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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT PLANNING COMMISSION

MEETING WITH FEATHERDALE WILDLIFE PARK

RE: SSD 7228
SYDNEY ZOO MOD 3

PANEL: RUSSELL MILLER
ALAN COUTTS

ASSISTING PANEL: DENNIS LEE
XANTHE O'DONNELL
MICHAEL WOODLAND
BRENT DEVINE

FEATHERDALE
WILDLIFE PARK: TONY CHIEFARI
CHAD STAPLES
BEN FULLER
JOHN WYNNE

LOCATION: IPC OFFICES
LEVEL 3, 201 ELIZABETH STREET
SYDNEY, NEW SOUTH WALES

DATE: 9.49 AM, WEDNESDAY, 28 AUGUST 2019

MR R. MILLER: So I will declare the meeting open, and good morning. Welcome, before we begin, I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal people, and I would like to pay my respects to their elders, past and present, and the elders from other communities who may be here today. Welcome to this meeting today. Sydney Zoo Proprietary Limited, the applicant, is seeking approval to make amendments to the conditions of consent for Sydney Zoo at Bungarribee, is it? To clarify the public opening hours, and to extend the hours of operation to provide greater flexibility for other activities to be undertaken outside the public opening hours. My name is Russell Miller. I'm chair of this IPC panel.

Joining me is my fellow commissioner, Alan Coutts. The other attendees at the meeting today are Dennis Lee from the Commission Secretariat, Michael Woodland and Brent Devine from Keylan Consulting who will be assisting the secretariat, and – there she is – Xanthe O'Donnell from the secretariat who is sitting in. In the interests of openness and transparency, and to ensure full capture of information, today's meeting is being recorded, and a full transcript will be produced and made available on the Commission's website shortly. This meeting is one of part – is – is one part of the Commission's decision-making process.

It's taking place at a preliminary stage of this process and will form one of several sources of information on which the Commission will base its decision. It's important for the Commissioners to ask questions of attendees, and to clarify issues whenever we consider it appropriate. If you're asked a question and you're not in a position to answer, please feel free to take the question or notice and provide additional information in writing, which will then be put on our website. Um, I request all members here today introduce themselves before speaking for the first time, and I think we will do that actually before we – anybody start at all, and for all members to ensure that they don't speak over the top of each other to ensure accuracy of the transcript. We will now begin. Over to you, Wynne.

MR J. WYNNE: Thank you. John Wynne is my name.

MR MILLER: Oh, sorry, John.

MR WYNNE: Um, I'm a group director at Urbis, um, town planner. Um, joining me today is Tony Chiefari, who is the general manager of Featherdale Wildlife Park. Ah, Chad Staples, who is the director of life sciences at Featherdale Wildlife Park, and Ben Fuller, partner at Gilbert + Tobin Lawyers. Mr Glenn Willis, the CEO of Elanor Investors is an apology for this meeting. Um, thank you for that introduction, and thank you for the opportunity to, um, talk to the Commission today. Um, we're proposing that I will do an initial run through of our key propositions and points.

MR MILLER: Thank you.

MR WYNNE: Um, and then we will invite, ah, the rest of the group to add anything they would like to add to what I've said, um, and then we're more than happy to have discussion with you or anyone else about any details that we raise. Um, the submission that I will talk to today, we will provide you with a copy, ah,
5 immediately after this meeting, um, and we – ah, if we need to provide an electronic copy, we will provide an electronic copy so that can be posted, ah, as well. So if you're comfortable with that - - -

MR MILLER: Thanks, John. That - - -

MR WYNNE: Ah, I just want to confirm we've got about an hour? So, um, um, you know, there's initial presentation – it will take a bit of time, and then we will go from there. Um, so – um, so John Wynne from Urbis on behalf of, ah, Elanor Investors, who are the owners and operators of Featherdale Wildlife Park. Um, it's
15 Elanor's position that modification 3, ah, to Sydney Zoo should be refused. Um, we submit that if modification 3 is approved, it will adversely affect 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 region, and the local community.

Before turning to the reasons why modification 3 should be refused, we think there are some critical issues that are relevant to and bring a heightened sense of understanding and alertness to the IPCs assessment of this matter. Um, and we would like to take the opportunity just to bring you some context to that. Um, a
25 starting point, I think, is to – it's important to remember that Sydney Zoo is located about three kilometres from Featherdale Wildlife Park. Featherdale Wildlife Park has operated in the Doonside area for coming up to 50 years.

Um, it's an established, um, and highly recognised and highly awarded facility, um, that has become an institution not just in Western Sydney, but in New South Wales. Um, it has been recognised for its significant contribution to regional employment, tourism activity, animal welfare, education and longstanding community connections. Um, most importantly for us in context as well, is the nature of submissions and representations that were made by Sydney Zoo during the initial
35 determination of the first SSD application. Sydney Zoo made significant representations to the Department of Planning and the PAC, now the IPC, to endeavour to differentiate its new zoo from Featherdale.

Specifically, they committed to differentiating the facility in relation to a number of key elements, the type of facility they're providing, the pricing of the facility, the type of Australian animal encounters to be provided, and the size of Australian animal encounters. Um, it also made representations to the Department of Planning and the PAC that the new facility would be primarily an exotic animal zoo, targeting the Western Sydney family market. And I'm sure you're aware that during the
45 assessment process and determination process, there was significant amounts of information presented to the department and the PAC. Those – all that information is referenced in the conditions that have been imposed on the condition of the consent.

