

submitters in opposition cannot indicate their preference to extend the WCO. The tribunal disagreed. MAJAC submits that the tribunal's decision was in error of law.

[3] The MAJAC Trust owns land beside the Gowan River. The Gowan is a tributary of the Buller which flows from Lake Rotoroa, meeting the Buller after a distance of approximately 12 kilometres. MAJAC wants a resource consent under the Resource Management Act 1991 (RMA) to build a hydroelectric power scheme using a "run of the river" scheme whereby some of the river flow is proposed to be taken into a canal, always leaving 9 cumecs as a minimum flow. The proposal also includes a telemetry system to enable restoration of full flow to the river for rafters to utilise if they wish to be able to use the full natural flow of the river.

[4] The Buller WCO includes the Gowan River. It prevents a resource consent if the resource consent would effect a change inflow of more than 15%, where the naturally occurring instantaneous flow is 9 cumecs or more. These restrictions are there in order to protect rafting.

[5] The natural river flows of the Gowan fluctuate from below 9 cumecs to well above. A schedule anticipating possible diversion for hydro indicates a natural river flow ranging from 4.5 to 81 cumecs. The proposed diversion for hydro work would frequently exceed 15% of the flow. MAJAC wants to divert up to a maximum of 28 cumecs. It is not possible for the MAJAC Trust to obtain a resource consent unless the current prohibition in the WCO is amended.

[6] MAJAC has applied under the RMA to amend the WCO. The amendment sought would essentially add a 'let out' clause, removing the constraints on diversion where:

The full naturally occurring instantaneous flow is able to be restored by telemetry controls from time to time for periods of no less than one and a half hours to protect its rafting amenity.

[7] Telemetry controls mean that rafters can by use of telephone and associated electronics enable any diversion to cease from time to time for a period of no less than one and a half hours. This period of time is intended to allow the rafters to traverse the Gowan River along the length where it might otherwise be diverted.

[8] The application for amendment of the WCO has been met with a number of submissions in opposition. Those parties opposing the application include the Director-General of Conservation, the New Zealand Fish and Game Council, the Nelson Marlborough Fish and Game Council, the New Zealand Recreational Canoeing Association and the Royal Forest and Bird Protection Society of New Zealand.

[9] All of these entities filed submissions in opposition. These submissions taken together essentially seek two categories of relief:

- (a) They oppose completely the application to vary the WCO;
- (b) Some of them propose that the WCO be extended to include recognition of other outstanding characteristics in addition to rafting. The Director-General of Conservation wants the contribution that the Gowan River makes as an eel migratory pathway to the eel habitat in Lake Rotoroa to be added as an outstanding characteristic of the river, and also that the trout fishery be added as an outstanding characteristic. The Canoeing Association wants the Gowan to be protected for its outstanding white water kayaking features. Nelson Fish and Game wants recognition of the Gowan as an outstanding amenity for its trout fishery.

[10] MAJAC contends that it is not possible under the legislation for submitters in opposition to an application to vary a WCO, to seek to extend the WCO by adding additional characteristics, to those already protected. A Special tribunal was appointed to hear the application for variation. The Special tribunal upheld the right of the submitters in opposition to seek to extend the WCO, in respect of the Gowan River.

The problem of construction posed by the application

[11] MAJAC argues that the Special tribunal's decision was an error of law. Whether the Tribunal was in error of law turns on the meaning to be given to two sections in Part 9 of the RMA, ss 216 and 205. The problem of construction is whether the text of s 205, considered in the light of its (or s 216's) purpose, allows submitters in opposition to enlarge the issue of amendment of the WCO beyond that proposed by the applicant. Second, if the apparent statutory purpose is too general to resolve that question and it is likely that this issue was not considered by Parliament, whether and how the Court should answer the question.

[12] As will be seen, this becomes the ultimate issue. The Court of Appeal has said:

... the Courts must try to make the Act work while taking care not themselves to usurp the policy-making function, which rightly belongs to Parliament. The Courts can in a sense fill gaps in an Act but only in order to make the Act work as Parliament must have intended.

(See *Northland Milk Vendors Association Inc v Northern Milk Ltd* [1988] 1 NZLR 530, 538 per Cooke P for the Court)

Summary of resolution of the construction issue

[13] Parliament has not identified and expressly provided in s 205(3) for submitters who oppose a variation of a WCO to seek at the same time to extend its scope. There is no intention of Parliament evident in either ss 205 or 216 or Part 9 generally that guides as a matter of policy the resolution of this gap. The safest course in this instance is to adopt the interpretation which adheres as closely as possible to the text of s 205, with the least policy making consequence.

