



19 November 2019

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Sydney Zoo – SSD 7228 Modification 3 – Supplementary Submission

We refer to your email dated 12 November 2019, and the IPC's confirmation that it will accept further submissions in relation to Modification 3 until Tuesday 19 November 2019.

The purpose of this submission is:

- to summarise Featherdale Wildlife Park's position in relation to Modification 3 for the benefit of the IPC; and
- to bring to the IPC's attention our significant concerns about the NSW Department of Planning, Industry and Environment's (**DoPIE**) misconduct persuading Blacktown City Council (**Council**) to withdraw its objection to Modification 3.

Summary of Featherdale's Position

Sydney Zoo has submitted Modification 3 as part of a deliberate strategy to unwind representations that it made to the PAC that it would be an exotic animal zoo for Western Sydney families, and therefore different to Featherdale. It is a pattern of behaviour that Sydney Zoo has consistently implemented since the grant of Development Consent.

In particular, Sydney Zoo has recently lodged a further Modification 5 which seeks to 'water down' a fundamental representation it made to the PAC that it would have certain iconic exotic species in place at opening of the new zoo to ensure that the market would perceive Sydney Zoo as an exotic animal zoo and different to Featherdale Wildlife Park.

For all of the reasons set out in Featherdale's objections to date, and in this letter below, Featherdale's position is that the IPC should determine to refuse Modification 3 on the following key grounds:

- (a) the proposed expansion and intensification of public access to Sydney Zoo proposed in Modification 3 is premature given the absence of an acceptable approach, or lawfully approved approach, to 'enhance regional tourism' as required by Condition C9;
- (b) the proposal will have unacceptable adverse social and economic impacts in the locality – because it will adversely impact the commercial feasibility of Featherdale such that it will be unable to maintain programs which have significant social, educational, employment and conservation benefits for the locality;
- (c) it is not in the public interest to approve expansion and intensification of public access to Sydney Zoo given Sydney Zoo's conduct to date in relation to non-compliance with conditions of the Development Consent and non-compliance with representations that it has previously made to the PAC to obtain the Development Consent and
- (d) section 4.55(1A) is not a valid approval pathway for a modification resulting in such significant detrimental social and economic impacts in the locality – and the IPC cannot be satisfied that the proposed modification is 'of minimal environmental impact' for the purposes of that approval pathway.

Despite the above, if the IPC does not determine to refuse Modification 3, then we respectfully submit that the IPC should either:

- (a) delay any decision in relation to Modification 3 until our significant concerns in relation to the validity of the Secretary's decision to approve Sydney Zoo's Condition C9 Regional Tourism Report is resolved either by the Secretary, or the Land and Environment Court of NSW; or
- (b) grant approval subject to Condition B8 of the Development Consent being amended to restrict any members of the public (including individuals, or as part of family, public or private tour groups) visiting between the expanded operating times of 7.30am to 9am for the first three years of operation of the facility. The suggested amended condition would read as follows (with changes underlined):

'B8. For the first three years after opening to the public, the Applicant is prohibited from:

- (a) having Interactive Programs that involve touching a koala except as part of demonstrations in the educational amphitheatre or provided in the context of education of school groups; and*
- (b) having any members of the public (including as individuals, or as part of family, public or private tour groups) accessing the site before 9am on any day of the week.'*

Department's Misconduct - Condition C9 Report

We refer to the Department's Assessment Report for Modification 3 dated July 2019 (**Assessment Report**).

The Assessment Report provides that Council also originally objected to Modification 3 on, among other grounds, that it was premature to approve Modification 3 while satisfaction of Condition C9 remained outstanding. In particular, the Assessment Report provides [at page 9]:

'Council objected to the proposed modification on the basis that the proposed private zoo experiences/small group tours were insufficiently described and justified. Council considered these activities were not consistent with the approved extent of operations of the zoo. Council did not object to the remaining proposed modifications.

Council requested the Applicant demonstrate how Condition C9 of the consent has been satisfied. Condition C9 requires the Applicant to prepare a report demonstrating how it will develop and enhance regional tourism in conjunction with the Development prior to the commencement of operation. This included consideration of how the private zoo experiences/small group tours satisfy this condition.'

The Assessment Report goes on to provide that Council withdraw its objection based on advice that the Secretary is satisfied the requirements of Condition C9 of the Development Consent have been adequately met. More specifically, the Assessment Report provides [at page 10]:

'Council confirmed the reason for its objection related to concerns that the proposed private tours, being an additional operating requirement, were pre-emptive given the requirements of Condition C9 have not yet been satisfied. However, Council advised it formally withdrew its objection to the modification application on the basis the Secretary is satisfied the requirements of Condition C9 of the consent have been adequately met.'

The Assessment Report is dated July 2019 and was prepared at a time when the Department was fully aware that there was an unresolved dispute between Sydney Zoo and Featherdale in relation to Sydney Zoo's non-compliance with numerous consultation obligations contained in Condition C9. Further the Assessment Report is dated about 3 months before we understand the Secretary's delegate decided to approve Sydney Zoo's Condition C9 Report.

In light of the above, it is clear that:

- the Secretary's decision to approve the Condition C9 Report was affected by bias and predetermination in circumstances where the Department responsible for making the recommendation for approval to the Secretary's delegate had already decided, before the assessment was complete and any decision made, that the Secretary would be satisfied of those matters; and
- it was highly unacceptable and improper for the Department to have made any suggestion to Council that the Secretary was satisfied that the requirements of Condition C9 have been met when that statement was blatantly incorrect.

We respectfully request the IPC to take this submission into consideration in its assessment of Modification 3.

Featherdale Wildlife Park reserve its position in relation to all of the matters set out in this letter.

Yours Sincerely



Tony Chiefari
General Manager
Featherdale Wildlife Park