There is an obligation there that those matters are adhered to. The representations were made by Sydney Zoo in an endeavour to appease the department, and we say the PACs concerns in relation to unacceptable social and economic impacts in the locality that would otherwise be caused by the operation of a new zoo. That was
5 always Featherdale's proposition, is that competition is competition, but competition has to be managed in such a way that it does not endanger the broader regional and social, ah, economic benefits, and – and attributes that the existing facility operates on. Um, the representations at Sydney Zoo, ah, made, was that – was in response to recognition that if Sydney Zoo is not adequately differentiated from Featherdale, it
10 would adversely affect the commercial feasibility of Featherdale in such a way that it may not be able to maintain its programs for which it has – ah, which have significant social, educational, employment and conservation benefits for the locality.

15 That was the proposition that was put during the assessment of the application, and Sydney Zoo endeavoured to address and appease those concerns by putting forward a series of differentiation commitments. Um, again in terms of context, just for the – to remind the commission, the programs that are implemented by Featherdale include some of the most significant conservation programs in Australia, and Chad, um, in
20 particular can talk to these, ah, following my submission. But they include the Plains-wanderers Saving our Species program, which is initiated by the Commonwealth government.

It includes the reptile seizures program. Featherdale is the only facility in Australia
25 that has agreed to accept reptiles that have been seized by the Commonwealth Department of Environment and State National Territory parks and wildlife services, to prevent illegal exports of these animals. It includes research projects. Featherdale houses Australia's largest collection of native animal species. It is committed to facilitating research projects into those native animals, including making its koalas
30 available for the National Koala Genome Project. And education, there is – we would submit to you, no better resource available to schools in New South Wales than Featherdale.

Australian animals in their environments are a syllabus requirement for every student
35 in New South Wales. Featherdale has over 250 native species living in a reflective natural environment for students to study and learn about. Featherdale provides lessons to all students taught by qualified teachers incorporating animals specifically kept as ambassadors for education. Education of school children has been a passionate commitment, a project of Featherdale for decades, and this program
40 would be a huge loss to the education system of New South Wales if it were to cease.

So there are some very significant – ah, attributes of Featherdale that extend just beyond its role as an attraction for people to come to. The PAC in approving Sydney Zoo, um, we say rightly imposed conditions enforcing the differing – the
45 differentiation obligations that were submitted by Sydney Zoo, in the, ah, in the process of the development assessment. To highlight the – what those differentiation contributions again were, um – sorry; the differentiation obligations that were

imposed by the consent covered the following areas. First of all, the development consent requires Sydney Zoo to price the new zoo comparatively with Taronga Zoo, and so that its pricing is a critical differentiator from Featherdale Zoo. So it was to be more expensive.

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The development consent requires Sydney Zoo's marketing to be differentiated by allowing Featherdale to continue to occupy the niche of getting close to native animals. And for Sydney's native animals exhibit to be part of an integrated Aboriginal cultural experience. The consent requires Sydney Zoo's native animals exhibit area to be limited to 1.6 hectares, within an area designated for native animals, and the development consent limits the hours of operation for the zoo to any – on any day, 9 am to 10 pm December to January and 9 am to 6 pm February to November. Those were conditions that were imposed in direct response to the commitments that were made by Sydney Zoo.

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It's really important, I think, for the commission to understand from our perspective, we're seeing a lot of things that may not be evident to what the Department of Planning is seeing, and what you may be aware of. So we just want to bring to your attention that since the grant of the development consent, Sydney is – of the development consent, Sydney Zoo has embarked on a course of conduct which demonstrates that it has disregard for the differentiation obligations imposed by the PAC. And – and all the team here will – can talk to this in more detail, ah, at the end of this.

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But from my point of view, this includes firstly Sydney Zoo is actively marketing trade rates of 12 or 15 dollars per visit, which is significantly lower than that of Featherdale, and significantly lower than that of Taronga Zoo. So it was to price differentially higher, and it's directly doing the opposite. Sydney Zoo is marketing itself as an opportunity for visitors to get up and close to koalas, and a range of other unique species. The marketing contains no reference – or we would say no adequate reference to the – to that experience being part of an integrated Aboriginal cultural experience.

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There isn't a single reference to any species of exotic animals in the latest marketing material produced by Sydney Zoo, and it states overtly that the wildlife experience it is creating is one of the – one of Australia's best displays of native Australian flora and fauna, and we have, um, ah, information that can, ah, support, ah, all of this. In addition, Sydney Zoo has been deliberately marketing itself to international tour operators in breach, we say, of those differentiation obligations and hours of operation limitation as part of a clear strategy to make the new zoo more attractive to international tour operators. Sydney Zoo put forward that it was a local facility serving the people of Western Sydney.

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Sydney Zoo has not been undertaking any marketing to Western Sydney families. It's in flagrant disregard, we say, to the representations made to the PAC that it would be a zoo for Western Sydney. Sydney Zoo is also marketing an area for Australian animals which is larger than 1.6 hectares. Sydney Zoo is also marketing

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operating hours for the new zoo as being 9 to 5, which is correct, but with negotiable early access, or – or implying that those operating hours will soon be changed. We submit to the Commission that this is pre-empting – Sydney Zoo is pre-empting and behaving with real – total disregard to the planning conditions, and we say is attempting to undermine the authority of the PAC and the conditions of consent.

Sydney Zoo is also flouting, we say, the representation it made to the PAC that it would have two thirds of exotic species for display from the opening of the zoo, and that it would maintain those exotic species post opening to sufficiently differentiate its animal offering. So again, to highlight, they are saying we're an exotic zoo, ah, with exotic animals. Featherdale is a native zoo, and we will commit to ensuring that we have two thirds of those species being exotic and available at opening and beyond. We've become aware – Featherdale has become aware and Chad and Tony can talk about this – that Sydney Zoo has approached the owners of Hunter Valley Zoo as one example to agist giraffes, two giraffes for a temporary period of six months commencing in the second half of 2019.

