

MAY IT PLEASE THE HEARING PANEL:

1. As stated in oral submissions by Counsel for the Director-General on 26th February, artificial light pollution-effects on Westland petrel have been a major issue since the applicant first proposed to mine the Barrytown Flats over four years ago. Written submissions by Counsel for the Director-General explicitly stated that uncertainty remained as to, '[w]hether lighting that accords with the Australian Light Pollution Guidelines for Wildlife 2020 ('Lighting Guidelines') complies with relevant health and safety requirements for mines' (at [13]). The Panel adjourned the hearing to enable to applicant to obtain the appropriate information.
2. The applicant responded by providing a statement from Dr Gary Bramley, Ecologist, dated 8th March 2024. There is an attachment to that statement containing a memorandum from IHC Mining dated 7th March 2024, authored by Tom Lawson, addressing lighting (see pp 16-18). Mr Lawson previously confirmed his qualifications and experience in his statement dated 19th January 2024 (at [4]). It is unclear whether Mr Lawson has the appropriate qualifications and experience to provide lighting engineer-evidence.
3. Regardless, the applicant has filed over 2,000 pages of information but has still not provided expert evidence from a suitably qualified lighting engineer *confirming* that lighting to be used on site *necessary for mine health and safety requirements*, can be *compatible with the Lighting Guidelines*.¹
4. Given that we still do not have this expert opinion – and that it is such an obvious issue to be addressed - the growing concern on behalf of the Director-General is that the applicant cannot provide this confirmation.
5. This presents a real possibility that: (1) conditions requiring compliance with both the Lighting Guidelines *and* mine health and safety requirements are not achievable and are therefore ultra vires, and (2) the applicant will have to apply to amend and / or remove the conditions that aim to protect Westland petrel from light pollution at a later stage, using s 127.
6. Without this information and clear expert opinion, it is not reasonably possible for the Panel to find that the applicant can avoid, remedy, or mitigate the adverse effects from artificial lighting on Westland petrel.



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¹ Note also Kate Simister's evidence dated 15th March 2024, which states the 2020 Lighting Guidelines have been superseded by 2023 Guidelines.