[14] What is of least consequence depends on the context. In this instance adhering closely to the text of s 205, notwithstanding its manifest policy gap, has the consequence that the submitters in opposition cannot seek to extend the present WCO. However, if they elect to, they can make their own applications for variation, under s 216. Accordingly, this application for review succeeds. The detail of this reasoning follows.

Development of legislative scheme for WCOs

[15] Part 9 of the RMA is devoted to water conservation orders (WCO). A WCO imposes restrictions or prohibitions on the exercise of regional councils' powers to control the taking, use, damming and diversion of water and the quantity level and flow of water in any water body and to control the discharge of contaminants into or onto land or water and discharges of water into water.¹ Frequently a WCO will include restrictions or prohibitions relating to the quantity, quality, rate of flow or level of the water body and the maximum and minimum flows or range of flows.²

[16] These restrictions are to protect outstanding amenity or intrinsic values afforded by waters, either in their natural state or if no longer in their natural state as are warranted because they are considered outstanding.³ The characteristics which can be considered to be outstanding and protected include water as a fishery and water for recreational purposes.⁴

[17] The consequence of the making of a WCO is that it takes its place high in the hierarchy of RMA regulation. It is useful to understand the RMA as providing for a hierarchy of regulatory restraints. At the top are the goals and purpose of the RMA, particularly set out in Part 2, but in respect of WCOs in s 99. The RMA provides for national and regional policies. A regional policy statement must not be inconsistent with a WCO;⁵ similarly a regional or district plan must not be inconsistent with a WCO.⁶ The consequence of the WCO is that it functions as a rule of exclusion. Section 217 provides:

217 Effect of water conservation order

(1) No water conservation order shall affect or restrict any resource consent granted or any lawful use established in respect of the water body before the order is made.

¹ s 200 and s 30(1)(e)(f)

² s 200(a) and (b)

³ s 199(1)(a)(b)

⁴ s 199(2)(b)(ii)(v)

⁵ s 62(3)

⁶ s 67(2) and s 76(2)

(2) Where a water conservation order is operative, the relevant consent authority—

(a) Shall not grant a water permit[, coastal permit,] or discharge permit if the grant of that permit would be contrary to any restriction or prohibition or any other provision of the order:

(b) Shall not grant a water permit, [a coastal permit,] or a discharge permit to discharge water or contaminants into water, unless [the grant of any such permit or] the combined effect of the grant of any such permit and of existing water permits and discharge permits and existing lawful discharges into the water or taking, use, damming, or diversion of the water is such that the provisions of the water conservation order can remain without change or variation:

(c) Shall, in granting any water permit[, coastal permit,] or discharge permit to discharge water or contaminants into water, impose such conditions as are necessary to ensure that the provisions of the water conservation order are maintained.

[18] By contrast, in the absence of a WCO the question of whether there should be a water permit falls to be considered against the customary standard under the RMA of examining adverse effects on the environment. This is an open ended inquiry taking into account numerous factors and not constrained by rules, in the absence of specific rules established by regional plans.

[19] In that sense WCOs are not under the umbrella of Part 2 of the Act. Part 9 is in that respect a special or exceptional code. This is illustrated most notably by s 199 which starts with these words:

Notwithstanding anything to the contrary in Part 2, the purpose of a water conservation order is ...

[20] The provisions of Part 9 are adapted from those in the Water and Soil Conservation Amendment Act 1981 (W & SCA), which provided for both national and local water conservation orders. Indeed the Buller WCO was gazetted under the RMA but emerged out of an application made under the W & SCA.

[21] Any person may apply for a WCO⁷. The application is to the Minister. The Minister appoints a Special tribunal to hear and report on the application or to reject

⁷ s 201

it.⁸ The Special tribunal ensures that the application is publicly notified⁹. The right to make submissions on an application is contained in s 205. This provides:

205 Submissions to special tribunal

(1) Any person may make submissions to the special tribunal about an application which is notified in accordance with section 204.

(2) Sections 37, 96(2) and (4), and 98 shall, with all necessary modifications, apply in respect of every submission made under subsection (1) as if—

(a) every reference therein to a consent authority were a reference to the tribunal; and

(b) every reference therein to a consent were a reference to an order.