We anticipate that this reflects the difficulties that Sydney Zoo is having in acquiring exotic animals to satisfy its two-thirds requirement. So an agistment, as you would understand, is a temporary storage of animals for a limited period of time. We see in that no commitment for the condition of content to have, ah, exotic species, two-thirds exotic species, ah, at opening and beyond opening. And again, we can highlight the concerns we've raised about that to various government departments, ah, as – in addition to talking to you today. So Sydney Zoo's non-compliant conduct, we say, presents real harm to Featherdale's operations, and more importantly, Featherdale's ability to maintain beneficial economic conservation and social programs in the region.

Sydney Zoo's marketing conduct is fundamentally cutting across the intent and purpose of the differentiation obligations imposed by the PAC, ah, and so that it can deliberately lock in tour groups for the opening of the new zoo. Um, Elanor has made repeated approaches to the Department of Planning seeking attention, alerting the department to these concerns, and seeking attention to ensuring compliance with the conditions of consent. Um, I think we would be saying – to date, we have been dissatisfied with the department's appreciation of the various elements of activity being conducted by Sydney Zoo, which in isolation might look, um, relatively benign. When you put them together, it represents a significant creep and expansion of what has been approved.

Um, given, ah – beyond seek – approaches to the department, um, Elanor has directly requested Sydney Zoo to refrain from non-compliant marketing activity. And Sydney Zoo has refused to do so. This issue is now subject to civil enforcement proceedings, commenced by Elanor against the zoo in the Land and Environment Court and Ben, uh, can talk to that, ah, as to the status of that. So we say that this modification, number 3, is consistent with Sydney Zoo's strategy to erode and/or dilute or sidestep its obligations to differentiate itself from Featherdale. This application presents itself as a benign, ah, matter.

It seeks to modify the development consent, um, in a – in a – in a manner that is trivial. The application actually seeks to modify the consent to allow private zoo experiences, small group tours of up to 600 additional visitors between 7.30 am and 9 am. They cannot operate in those hours currently. We say modification 3 is a
5 further step by Sydney Zoo, um, to step away from its obligations, and undermining the authority of the PAC's decision and the consent obligation. Sydney Zoo has – has sought to brand modification 3 as a trivial matter. It has done this by describing it as a clarification of operating hours. It's no such thing. Um, it has also pursued the modification approval contained under section 4.55(1A) of the Act, of the
10 Environmental Planning and Assessment Act which is intended, as you would be aware, for modifications of minimal environmental impact only.

We submit that modification 3 is not clarification of hours and is not of minimal environmental impact. It is a material change to the differentiation obligations
15 imposed by the PAC in the consent. It presents a material risk of harm to Featherdale's operations, and its ability to maintain its important economic and social programs. To fully appreciate the concerns with it – and you raised the issues of what are the regional tourism and social impact issues - - -

20 MR MILLER: Yes.

MR WYNNE: I will provide an overview – and again, Tony and Chad and – can provide others. Um, but to understand the concerns of Elanor, it's – we just give a broad overview of the way tourism activity is operating in accordance with
25 Featherdale. There are two key timeslots for international tour groups that visit Featherdale, which in its simplest, comprises the morning group and the afternoon tour group. On an average day, Featherdale will have approximately 300 international visitors in its morning tour group, and approximately the same amount in the afternoon.

30 The effect of this is that the international visitor morning tour group is critically important to Featherdale's operation. It's a substantive long-established part of its operation. On average, it equates to approximately 50 per cent of Featherdale's international visitation on an average day. That is, the morning group and the
35 afternoon group. And that equates to approximately one-third of Featherdale's total visitation per annum. It's a very substantial part of their operation.

To preserve the morning tour group activity, it's – Featherdale needs to open at 8 am, which it's permitted to do. This allows sufficient time for day tour operators
40 travelling from Sydney to include Featherdale on a stop for international visitors on the way to the Blue Mountains and back. That's the tour group that comes. They go Featherdale to the Blue Mountain and home.

45 Based on Featherdale's experience, there is no demand from local visitors, domestic local visitors, the Western Sydney, um, local community to access Featherdale before 9 am. This is purely about the international tour groups. If Sydney Zoo wishes to operate an exotic animal zoo for Western Sydney families, it doesn't need

to open before 9 am. There is no market for that, based on our 50 years of experience. Sydney Zoo's proposal to change its operating hours is a deliberate attempt to mimic Featherdale's offering and not to differentiate Sydney Zoo from Featherdale.

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There is a – the PAC rightly imposed a condition of consent restricting operating hours for a reason, and this is an endeavour to move away from that. Um, so condition B10 of the current development consent limits the hours of operation for the new zoo to 9 am to 10 pm, and 9 am to 6 pm. Ah, that limitation has no impact on their ability to cater for domestic, um, they – they have no impact on their ability to bring local Western Sydney families in. Um, it's entirely about, ah, attracting the international tourism groups. So accordingly, and despite the representations made by Sydney Zoo in the environmental assessment documentation for modification 3, it is clear that Sydney Zoo's proposed modification has nothing to do with domestic or local visitors.

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Modification 3 is wholly intended to target morning tour groups for international visitors and that is a blatant attempt to mimic Featherdale. So we put to you, if Featherdale – if modification 3 is approved, on an average day, it will enable Sydney Zoo to target 100 per cent of the existing market for international visitors on the morning tour groups on the way to the Blue Mountains. And that remains the same even if the department's recommendation that the maximum number of visitors is limited to 300. It still captures the market.

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There is also a flow-on effect, ah, as a result of this proposed extension of hours. As all international tour operators who take their morning business to Sydney Zoo will also likely take their afternoon tour groups. So if they, ah – if they have an arrangement go there in the morning, they will an arrangement – the same operator to come there in the afternoon. That's what Featherdale has today. Ah, this is because, in practice, the international tour operators will want to align themselves with one business operating native animal experiences. They won't want to have, ah, brochures as choice, or there's two, there's one. Therefore, Sydney Zoo's representation that modification will not present social – socioeconomic impacts over and above what is already assessed and approved for the operation of the zoo, is factually incorrect, and is actually, we say, is grossly misleading.

