

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

Question No: 54
Hearing: Additional Estimates
Outcome: Outcome 5
Programme: Environment Assessment and Compliance Division
Topic: Maules Creek (EPBC 2010/5566)
Hansard Page: N/A
Question Date: 07 March 2014
Question Type: Written

Senator Waters asked:

On 27 December 2013 the Department was provided with the independent review of offsets for the Maules Creek coal mine which was required under Condition 10 of the EPBC approval.

1. It's a requirement that the proponent to publish the independent review. However given their delay and the Department's inability to require them to publish it in a timely manner due to poorly drafted approval conditions, coupled with the considerable public interest in the contents of this independent review, why will the Department not publish this review of its own accord?
2. What if any legal grounds prevent the Department from publishing this review?
3. Please provide a summary of the key issues and findings of the independent review?
4. What is the Department's understanding of the proportion of Whitebox Gum Woodland contained in the Maules Creek offsets?
5. Would a project which wipes out hundreds of hectares of nationally significant habitat without any genuine offsets be likely to comply with the National Offsets Policy? Would it be likely to obtain an approval under the EPBC Act?
6. In his comments in the Federal Court judicial review of the Maules Creek mine approval Justice Cordroy, at paragraph 39, stated that if adequate offset areas cannot be found, "the offset conditions will necessarily be breached". In that case, the Minister's power to vary the conditions, or suspend or revoke the entire approval of the project would also be enlivened. Does the Department agree with those statements?
7. What is the Department intending to do if it is found that there is insufficient Whitebox remaining in the world to offset the mine?
8. What was the process undertaken for selecting the independent reviewers?
9. Who selected the reviewers and what was the criteria used for selecting each reviewer?
10. Did the proponents have any input into the criteria, decision-making process or the selection of the reviewers?
11. Is the Department aware of any communication between Alison Martin, the independent reviewer, and Cumberland Ecology, and if so, what is the nature of that communication?

Answer:

1. Whitehaven Coal has published the report of the independent review of offsets on their website in accordance with condition 10 of the Maules Creek Coal Mine approval. Please note also that on 15 April 2014, Senator the Hon Matthew Cormann, Minister for Finance, provided a copy of the independent review to Senator the Hon John Hogg, President of the Senate in compliance with an order of the Senate.
2. Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) the Department is neither required to, nor prevented from, publishing this document (although

there may, in particular circumstances, be other legal grounds that would prevent the Department from publishing the document).

3. The Department has considered the independent review and has found the report to be generally sound, based on the data and information provided. The review found the majority of areas surveyed through the independent review conformed to the mapping provided through the original environmental assessment, including the areas identified as critically endangered Box Gum Woodland. The review also found that additional offset areas were required to meet the terms of the conditions.
4. Information in relation to the proportion of White Box Gum Woodland contained in the Maules Creek offsets is drawn from the material submitted for the purposes of the assessment of the Maules Creek Coal Mine proposal. The Department's understanding of the proportion of White Box contained in the Maules Creeks offsets is as described in the Independent Review of Offsets and the report commissioned by Whitehaven to verify additional offsets.
5. Projects which are likely to have a significant impact on matters of national environmental significance and where the proponent has not demonstrated clearly that sufficient and effective mitigation and offset measures will be undertaken are not likely to obtain approval under the EPBC Act.
6. The Department does not make any comment on the specific findings of Justice Cowdroy's judgment of *Northern Inland Council for the Environment Inc v Minister for the Environment* [2013] FCA 1419.

Where a condition attached to an approval has been contravened, the Minister has the power to vary, add to, or revoke the conditions under section 143 of the EPBC Act. Additionally, the Minister may suspend or revoke an approval pursuant to sections 144 and 145 of the EPBC Act where a significant impact on the matter protected by the provision of Part 3 has occurred because of the contravention of a condition.

7. In considering whether to approve a proposal referred under the EPBC Act, the Minister or his delegate must take into account matters relevant to any protected threatened species or ecological community, and economic and social matters. The Department provides all relevant information available, including in regard to the status of listed matters relevant to the proposed action, to enable the Minister to make an informed and legally robust decision on whether or not to approve the proposal under the EPBC Act.
8. Condition 10 of the Maules Creek coal mine approval requires that the person taking the action must verify through an independent review the quantity and condition of each of the relevant protected matters. The definitions attached to the conditions define an independent review as *an investigation conducted by an independent expert ecologist who has been approved by the department*. Accordingly, Whitehaven Coal selected an independent expert ecologist to conduct the independent review and submitted to the Department, for approval, details of the candidate and a comprehensive account of their relevant qualifications and previous experience. Before approving the candidate, the Department sought further information on the independence of the candidate.
9. Whitehaven Coal selected an independent expert ecologist to conduct the independent review. The conditions of approval do not specify criteria for the selection of an independent review beyond the requirement for the reviewer to be an expert ecologist and approved by the Department.

10. Yes

11. The Department is not aware of any specific communication between Alison Martin and Cumberland Ecology, although the Department is aware that Alison Martin has previously been contracted by Cumberland Ecology to work on projects.