

Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment portfolio

Question No: 122
Hearing: Supplementary Budget Estimates
Outcome: Outcome 1
Programme: Environment Assessment and Compliance Division
Topic: MAULES CREEK COAL MINE - INVESTIGATION
Hansard Page: N/A
Question Date: 29 October 2014
Question Type: Written

Senator Waters asked:

The Department was investigating the Maules Creek Community Council allegations that the Maules Creek Mine consultant Cumberland Ecology knowingly, recklessly or negligently provided false and misleading information with regard to the extent and quality of the Critically Endangered Ecological Community (CEEC) of Box – Gum woodland that occurs within the Maules Creek offset properties. That investigation was stopped in April this year on the grounds that there was not enough admissible evidence to secure a conviction. There is ample evidence in the field that would be admissible for court, the three consultants can provide such evidence that will prove that false or misleading information was provided either knowingly, recklessly or negligently.

1. When was the advice received from the CDPP that there was no reasonable prospect of securing a conviction?
2. Are there any civil penalties or other penalties or sanctions with a lower standard of proof which are open to the Department in pursuing this matter?
3. Did the Department prepare advice on any of these penalties or sanctions for the Minister or for the CDPP?
4. Did the Department seek advice from the CDPP or any other body about pursuing any other penalty or sanction against the proponents in this case?
5. An independent review of the offset properties by Alison Martin was conducted to determine the extent of the CEEC. She agreed that 490ha was not the CEEC, that area of 490ha deleted was part of a much larger area that the three local consultants contended was not CEEC. Given that four consultants now agree that 490ha was falsely described is the Department considering taking any other action in relation to this matter?
6. Has the Department advised the Minister of any new information coming to light since the investigation was dropped?

Answer:

1. Following a review of the evidence available it was determined that there was not sufficient evidence to refer the matter to the CDPP.
2. The offence of providing 'false and misleading' under Section 489 of the EPBC Act is a criminal matter and no other civil penalties or sanctions are available.
3. No.
4. No. In line with Departmental processes, the matter was closed as it was considered that there was not sufficient evidence to support further action.

5. The Department is aware of the uncertainty around a number of estimates of the extent of listed ecological community in the offsets areas. The Department continues to work with the proponent to finalise the appropriate offsets.
6. No.