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Um, it significantly understates the potential economic and social impacts that can arise as a result of this modification. So the effect of modification 3 is that it will materially expand the native animal offer – native animal offering at Sydney Zoo, ah, compared to that which was approved by the PAC, and conditioned by the consent. It will create visitation scenarios that are materially different, and inconsistent with all modelling assumptions that were submitted by Sydney Zoo and relied upon by Sydney Zoo in its submissions to the PAC, in an endeavour to address the concerns raised about social and economic impacts.

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So in that context, it's Elanor's position that modification should be refused. And we say the reason it should be refused – there's three reasons – firstly, the proposed

expansion and intensification of public access to Sydney Zoo is premature, given the absence of an acceptable and approved approach to enhance regional tourism as a – required by condition C9 of the development consent. So as you know, as part of the differentiation obligation in the PAC imposed condition C9, it said you need Sydney Zoo to satisfy the department that you have developed a regional tourism activity that ensures these commitments have been adhered to. They have not to date. Um, to date a comprehensive and acceptable regional tourism plan has not been provided to Elanor.

10 A very – a very basic proposition was provided to us which we provided a comprehensive response to, at all times copying the Department of Planning in to our correspondence about our concerns. Elanor have in fact offered up its suggestions at its own expense as to what a regional tourism, um, cluster could look like, and how it could operate, and that has been dismissed by Sydney Zoo. So to date, nothing has been received by Elanor, and nothing has been accepted by the secretary of the Department of Planning. In that context, we say it is totally unacceptable for approval of any expansion of Sydney Zoo to occur in the absence of a satisfaction of this condition precedent. It was a fundamental condition. They need to show how there's going to be collaborative facilities, and not competitive. And these various modifications and activities of Sydney Zoo, we say, is directly endeavouring to undermine that commitment.

MR A. COUTTS: John, has there been any discussions – you say you've had a draft of the – of the - - -

25 MR WYNNE: The proposed?

MR COUTTS: The proposal.

30 MR WYNNE: Yes, yes.

MR COUTTS: And you've had comments. Has there actually been any discussion, like sitting down and talking through and so forth?

35 MR WYNNE: Yes. I will get – I'm nearly finished. I will let – if that's okay.

MR COUTTS: Yes, you can come back to it.

40 MR WYNNE: I will let Tony come back and he can detail you in detail what has happened – and we've documented that to the department.

MR COUTTS: Yes.

45 MR WYNNE: Secondly, we say that this totally – totally inadequate assessment is provided with the application regarding potential social and economic impacts, arising from this modification. Um, you must remember that when this application went in, it went in as a clarification of ours. It had no substantive commentary or

recognition of the potential negative impacts. Only as a result we say of our submission, which we've been very vigilant in – in – in looking at the submissions made by Sydney Zoo, and – and Elanor has not objected to a number of those modifications they've sought. You know, they can get on with their business. But we – when we saw this application, it immediately highlighted to us a further step away from the commitments in the consent, and that they gave. So Sydney Zoo's representation in its environmental – or its documentation with modification, that modification 3 will not present any socioeconomic impacts over and above what was already assessed and approved is just wrong.

It totally understates the potential environmental impacts of this in circumstances where it would enable Sydney Zoo to target 100 per cent of the existing market for international tourist visitors in this region. And finally, we say the IPC, um, we say cannot – we've been very concerned about the department's processing of this application, ah, as a matter of minimal environmental impact, um, under section 4.55(1A) of the Act. Um, as you will be aware, case law - - -

MR MILLER: I gather that – just on that point, I gather that the submission including the letter that was provided to you – to the department from Gilbert + Tobin is now on the public record.

MR WYNNE: Yes.

MR MILLER: Thank you.

MR WYNNE: So case law provides that the word minimal in the context of section 4.55(1A) means very small or negligible. With respect, on any reasonable view, um, the environmental impacts arising from – the impacts on the – social and economic impacts arising from modification number 3 cannot be characterised as very small or negligible. We met with the department and said we are extremely concerned about the pathway you're processing. We know that dealing with many applications, either as SSD modifications or local consents, there's typically a cautious approach to what is minimal environmental impact, typically, it's either a fresh or at least a – a – a 4.55(2). For it to be processed as a 4.55(1A) with it is – is – is unacceptable, um, and is not valid. So that's our proposition, and it should be refused on those three grounds. Um, as I said at the outset, our concern is that these applications can be looked at in isolation, and on – on the face value, they can – they can seem benign or of low impact.

When you put in the context of what was submitted by Sydney Zoo in supporting this application that was conditioned by the PAC in its condition of consent, by the marketing activity that's underway, by the various way it's representing itself in the industry, and now by the various modifications, it is clearly an endeavour to creep beyond the commitment it gave to be differentiated and complementary to what Featherdale is. So on that basis, we say this application should be refused.

MR MILLER: Thank you very much. Um, we will go to Alan's question first, but you might want to take on board another question while that's being answered. Um, your – your, um, proposition is based on a failure to comply, you say, with some conditions in relation to the mix of – of exotic animals and – and Australian animals, and - - -

MR WYNNE: Amongst other things.

MR MILLER: For which you say – for which there is a condition.

MR WYNNE: Yes.

MR MILLER: Um, if that condition were complied with, could you just address, um, how this modification would have the impact that you're – you're – um, asserting? Just take that on board.

