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Dear Minister

I am writing to express some concern about recent comments you have made in respect of the Environment Protection Authority.

One of my functions is to keep under review the system of agencies and processes established by the Government to manage the environment. The EPA is an important part of that system, and we all need to be assured that it is functioning well and achieving the tasks Parliament has given it. For that reason, I must take your comments seriously.

I noted a report in the *New Zealand Herald* last week in which you were quoted as saying that the “bureaucratic system is struggling to implement” the fast-track rules because they are “pro-growth, pro-development legislation”. You went on to say that “the EPA may very well have people who are better suited to an ideological nunnery rather than delivering on the Government’s manifesto and stated outcomes to rapidly grow the economy.”

I am not a neophyte when it comes to the cut and thrust of political rhetoric and have been known to chuckle at some of your ripostes. But in this case, I think your comments land heavily and unfairly. Staff must do what Parliament has required of them in legislation, much of it complex.

It became apparent to me, after taking up this role and acquainting myself with the various elements of the environmental management system, that the EPA is a very specialised agency that is home to skills that are not common in the public sector. This no doubt reflects the highly technical nature of some of the tasks delegated to it by legislation. Chemicals management is one such task. Having been responsible for the chemicals programme at the OECD (which is the international reference point for global agreements on chemicals management), I have some idea of the sorts of skills that need to be assembled.



My exchanges with the EPA have invariably left me confident that I have been talking to seriously qualified people doing their best, often with very limited resources. This no doubt reflects the quality of governance and senior management. The current CEO comes not from the bureaucracy but the private sector. So, if the EPA says no to things – or asks for more information – it generally does so on the basis of demands that legislation make of it.

Which brings me to the Fast-track Approvals Act. This Act is one of the most complex and convoluted pieces of legislation that I have ever seen. You no doubt pored over the draft legislation during its enactment, but let me just recall a couple of tasks that Parliament gave the EPA when it passed this legislative labyrinth. Recall, for example, that:

1. Under section 14, the EPA has 10 working days to decide whether a referral application is complete and within scope. To do that, it has to be sure that the application complies with section 13, which spells out – among other things – the information requirements that need to be ticked off. Section 13(4) itself contains 25 paragraphs, (a) to (y) – one short of the entire alphabet, and paragraph (y) spawns a further 9 sub-paragraphs. The EPA has to do this meticulously within 10 working days.
2. Even more heroically, under section 46, the EPA has just 15 working days to check whether the substantive application is complete and within scope. This means complying with sections 42, 43 and 44. At this point the EPA is dealing with much more voluminous material than at the section 14 stage. Sections 42 and 43 are very detailed. Section 44, by contrast, is a model of brevity simply stating that “information required by section 43 must be specified in sufficient detail to satisfy the purpose for which it is required”. That’s perfectly sensible. But the seemingly modest demand that the detail is ‘sufficient’ requires expert judgment and careful consideration of what is inevitably complex material.

I am following closely the development of the fast-track system. In my judgment – and it is early days – the fast-track is being handled with a high degree of professionalism. I am sure there will be teething problems. But if you were hoping for even swifter processing, I fear that you would not be able to assert that approvals are supported by evidence. That inevitably takes some time and resource to do professionally.

I recall that in its original incarnation, fast-track left the final decision in the hands of three ministers. That was contentious and did not survive. Ultimately, you and your colleagues decided to provide an accelerated process but leave others to assess the evidence and determine applications. That was a wise decision as you would have politicised many major resource allocation decisions.

As I observed at the time, it is a pathway that is not without precedent. A Parliament, of which I was a member, enacted the Clutha Development (Clyde Dam) Empowering Act 1982. It was highly controversial, in part, because it over-rode a High Court order overturning the water rights needed to build the dam.



The Government of the day ensured that it got its dam built and took political responsibility for the consequences. But speed didn't do the Clyde dam any favours. Concrete was poured before the extent of the seismic risks in play were known. The country spent hundreds of millions of dollars de-watering unstable ground along the margins of the new lake. The dam is an important asset in our power generation system. But the Clutha might have been developed differently – and less expensively – if a less-politicised and more cautious approach had been taken.

I know that you and many politicians of different political stripes have felt intense frustration with the way our planning system has operated. I have too, and you are right to question it. It remains to be seen whether the anticipated reform of the RMA will be an improvement. We all hope so. But as I have made clear, it will stand or fall on the quality of information that can be swiftly and easily amassed to enable decision-makers – be they councils or fast-track panels – to judge risks and, if manageable, propose sensible conditions.

In my view, you do not have the information systems you need to make a different sort of planning system work well. I draw to your attention a note I have shared with five of your colleagues calling for a federated environmental data system.<sup>1</sup> I would be happy to brief you on it. Such a system cannot be created overnight and will cost money. But it is an infrastructure investment every bit as important as any of the fast-track projects and would ensure that all of them will be better processed.

In the meantime, I would urge you to let the EPA do its job, at arm's length from Ministers, as Parliament intended. By separating decision-making from political interests, you wisely decided that complex environmental management decisions often involving public resources should be managed on the basis of evidence and should be able to demonstrate that they will deliver net benefits to our society.

If you have serious concerns about the EPA's conduct in respect of Fast-track, I would be very happy to discuss them with you, since one of my functions is to review the agencies and processes that comprise our environmental management system.

With kind regards

Rt Hon Simon Upton

**Parliamentary Commissioner for the Environment**  
**Te Kaitiaki Taiao a Te Whare Pāremata**

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<sup>1</sup> <https://pce.parliament.nz/publications/letter-and-note-a-federated-system-to-improve-environmental-information/>