(3) Any person who supports the making of a water conservation order but who would prefer—

(a) that the order instead preserve a different but related water body in the same catchment; or

(b) that different features and qualities of the water body be preserved,—

shall endeavour, in his or her submission,—

(c) to make that preference known to the tribunal; and

(d) to specify the reasons for the preference, referring, where practicable, to the matters set out in sections 199, 200, and 207; and

(e) to describe the provisions which, in the person's opinion, should be included in the water conservation order and the effect that those provisions would have on the water body.

(4) Any submission that does not contain all the matters referred to in subsection (3) may nevertheless be considered by the tribunal.

(5) Any person who makes a submission opposing the making of an order shall specify the reasons why he or she considers the proposed order is not justified in terms of section 199 and section 207.

(6) The special tribunal may, by notice in writing, require any person making a submission to supply such further information in respect of the submission as the special tribunal considers necessary.

(7) The closing date for serving submissions on a special tribunal is the 20th working day after notification of the application under section 204 is complete or such later date as is notified under section 37.

⁸ ss 202 and 203

⁹ s 204

[22] The special tribunal then conducts a hearing which is described by the statute as an “inquiry”.¹⁰ Section 207 requires the special tribunal to consider the application for water conservation order and in so doing have regard to “the application and/or submissions”¹¹. The special tribunal having conducted its inquiry then prepares “a report on the application for a water conservation order”¹².

[23] There is then provision for submissions to be made to the Environment Court¹³ and the Environment Court, if submissions are lodged, must then conduct a public “inquiry”¹⁴. Upon completion of the inquiry the Environment Court it is then up to the Minister to make a recommendation to the Governor-General in council to make a water conservation order¹⁵. Once that step is taken the Governor-General will of course make the order in council and the WCO will take effect.

[24] Before the RMA was enacted it would have been well understood that the making of a conservation order under the W & SCA is a substantial exercise, tending to be extremely contentious and taking a long time. This is illustrated by the Acclimatisation Society’s application for a water conservation order for the Rakaia River. It is discussed in the decision of the Court of Appeal *Ashburton Acclimatisation Society v Federated Farmers of New Zealand Inc* [1988] 1 NZLR 78. By the time the issues relating to this case reached the Court of Appeal in 1987, more than four years had elapsed since the order had been applied for in (June 1983). The special tribunal had conducted a hearing over 28 days at the end of 1984. The Planning Tribunal had conducted a hearing in May 1985.

[25] Application for what became the Buller WCO was lodged in September 1987. The Planning Tribunal’s decision was released on 31 May 1996! The conservation order itself was notified nearly five years later on 21 June 2001. There was litigation in-between that went to the High Court.

¹⁰ s 206, particularly subs (4)

¹¹ s 207(a)

¹² s 208(1)

¹³ s 209

¹⁴ s 210

¹⁵ s 218

[26] There are at least two reasons why WCO applications are time consuming. The first is that they proceed by way of at least one but usually two inquiries and have to take into account an enormous range of material. Second, if granted they have severe implications as to the use of water. So they are of themselves always of vital interest to conservationists, recreational users and last but not least to those persons and organisations who wish to take or divert water.

[27] Under the W & SCA it was possible for the conservation orders ultimately made to extend beyond the scope of the original application. This was confirmed by the *Ashburton Acclimatisation* decision. Although in the context of that statute the Court was only talking about changes in detail:

A public inquiry by the Tribunal under the special code is a step towards legislation, for by s 20D(5) an order takes effect as a regulation. Obviously the evidence at the inquiry and the Tribunal's own observations of the river system may bring to light desirable changes in detail. The public and all interested parties should be regarded as having notice of such possibilities. The Tribunal must have flexibility, within the broad limits of reasonableness and natural justice, and there is no ground for saying that they have gone too far in the present case.¹⁶

[28] There is no equivalent to s 205 in the previous legislation. It is plain that s 205 is consistent at the very least with the finding of the Court of Appeal in the *Ashburton Acclimatisation Society*. Subsection (3) enables any person supporting the making of a water conservation order to identify a preference:

- (a) that the order instead preserve a different but related water body in the same catchment; or
- (b) that different features and qualities of the water body be preserved,—

[29] There is no requirement that the tribunal advertise receipt of such an indication of preference but s 204(1)(b) gives the tribunal a discretion to do so.