MR WYNNE: Okay. Well, perhaps we will come back and – perhaps, Tony, do you want to - - -

MR T. CHIEFARI: Yeah, sure. I – I can answer that. Um, the tour operators have got an hour to an hour and a quarter to visit on one only zoo. They don't have time to do two zoos or multiple zoos. Tour operators are not interested in exotic animals. They're only interested in the Australian animals. The problem with what your suggestion is, if they follow those rules and they're creeping on those rules as we believe - - -

MR MILLER: We're just asking if they were required to follow the rules.

MR CHIEFARI: Sure, yes.

MR MILLER: And their zoo is primarily exotic animals.

MR CHIEFARI: Yes.

MR MILLER: Does that make a difference to your submissions?

MR CHIEFARI: Because they've clustered their Australian animals, um, and hopefully they will stick to the rules on, on – the limitations they've got there. So they can still get the tour operators to come in and see those Australian animals, and out they go. Now, there are some restrictions around that. They can't touch a koala, for example. But they're working around some of those things. Um, you know, the tour – the – you know, they're on a bus, they've got an hour, they want to see the koala, they want to see the kangaroo, they want to see the icons, right, so by getting there at 7.30 or 8 in the morning, they've got the time to do that before they head off. If they're at 9 o'clock, which is what the – their obligation is now, then that makes it very difficult for those operators to then head off and do their full day tour, because they don't have enough time.

MR MILLER: I see.

MR CHIEFARI: And as John pointed out, if they get the morning tour, by default they'll also get the afternoon tour of any given operator, because it's too hard to
5 brochure two zoos. It's too hard to deal with two zoos. They want to deal with one. So if they get the morning tour, they will actually then get the afternoon tour, so it's – they're getting both of that particular operator.

MR C. STAPLES: I can actually speak a bit more directly to that collection that
10 you're talking about.

MR MILLER: Mmhmm.

MR STAPLES: One of the things that John did mention was very briefly, that I'll
15 speak to more, is that this reverse agistment. We don't even actually know if the two-thirds of exotic animals that they plan to have are there permanently or there for one day. And we were – well – and I especially was very disappointed with the response back from Department of Planning that they don't actually see that as a requirement that the animals that they have on opening are their animals; that they
20 can actually reach out to other zoos and, in essence, hire them to get their doors open and then those exotic animals could slowly disappear and they could become more and more exactly like Featherdale.

MR CHIEFARI: That – that - - -
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MR MILLER: Okay.

MR CHIEFARI: - - - restriction was put on by the Planning Assessment Commission. There'd be no other reason to put that – that restriction in there, except
30 that they felt that there was a chance that they would open up with a couple of stamp collections of exotic animals and then fill it up with Australian. I - - -

MR STAPLES: And the first time that we spoke to the PAC, when it was called the PAC, I sat there and the very initial advertisement that they went out with was they
35 were going to have this amazing, underwater viewing of hippopotamus. And I sat there to the commission and I said, "Impossible." We have 11 hippopotamus in the entire region. They will not get one. We will never be importing hippopotamus again, probably in my career, because of the threat to the pork industry. So then all of a sudden, once I'd tabled that and showed them it was impossible, that species just
40 dropped off their list. It was going to be their centrepiece.

MR MILLER: Mmm.

MR STAPLES: So then the species slowly changed to African savannah. Now,
45 again, I basically pointed out, okay, elephants; that took Taronga and Melbourne Zoo the best part of 10 years to happen.

MR MILLER: Mmhmm.

MR STAPLES: You then talk about giraffes, there's another probably dozen zoos with their hands up that are already zoo operators with experience, with teams in
5 place that want them. I was very honest, and I said, "This stamp collection zoo collection that they've put on paper is not what they even care to have. This is just to get open. They then want to become a Featherdale." And so that's the real problem with this creep is that we don't even now know how many of those species will be there long term. I'm certainly not suggesting that that's the plan, is that all these
10 things are here for six months, but those really significant ones, especially the ones you see on their logo, being the elephant and giraffe, are basically proven to be impossible to get.

MR MILLER: Thank you. Could we go back to the question you asked, Alan.
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MR CHIEFARI: Yes. You're talking about has there been any meetings, I believe.

MR COUTTS: Well, I'm interesting in just - - -

20 MR CHIEFARI: Well, yes. Yes. Absolutely.

MR COUTTS: - - - what -what – what the level of discussion - - -

MR CHIEFARI: Correct. So there – there was some obligation around Sydney
25 Zoo around this C9 clause about - - -

MR COUTTS: Yep.

MR MILLER: Mmhmm.
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MR CHIEFARI: - - - working out a – a – you know, a – a regional plan for Western Sydney. So in – in the spirit, we had a meeting in – in my office with, ah, my sales and marketing director, Jake Burgess, who's the managing director, and his marketing person. And they came up with four initiatives. And they were written
35 on, you know, a one page and the initiatives were joint ticketing. Ah, they wanted to have a bus between both, ah, institutions to ferry the people through; they wanted us to own events; and they wanted us to cooperate with them in animal welfare.

So I went through each one of those specifically. None of those grow the pie. What,
40 in actual fact, it – it has the, um, opportunity to shrink our pie. So joint ticketing, the way joint ticketing works, is that we would say, "Righto. Featherdale is at 35, Sydney Zoo is at 35. It's a \$70 to buy two tickets. Let's do one for 50 and then we share it."

45 What that actually does is decrease our profitability and takes our established customers over to them. It doesn't draw more people in. Now, just on that point, that has been absolutely because they've said to the department that they've had

other people in the Western Sydney region that want to do the joint ticketing. Um, to be fair, that's probably a lie. The two biggest institutions in Western Sydney are us and we've already said we won't do a joint ticketing. The other one is Wet'n'Wild, which is now changed to Raging Waters. And I've had a meeting with them. It is
5 against their company policy to do joint ticketings. They will promote and – and work together, like they will

MR COUTTS: I suppose – I suppose I'm less interested in actually the detail of the sort of things that you might be negotiating as – I mean, I was on the - - -
10

MR CHIEFARI: Yes, you were.

