater for a development of 70 apartments and three retail units.

I refer again to s16 of the HASHA and the requirement for decision makers to have regard to '*relevant local planning documents, strategies, policies, and any other relevant information.*'

I wish to address these 'strategies, policies and any other relevant information' which I believe Council failed to have regard to. As the principal discharge point for sewage overflow from the suburb of Herne Bay is Cox's Creek 400 metres from the proposed SHA, the *National Policy Statement on Freshwater Management* 2014 (NPS) is relevant and needs to be considered. I would refer to Policies A1, A2, A3 and A4 which all require regional councils (i.e. Auckland Council) to act to ensure the attainment of Water Quality, Objective A1 and Objective A2.

Objective A1:

To safeguard:

a) the life-supporting capacity, ecosystem processes an indigenous species including their associated ecosystems, of fresh water; and

b) the health of people and communities, at least as affected by secondary contact with fresh water;
in sustainably managing the use and development of land, and of discharge of contaminants.

I suggest that to consciously permit the increased level of pollution from the sewage and grey water of 70 apartments and two shops to flow into Cox's Creek at least 52 times a year is contrary to the objectives of the NPS.

Part C of the NPS deals with **Integrated Management**.

Objective C1

> To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.

The words of the NPS speak for themselves. In the case of the Kelmarna SHA they have been ignored by the Auckland Council which has failed to take seriously the purpose of the NPS even though it is embodied in the Council's own Proposed Auckland Unitary Plan.

'Coastal Environment'and **'Coastal Water'.**

These words appear in section C of the NPS. The Cox's Creek pump station overflow is sited 200 metres from Cox's Bay, on Auckland's Waitemata Harbour. The Waitemata Harbour lies within the Hauraki Gulf Marine Park thanks to visionary legislation, the Hauraki Gulf Marine Park Act 2000 (HGMPA), which you yourself played a leading role in formulating when you were Minister of Conservation in the late 1990s.

According to s10(1) of the HGMPA, '*for the coastal environment of the Hauraki Gulf, sections 7 [Recognition of national significance of Hauraki Gulf] and 8 [Management of Hauraki Gulf] must be treated as a New Zealand coastal policy statement issued under the Resource Management Act 1991.*

I am sure you are familiar with ss7(1), 7(2) and 8(a)-(f) but I am reminded that s7(1) states: *'The interrelationship between the Hauraki Gulf, its islands and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.' etc.,*

And s8: '*To recognise the national significance of the Hauraki Gulf, its islands and catchments, the objectives of the management of the Hauraki Gulf, its islands and catchments are (a) the protection and, where appropriate, the enhancement of the life supporting capacity of the environment of the Hauraki Gulf, its islands, and its catchments.*' etc.,

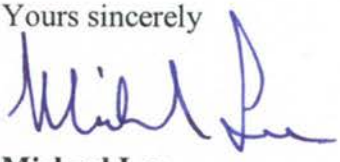
May I also draw your attention to s13: **Obligation to have particular regard to sections 7 and 8.** '*Except as provided in sections 9 to 12, in order to achieve the purpose of this Act, all persons exercising powers or carrying out functions for the Hauraki Gulf under any Act specified in Schedule 1 must, in addition to any other requirement specified in those Acts for the exercise of that power or the carrying out of that function, have particular regard to the provisions of sections 7 and 8 of this Act.*' Finally I refer to Part 3, s32(a)-(d) **Purposes of the Hauraki Gulf Marine Park**.

Again I would point out the deliberate provision for discharge of additional sewage and greywater from 70 apartments and 3 retail units to the waters of Cox's Bay more than 52 times a year will neither meet the purposes of the Hauraki Gulf Marine Park – nor the **Purpose of the Act** (s3) as elaborated in the **Preamble**, nor the objectives of the New Zealand Coastal Policy Statement embedded within ss7 & 8 of the Act.

In summary, while the Council ignored the advice of the Waitemata local Board and choose to pre-empt due process and the legal rights of the 17 submitters to the PAUP (which apparently it is able to do), the Council is legally obliged to comply with the Housing Accord & Special Housing Areas Act (2013). My submission is that the SHA at 1 Kelmarna Avenue does not have – nor will it have for conceivably 10 years from now – the 'adequate infrastructure' required under s16 of the Act, nor did the Auckland Council have regard in making its recommendation to you, to all the necessary 'relevant local planning documents, *strategies, policies, and any other relevant information'* required under the same section of the Act – notably its own Unitary Plan, the *National Policy Statement for Freshwater Management* (2014) and quite separately and even more importantly its ongoing statutory obligations under the Hauraki Gulf Marine Park Act (2000).

Accordingly, I formally seek the revocation of the SHA at 1 Kelmarna Avenue, Herne Bay, Auckland under s18(2) AND 18(3) of the Housing Accord & Special Housing Areas Act.

Yours sincerely



Michael Lee
Auckland Councillor
Waitemata & Gulf Ward