[30] There is an immediate difficulty with the text of s 205(3), in the use of the word “instead” in paragraph (a) and “different” in paragraph (b). Subsection (3) seems to be addressing persons who support the WCO applied for. One construction of the phrase “*that the order instead*” may be that a person has the choice of

¹⁶ p 91

supporting the application for the making of a water conservation order, without qualification or alternatively supporting the making of a water conservation order in its place (instead) but as to a different but related water body or as to different features and qualities. The use of “different” has a similar consequence. This literal interpretation would, however, have a very odd and manifestly unreasonable consequence. For it would prevent a person who supports the application from adding a preference for a different but related water body and/or different features and qualities. Parliament clearly intends that a supporter can indicate his or her preferences. That being the case, there is no manifest reason why those preferences cannot be in addition to and/or alternative to the application. The words “instead” and “different” are inapt but do not prevent subs (3) from being construed in the light of its purpose, which is manifestly to allow persons supporting the making of a water conservation order to indicate other different but related water bodies that should be the subject of the WCO, and/or other different features and qualities that should be preserved. So Parliament intends that a WCO made under the RMA can protect matters in addition to those which were the goal of the original application.

[31] Once a WCO is in place, for two years no application can be made to the Minister to revoke it and the Minister may not allow any application to amend it unless satisfied that the application will have no more than a minor effect or is of a technical nature which would enable the order to better achieve any purpose for which it was made¹⁷.

[32] After two years these restraints do not apply. The relevant provisions are then s 216(2) – (4) inclusive which provide:

216 Revocation or variation of order

...

(2) Except as provided in subsection (1), any person may at any time apply to the Minister for the revocation or amendment of any water

¹⁷ s 216(1)(a)-(d)

conservation order, and every such application shall state the reasons for the application.

(3) Upon receipt of an application made under subsection (2), if

(a) the Minister is of the opinion that the application should not be rejected but that, by reason of the minor effect of the amendment, it is unnecessary to hold an inquiry; and

(b) the original applicant for the order (if that person can be located) and the regional council agree to the amendment—

the Minister may recommend that the order be amended, and the Governor-General may, by Order in Council made on the recommendation of the Minister, amend the order accordingly.

(4) Except as provided in subsection (3), an application made under subsection (2) for the revocation or amendment of a water conservation order shall be dealt with in the same manner as an application for such an order, and sections 201 to 215 shall apply accordingly.

[33] Section 216 manifests a clear intention that after two years it is open to any person to apply to revoke or amend a WCO. Second, it is intended that such an application be dealt with in the same manner as an application for an order in the first place. No problem as to the content of that intention appears in s 216. The problem emerges with the application *accordingly* of s 205.

The problem of construction

[34] One consequence of s 216(4) is that any amendment of a WCO is by way of the making of a WCO under s 214. The concept of making of a WCO is repeated in s 214. Accordingly, it is appropriate to read the reference to “making” a WCO under s 205(3) as including “making an amendment to”¹⁸.

[35] Applications for amendment of a WCO can be divided conveniently into two categories:

1. An application which seeks to amend a WCO by extending its impact.
2. An application which seeks to amend a WCO by restricting its impact, or revoking it.

[36] In the case of an application to extend a WCO there is no difficulty in applying s 205 accordingly. A submitter in support can also indicate extension to a different but related water body in the same catchment and/or additional different features or qualities of the water body to be preserved.

[37] In the case of an application seeking to restrict a WCO it is not easy to apply subs (3), because of its text. A person who opposes the application to restrict a water conservation order may also prefer the existing order to be extended to preserve a different but related water body and/or also preserve additional features and qualities. In such a case for an opposing submitter to be a “*person who supports the making of a water conservation order*” it is necessary to read the italicised words as referring to support for the existing WCO.

[38] This is what the special tribunal found. The tribunal held:

The plain wording of s 205(3) directs that the position of qualifying support is the support for the protection of a WCO [already in existence].

[39] That proposition gives no effect to the anticipatory character of the phrase “*the making of*”. It is not an ordinary meaning of s 205(3), but is rather a generous reading of s 205(3), ignoring those words in order to recognise that the opposing submitters supported the protection of the Buller WCO. The ordinary meaning of the opening words of subs (3), particularly “*the making of*” refer to a future event. They refer to the making of a WCO [or of an amendment to a WCO] as a consequence of an application which has been notified in accordance with s 204.