MR COUTTS: - - - the last one.

15 MR CHIEFARI: Yeah. I – yep.

MR COUTTS: so, I mean, one of the issues that we were wanting to see happen was – ah, because clearly there was a level of, ah, disassociation between Featherdale and the operators of Sydney Zoo – was to try and get the two organisations coming
20 together in a bit of a spirit of cooperation.

MR CHIEFARI: Yep.

MR COUTTS: And I guess I'm trying to get a bit of a sense of has there been any
25 movement in trying to come together in a sense of cooperation or is it still, you know, you're – you're a fair way apart?

MR CHIEFARI: Well, look - - -

30 MR MILLER: I mean, just to – just to - - -

MR CHIEFARI: Sorry.

MR MILLER: - - - take that, C9, just to be very clear, says that it:
35

...has to make genuine and reasonable attempts to consult with local recreational facilities and businesses (including Featherdale) to enhance the regional tourism.

40 So what we're really getting to is what in a factual sense has happened to meet that requirement from your perspective?

MR CHIEFARI: It – from them, we believe nothing. As I said, they've come up with those four points which - - -
45

MR MILLER: So I'm sorry. That – you said you had one meeting.

MR CHIEFARI: One meeting and then they also had what they called a town hall type meeting with a number of businesses, which, ah, we attended. I didn't attend personally; I was on leave, but my sales and marketing director and, ah, my social media manager attended. And that meeting – there was no agenda. There was no
5 outcome. There's been no minutes from that meeting. Ah, it actually finished early. Um, so that is it. That's all that's happened.

MR MILLER: Thank you.

10 MR CHIEFARI: So they've had the one meeting with me, which was a long time ago and then they've had this one town hall type meeting, which probably was about seven or eight months ago.

MR STAPLES: If it assists, the – the IPC, Russell, we can provide a chronology of
15 - - -

MR CHIEFARI: Yep.

MR STAPLES: - - - of – of events that we've provided to the department in respect
20 of - - -

MR MILLER: That would be helpful.

MR WYNNE: Yep.
25

MR STAPLES: - - - the meetings in respect of C9.

MR MILLER: Thank you. Yes.

30 MR STAPLES: Yep. Sure.

MR COUTTS: All right.

MR CHIEFARI: So just – just going back to your - - -
35

MR MILLER: nothing else

MR WYNNE: - - - question, Alan, I – you know – and obviously you were on it and, you know, your counterparts at the time visited the park and visited Taronga and
40 we were really happy at the time that we felt that the PAC genuinely had done a great job at trying to say, "Right. There's two zoos here that they've got to differentiate themselves." And the reason for these clauses that are put in, and we can go through them all, and John's done a fair job at, ah, at going through them, were purely because of that. There'd be no other reason otherwise to put any of those restrictions
45 in that the PAC determined. And we felt that that was the case. The problem we're seeing is this creep in all these areas unfortunately.

MR MILLER: Thank you.

MR STAPLES: Would you like me to speak to the social - - -

5 MR WYNNE: Yeah. So, the programs. Mmm.

MR STAPLES: Because I can just sort of flesh them out a little bit more. So what we're actually saying is, I guess, the – the programs that are in danger. So, sorry, I'm Chad Staples. I've been at Featherdale for 22 years. So I can certainly hopefully
10 answer a lot of the questions, if you do have them, around this, so please stop me - - -

MR MILLER: And, Chad, we just have to make sure the microphone's close enough to you to make – this is recording. Fine.

15 MR STAPLES: Yep.

MR MILLER: Thank you.

MR STAPLES: Ah, so when we're talking about these programs, what we're really
20 talking about is – you know, very basically is real research and real conservation, because these programs can never make money. They very rarely even get you real PR, unless it's a fluffy mammal, and those are the things that we have always done. So, I mean, I'm certainly not going to bore you with the programs we've been involved with for 22 years. But the ones that we're involved in right now have only
25 ever been a massive cost to us. So John talked about the – the Plains-wanderer project. So this is a tiny little bird that looks like a quail. Even if we had them on display, people wouldn't see them, but we're not allowed to have them on display.

We have no signage to say that they're there. We can't even really speak to the fact
30 that we have them onsite. They're not even on our books. They're still owned by the Crown. Now, we got involved with this project. We were approached by the federal government under the Saving Our Species program, because the Plains-wanderer was highlighted as the most important bird for saving within our country and the fourth most-important bird worldwide to protect, because of where it
35 basically sits in your taxonomic tree. But if we lose it, we lose a whole branch, in essence. So very, very important. Now, if we hadn't have straightaway committed to building this offsite display, the same way that Taronga did – so we offered the exact same buy-in as what Taronga Zoo did; being a state government entity, if we hadn't both bought into it, the program never would have started.

40 Now, since then, obviously we've been very lucky that other government institutions in other states have gotten involved, but it never would have started and it's only ever been a drain. And so thankfully that initial collection that we had within, um, captivity has almost tripled. So we're actually doing real conservation, but it's been
45 a massive cost to Featherdale. Um. If you then sort of talk to the research aspect, again, the most, um, I guess for right now is the koala genome project. Now, this

was a project that I started with the Australian Museum about five years. Research takes a very, very long time and you may never get a result.

5 This program, I suppose, is one of the absolute rarities. And, like, I said, it's because
it's a koala, that it actually got some, ah, media, I suppose, because the koala is so
significant around the country. But what I'm saying is we got involved in that. We
made investments for over five years, not knowing what would ever come at the end.
10 They may never have even completed that genome. And that only ever started
because of the 10 years prior to that the smaller projects that we had been involved
with, the Australian Museum, that we put runs on the board together; we're the
largest collection of Australian animals anywhere in the world. So there's nowhere
else that can even offer some of the species we have. We actually hold some species
that aren't kept anywhere else in the world, so, of course, this is where these true
research facilities would come to.