[40] So, if the person does not support the restriction of the WCO the person cannot ask for an extension in other respects except by the most liberal reading of subs (3). For s 205 separates supporters, (subs (3)) from those who oppose (subs (5)). Nor can such a submission be justified by reliance on subs (1), as to do so would render subs (3) redundant.

[41] Faced with this predicament counsel for the Director-General of Conservation, Fish and Game and Forest and Bird and Recreational Canoeing and

¹⁸ s 216(4)

Kayaking argued for a liberal construction of s 205(3). They argued that the application for an amendment to a WCO was to be processed as if it were an application for a [originating] WCO. Second, that submitters that oppose the application for a variation but in fact support the past making of the existing water conservation order fall within s 205(3). In the end all counsel taking this position submitted that the phrase “*apply accordingly*” in s 216 had to allow for a liberal reading of the relevant sections, particularly s 205, so as to enable a “sensible” interpretation and outcome. So, for example Fish and Game submitted:

The sensible interpretation of s 205 in these proceedings is that any person who supports the WCO may submit that other water bodies or features be protected.

(My emphasis)

[42] Counsel for the opposing submitters argued that such an interpretation was sensible because, viewed in the round, the scheme of the legislation was that any application for a WCO (which should include an amendment to a WCO) should be understood as triggering potentially wide ranging inquiry. They sought support from the W & SCA case *Ashburton Acclimatisation Society* (the Rakaia River case). There, in the High Court, Jeffries J had observed that an application under the water conservation provisions of that Act was a “triggering mechanism”. In the Court of Appeal Chilwell J agreed with Jeffries J and repeated his view that the “*triggering mechanism*”:

... set in train a full investigation culminating in a report and recommendation to the Minister. He referred to the level of public notification and participation before the Authority and the Tribunal and to the national importance and significance of a national water conservation order. In ruling that the application is not determinative of the proceedings he observed that the parameters of the order are not the preserve of the first applicant who may have a specialised interest in the subject of an application.¹⁹

[43] Counsel for the opposing submitters argued that while MAJAC may see the protection of the Gowan River as being only for rafting, they may not be aware that the flow set to protect rafting may also have been appropriate for the trout and eel fishery. An application to amend the conditions may be consistent with protecting

¹⁹ op.cit at p 101

rafting yet may threaten the trout and eel fishery. Counsel for MAJAC protested in 1996 that the Planning Tribunal had rejected protection being given to the Gowan River for a claimed outstanding headwater trout fishery.

[44] All counsel agreed that there is nothing in s 216 which suggests that any person cannot after two years reopen issues decided in the reports prepared for the original WCO by either the special tribunal or by the Environment Court or its predecessor. There is no issue estoppel.

[45] It appears to be the concern of the opposing submitters that if they cannot advance their concerns about the function of the Gowan as a pathway for eels or as an outstanding trout fishery they will be constrained in the arguments that they can offer against the proposal of a telemetry mechanism to protect the utilisation of the Gowan for rafting. Counsel for the applicant MAJAC counters that point by saying that the question of the eel and trout fisheries and any adverse effects on them by the hydroelectric proposal will inevitably be important matters which fall for examination at the hearing for a water permit. Indeed counsel for the applicant argued that the opposing submitters really wanted two rounds of the same argument, one in the context of the proposed amendment to the WCO and the other in the context of a subsequent application for a water permit, if the amendment were granted.

[46] These are all interesting points but do not really assist in discerning the intention of Parliament. They are arguments in support of a policy inconsistent with the text of s 205(3), namely that persons who oppose a particular restriction may use that opportunity to suggest other extensions.

[47] Mr Crosby, for MAJAC, argued convincingly that if an application to amend is withdrawn then any suggested extensions to that amendment are removed from the special tribunal also. This argument finds considerable support in the text of ss 205(1), 206(1), 207(a) and 208(1). For all these sections refer repeatedly to the special tribunal considering an application for a WCO²⁰.

²⁰ s 205(1) “make submissions to the special tribunal about an application”
s 206(1) “special tribunal with the application”

[48] Mr Crosby argued that s 205(3) should be given a literal interpretation. His argument was old-fashioned in the sense that he was contending for a literal interpretation whether it advanced the purpose of the statute or not. Although he cited s 5 of the Interpretation Act 1999 he also relied on the traditional proposition that if the words of a statutory provision are plain and unambiguous the Court is bound to construe them in an ordinary sense. He argued that it is only if the language of a statute is ambiguous that the policy may be taken into account.