15 MR MILLER: Thank you.

MR STAPLES: One – ah, there's just two more. Just to sort of show the – the
scope, I suppose. The next one is that we also work with both federal and state, ah,
20 officers of environment in holding reptiles that have been illegally tried to be
exported. Now, this may sound trivial, to some degree, but you're talking about
taking animals into your collection that have to be kept separate to your collection,
because you have no idea of their origins and therefore their disease-risk potential.
But right now there is a real epidemic of our reptiles primarily being harvested from
25 the wild in Western Australia and basically packaged up into Postpaks and sent over
to Asia.

Now, thankfully, a lot of these are now being found via x-ray and things during the
postal service, but then what do we do with them? We can never prove where they
30 actually came from, so if we didn't put our hands up and say, "We are willing to hold
them while this process is happened and then potentially care for them for the rest of
their lives," they would all be euthanised. Again, this is a massive side arm of what
we do for caring for the 2000 animals that are ours. Just in the last month alone
we've taken on 24 of these reptiles. And it's just continuing to grow. The education,
35 which will be the last part that I speak to – and I actually got to run the education for
about – the education program for about three years, so it is a – you know, it's a real
passion project of mine, as well as Featherdale's.

40 It – it certainly wasn't something I started. That passion was there before I even
began, but this is a program that, in essence, is – is barely cost neutral. We are –
like, I said, we're the largest collection of Australian animals anywhere. So to New
South Wales schools, there is no better resource than bringing your kids to
Featherdale to meet the syllabus requirement for Australian animals and their
environments. We have over 200 enclosures that mimic natural environments with
45 multi-species, ah, kept within them to simulate environments, so the children can
come and basically watch what they should be able to see if they were to visit the
wild. And we have a fully-qualified teacher that then teaches them, so, as you can

imagine, it starts to add up when you – when look at the cost to – to bring that, but it's something that we've always believed in doing. And I certainly hope we can continue in the future.

5 MR MILLER: Thank you very much. John, was there anything else you wanted to say?

MR WYNNE: Ben, did you want to add anything?

10 MR B. FULLER: Oh, just a couple of points, perhaps, Russell. Um, so Ben Fuller, Gilbert + Tobin. Just, um, on the, um, last point in the submission around the validity of the approval pathway. I mean, we've touched at a high level on – on case law setting out the principles, um, which is a very low threshold test has been held to mean you're very small or negligible. If it assists the IPC, we're happy to
15 provide some of the key cases. I expect the IPC will take its own legal advice but, you know, we can provide those as part of the submission.

MR MILLER: Mmhmm.

20 MR FULLER: And just to reiterate the point that John made that, you know, there's a suite of differentiation obligations opposing this consent. We asked Sydney Zoo to refrain from the marketing conduct. They refused to do so. We approached the department to, um, to regulate those conditions. The department indicated that it wouldn't be taking any steps in the respect of any enforcements till opening of the
25 zoo. And I think, um there's a – there's a grappling here of the marketing dynamics for - - -

MR MILLER: I'm sorry. Just pick that up. Did you say "until the opening of the zoo"?
30

MR FULLER: That's right. As a policy position, the department indicated that, um, it doesn't take enforcement action - - -

MR MILLER: Until it sees the breach.
35

MR FULLER: - - - until all – until, ah, the – the opening of the zoo or the opening of the facility occurs.

MR MILLER: Mmhmm.
40

MR FULLER: Um. And, you know, we've explained to the department that the marketing dynamics of zoos are quite, um, important to take into account here, because, um, how Sydney Zoo operates and how Featherdale operates is that they take actions now to lock in customers starting from April next year.
45

MR MILLER: Mmhmm.

MR FULLER: And so all of this conduct prior to the lead up to the opening of the zoo, it presents real harm to the commercial feasibility of Featherdale and its – and its programs in the locality. It's not a matter of waiting till the opening of the zoo, um, to have a think about, well, you know, should enforcement action be taken and
5 what does that mean in terms of – of harm to Featherdale's operations?

MR MILLER: Thank you.

MR FULLER: So we'd ask the IPC just also consider modification 3 in that
10 context, that it's in the lead up to the zoo that – that that Sydney Zoo is already going to the market and suggesting that it has flexibility around operating hours and – and that the operating hours will be changed, because it is seeking to lock in customers, you – you know, in the future for the opening of the zoo.

15 MR MILLER: Thank you.

MR WYNNE: I suppose the only thing I'd add to – I think in conclusion to Ben's point is that, you know, that – that's a process issue, you know, a pathway to determination. Even if it were lodged, we say, correctly, probably as a – as a DA or
20 as an amending DA or whatever it is, we still say it should be refused.

MR FULLER: Yeah.

MR WYNNE: You know, on merits, we say this - - -
25

MR MILLER: Mmm.

MR WYNNE: - - - application is fundamentally premature. Um. It's premature in light of the failure to satisfy conditions that are already on the consent that are all
30 about differentiation and trying to achieve this collaborative regional, um, relationship that they proposed as the solution to our concerns. Um. So notwithstanding the actual pathway we take to the commission, it just should be refused on the grounds that merit wise it is going to result in a significant impact that will – economic and social impact that's going to be detrimental to the region.
35

MR MILLER: Thank you.

MR COUTTS: In – in terms of the marketing you've seen from the Sydney Zoo - - -

40 MR WYNNE: Yes.

MR COUTTS: - - - to date - - -

MR WYNNE: Yes.
45

MR COUTTS: - - - are they marketing this – these opening hours as an experience to do what?