[49] The notion that the meaning of a statutory provision can be plain and unambiguous without having taken into account the purpose of the text is a dubious proposition considered linguistically. But in any event, if it was ever law, it is not now. Section 5(1) of the Interpretation Act 1999 says:

The meaning of an enactment must be ascertained from its text and in the light of its purpose.

[50] Counsel for the opposing submitters conceded that their proposed construction struggled with the text in s 205(3), but submitted that in light of the manifest purpose of the statute, appearing in s 216(4), the provision should be read generously to enable the opposing submitters to seek variations extending the order.

[51] Section 5 of the Interpretation Act does not enable the Court to run roughshod over the text of a provision. The text still must be capable of bearing the meaning justified by its purpose. In any event, running roughshod over the text has to raise a serious question as to whether or not the Court properly understands its purpose.

[52] Often, and indeed here, there can be a collision between a literal meaning of the text, of s 205(3) and a manifest intention of Parliament appearing elsewhere in the statute, s 216(4). Such conflict is often a sign that Parliament has not foreseen the actual circumstance to which the statutory provision might apply.

[53] The argument canvassed applications to extend, to restrict, and to revoke WCOs enabled by s 216. Are there limits on how related a particular water body had

s 207(a) “have regard to the application and all submissions”

to be before sub-paragraph (a) of subs (3) applies? Was it Parliament's intention that opposing submitters could take advantage of an application to force a more wide ranging review of the whole of WCO? The range of outcomes post-WCO are broader than the range of outcomes pre-WCO. Pre-WCO the outcome is a WCO or not. The range of outcomes post-WCO are: staying with the status quo, extending the WCO, restricting the WCO or revoking the WCO.

[54] The difficulties with the text of s 205(3) suggest that when Parliament enacted s 216(4) it did not examine whether the language of s 205 could accommodate the potential range of preferences of opposing submitters responding to an application for a restriction or revocation of a WCO. One cannot be sure. But it is more likely than not. Accordingly, I proceed on the basis that Parliament did not consider the contingency of a submitter opposing a restrictive variation, yet also wanting to take the opportunity to seek an extension.

[55] Such considerations raises important issues of policy. This is particularly so if an applicant for an amendment can bring the whole process to an end simply by withdrawing the application. It is not the Court's role to fill any policy void left by Parliament. It can be legitimate to extrapolate from an evident policy if the text of the provision allows and it is beyond any real doubt that it is necessary to give effect to Parliament's intention. See *Northland Milk Vendors*, cited above in [11]. It is quite another thing to make a policy decision which should have been made by Parliament at the time.

[56] Where upon close analysis a Court finds, as it has here, that there is no relevant purpose then it is necessary to fall back on the text of the provision. When falling back on the text of the provision, where it is capable of two or more constructions, or applications, it is important that the construction must not create a public mischief or an injustice.

[57] In this case if s 205(3) is read as closely as is possible to its text the opponents of the application by MAJAC cannot take the opportunity while opposing MAJAC to indicate a preference to also extend the Buller WCO. However, that does

s 208(1) "a report on the application"

not cause a public mischief or an injustice because there is nothing to stop the opponents from applying independently to vary the Buller WCO.

Residual discretion

[58] Mr Christensen submitted that it would have been more appropriate for MAJAC to have taken this issue to the Environment Court for declaratory relief under s 310 of the RMA. He relied on dicta of Rodney Hansen J in *Red Hill Properties Limited v Papakura District Council and Anor*²¹.

[59] I am satisfied that the case has been fully argued. The arguments that were canvassed by all counsel in this case were thoroughly prepared and well presented by counsel experienced in this area of the law. I am further satisfied that the prudent course is to adopt the interpretation of s 205(3) which stays as closely as is possible to its text.

Conclusion

[60] Section 205(3) is to be read as closely as is possible to its text. Section 205(3) applies only to submitters in support of the application, to which they are responding.

[61] Accordingly, there is a declaration that those parts of submissions in opposition to MAJAC which seek to enlarge the present Buller WCO are outside the scope of the special tribunal, as they are not enabled by s 205(3).

[62] The special tribunal is to consider only MAJAC's application, submissions in support and any extensions, and submissions in opposition. These orders do not address the consequence if any of the submitters in opposition to MAJAC make independent applications to vary the Buller WCO.

[63] Costs are reserved.

²¹ (2000) 6 ELRNZ 157

Fogarty J

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