MR WYNNE: Do you want to talk to that?

MR CHIEFARI: Yep. So there – there’s flyers and we’ll submit those flyers to you. So, firstly, just on a marketing basis, ah, if I can just sort of take a minute on
5 that. If you’ve got a business where 90 per cent of your business, which is 90 per cent of their zoo, roughly, is exotic animals, that’s what you would market to. They have not done one skerrick of marketing on that. They have done marketing to the 1.6 hectares of the limited Australian species. And that’s the reason they’ve gone out to all the tour operators and that’s – those flyers have gone out personally by a firm
10 which is called Australian Attractions, which they’ve hired on their behalf to target the international market.

So – and that’s part of the – the original PAC decisions was that pricing – and – and, Alan, I don’t think you were in the office, but certainly Lyn Briggs and your other
15 counterpart at the time were. I actually opened up our pricing, ah, of the tour operators and showed the PAC at the time what that – that means. And they’ve now targeted this 12 and 15 dollars that John was talking about, in actual fact, doing whatever they can to woo the people over. Now, this modification consent is the last piece of the puzzle. Because if they can’t open earlier than 9 o’clock, then they’re
20 going to have to do other things. If they can open before 9 o’clock – and – and a tour operator told me personally, “That’s all the process of getting changed.” His exact words to me were, because I – that was one of the things I said to him.

MR COUTTS: Are – are they marketing themselves though as providing, ah, these
25 bus operators with the opportunity for their people to get an – you know, an on-hand experience with koalas, which they do at your place?

MR WYNNE: If you go to the previous page - - -

30 MR COUTTS: Yeah. If you look at all those flyers - - -

MR WYNNE: - - - it’s even more revealing the previous page there.

MR COUTTS: Yeah. If you look at all the flyers, um, that will show you.
35

MR WYNNE: And – and we – we just highlight a couple of things on that. It – is that the one?

MR MILLER: Yes.
40

MR WYNNE: You see first of all, Bungaribee Wildlife Park.

MR CHIEFARI: Yep.

45 MR WYNNE: So their first commitment of differentiation in their submissions pack was they call themselves a “zoo” and we’re a “wildlife park”, yet their marketing material is Bungaribee Wildlife Park. And you will see the – the koalas

and you'll see all of the references there to the native animals and the experiences and that.

5 MR CHIEFARI: Correct. Now, these don't go - - -

MR MILLER: It would be helpful if - - -

MR CHIEFARI: Sorry.

10 MR MILLER: Sorry. Just to interrupt.

MR CHIEFARI: No, you're right.

15 MR MILLER: It would be helpful if you could provide us with – with, um, colour copies of each material and - - -

MR CHIEFARI: Yes. Absolutely.

20 MR WYNNE: Yes.

MR CHIEFARI: Yep.

MR MILLER: - - - we'll put that - - -

25 MR WYNNE: We can do. Sure.

MR MILLER: Thank you very much.

30 MR CHIEFARI: Absolutely we can do.

MR MILLER: Mmhmm.

35 MR CHIEFARI: Those aren't – those flyers and marketing don't go out in the public area like a – a newspaper or whatever. They get delivered to and handed to tour operators with personal letters. And I think there's a personal letter attached in there as well that explains all of that. The reason they've gone to Bungarribee Wildlife Park is because the international market don't want to go and see a zoo. They want to see a wildlife park, and that's why they've gone to that terminology.

40 MR COUTTS: Okay.

45 MR MILLER: I've just noted that on the – you – you took us only to two advertisements, um, and – and brochures, but, um, the document that you handed over, ah, says that it's confidential. We can only receive confidential information on certain terms and conditions. You need to think about whether you want to provide - - -

MR WYNNE: Okay.

MR MILLER: - - - it to us on that basis. Essentially, what we need is a non-confidential version, um, and we still have to make a decision about whether we'll
5 accept the confidential material. And we can't make a - a - a - an ultimate determination based only on confidential material that's not been disclosed.

MR CHIEFARI: Sure.

10 MR WYNNE: Okay. Thank you.

MR CHIEFARI: Yep.

MR WYNNE: Okay. We'll respond appropriately in that way.
15

MR MILLER: Thank you.

MR WYNNE: Yep.

20 MR COUTTS: Otherwise, generally everything goes up on our website.

MR WYNNE: Yep.

MR FULLER: Understood, yep.
25

MR CHIEFARI: Yep. Sure.

MR WYNNE: Yep.

30 MR MILLER: And it would be very helpful to have the - it would be very helpful
- - -

MR FULLER: We'll revisit the submission and we'll provide a non-confidential
version - - -
35

MR MILLER: Thank you.

MR FULLER: - - - and email to the IPC.

40 MR MILLER: Thank you very much.

MR FULLER: And, um, and the annexures to the - to the - to the submission, I think, will be helpful to the IPC.

45 MR MILLER: We'll need publicly available information, so - - -

MR FULLER: It contains the material and the differentiation obligations, etcetera.

MR MILLER: - - - yes, that would be very helpful.

MR FULLER: So

5 MR MILLER: Thank you.

MR COUTTS: All right. Well - - -

10 MR MILLER: Thank you. Was there anything else?

MR WYNNE: Not unless you've got any questions. I - - -

MR MILLER: No. Well, it was very clear.

15 MR WYNNE: No.

MR MILLER: Thank you.

20 MR CHIEFARI: Thank you.

MR MILLER: And thank you very much for coming this morning and thank you for - um, for - that - your clear exposition of your position.

25 MR WYNNE: Thank you. And we appreciate the opportunity. Great. Thank you.

MR MILLER:

MR COUTTS: No, no, no.

30 MR MILLER: Thank you very much. We'll close the meeting.

MR WYNNE: Thank you.

35 MR CHIEFARI: Thank you.

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[10.39 am]