



25 November 2019

Sydney Zoo (SSD 7228 MOD 3)

1. INTRODUCTION

1. On 30 July 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a State significant development modification application (SSD 7228 MOD 3) (**Application**) from Sydney Zoo Pty Ltd (**Applicant**) seeking to modify the existing development consent (**Existing Development Consent**) for the Sydney Zoo (**Project**) under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
2. The Commission is the consent authority in respect of the Application under section 4.5(a) of the EP&A Act and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011*. This is because:
 - the Application constitutes an application to modify a development consent for a State Significant Development; and
 - the Department received a submission by way of an objection from Blacktown City Council (**Council**).
3. Professor Mary O'Kane AC, Chair of the Commission, nominated Russell Miller AM (Chair) and Alan Coutts to constitute the Commission determining the Application.

1.1 Site and locality

4. The Department's Assessment Report (**Department's Assessment Report**), dated July 2019, stated that the Sydney Zoo (**Project Site**) is "*located on the Great Western Highway approximately 33 kilometres west of the Sydney Central Business District within the Bungarribee Precinct of the Western Sydney Parklands (WSP), in the Blacktown local government area (LGA)*".
5. Construction of the zoo commenced in December 2017 and is ongoing, with the zoo expected to open by the end of this year.
6. The Department's Assessment Report described the site as "*predominately cleared of vegetation with small areas of Cumberland Plain Woodland and River Flat Eucalypt Forest*".
7. The site context of the Project Site is demonstrated in Figure 1.

Figure 1 – Site Context of the Project Site



Source: Department's Assessment Report

1.2 Background to the Application

8. The Sydney Zoo Project (**SSD 7228**) was originally approved (**Original Approval**) by the former Planning Assessment Commission (**PAC**) on 8 September 2017. The Original Approval permits the following works:
 - subdivision of the site (current Lot 101 in DP 1195067) into:
 - Lot 11 containing the proposed zoo development (16.505 ha)
 - Lot 10 containing the remainder of current Lot 101 (188.9 ha) (residue lot)
 - site preparation works including bulk earthworks
 - construction of a new zoo including:
 - animal exhibits for a range of native and exotic animals
 - entry/retail building
 - restaurant

- administration, curatorial and veterinary facilities
 - show arena
 - back of exhibits and work depot buildings
 - other buildings including two kiosks and restroom facilities
 - construction of vehicular access roads and parking
 - installation of signage
 - stormwater drainage and design and construction of site services
 - landscaping.
9. Condition B10 of the Existing Development Consent currently limits the hours of operation of the zoo on any day to:
- 9 am to 10 pm December to January
 - 9 am to 6 pm February to November
10. The Department's Assessment Report stated that the Project has been modified on three occasions. The approved modifications to the Original Approval are set out in Table 1 below.

Table 1 – Modifications to Sydney Zoo (SSD 7228)

Project	Description	Determination
Mod 1	Amendments to the location and design of buildings on the site and the design of the stormwater management system	Approval 08/05/2018
Mod 2	Amendments to the boardwalk access path to the aquatic habitat and the layout and built form of the aquarium building	Approval 20/09/2018
Mod 4	Addition of two sheds at the rear of the Nocturnal and Reptile Building and Primate Back-of-House spaces	Approval 04/07/2019

Sourced: Department's Assessment Report

1.3 Summary of the Application

11. The Application seeks permission to allow the following operational activities to be conducted outside of the approved public opening hours:
- maintenance activities;
 - emergency activities; and
 - delivery of goods, waste collection and food delivery.
12. In addition, the Application seeks approval to conduct private zoo experiences and small group tours, and temporary and community events outside of the approved public opening hours.
13. The proposed changes to the hours of operation under Condition B10 of the Existing Development Consent are listed in Table 2 below.

Table 2 - Proposed Activities and Hours

Activity	Proposed hours
Maintenance activities	5:30 am to 11 pm, seven days a week
Emergency activities	24 hours, seven days a week

Delivery of goods and waste collection and food delivery	7 am to 6 pm, seven days a week
Temporary and community events	7 am to 11 pm, December to January
Private zoo experiences and small group tours	7:30 am to 9 am, seven days a week

Source: Department's Assessment Report

1.4 Stated need for the Application

14. The Applicant advised in its Application that the *“proposed changes to Condition B10 clarify the intended operational activities of Sydney Zoo. A facility such as the zoo includes a range of other activities that form part of the overall operation of the zoo over and above opening hours for the general public. It is therefore appropriate to clarify in this consent these operational activities as well as the opening hours”*.
15. In relation to private zoo experiences and small group tours, Sydney Zoo stated that it intends *“to offer exclusive private guided tours outside of standard opening hours, to provide small groups of guests with unique experiences with animals throughout the zoo grounds”*.
16. In relation to the temporary and community events, Sydney Zoo stated that these *“would be conducted as exempt development under the State Environmental Planning Policy (Western Sydney Parklands) 2009”*.

2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

2.1 Key steps in Department's consideration of the Development Application

17. The Department received the Application in December 2018 and notified the Application from 18 January 2019 to 7 February 2019 to Council and previous submitters. The Application was also made publicly available on the Department's website.
18. The Application was notified in accordance with section 4.55(1A) of the EP&A Act.
19. According to the Department's Assessment Report, two submissions were received during the notification period; one submission from Council and one from the public.
20. The public submission was an objection to the Application by Elanor Investors Group, the owner and operator of Featherdale Wildlife Park (**Featherdale**). That objection related to the proposal to conduct private zoo experiences and small group tours outside of the approved public opening hours.
21. Council's objection was that the proposed private zoo experiences and small group tours had been insufficiently described and justified by the Applicant. On 4 March 2019, Council formally advised the Department that it withdraws its objection.
22. On 10 May 2019, the Department requested the Applicant submit additional information relating to the proposed private zoo experiences and small group tours, including:
 - a clear consolidated description of the total extent (hours of operation and number of tours) of private zoo experiences proposed as part of the zoo operations;
 - total number of visitors anticipated to attend the private zoo experiences daily;
 - total traffic generated as a result of the private zoo experiences; and
 - a comparison of temporary and community events and private zoo experiences/guided tours offered by other tourist facilities.
23. The Applicant provided a Response to Submissions (**RtS**), dated 25 February 2019, to

address the issues raised during the notification period and to respond to the additional information that was requested by the Department.

24. In relation to the proposal for private zoo experiences/guided tours, the Applicant stated in the RtS that:

“Examples of this include a range of limited access unique experience with both exotic and native fauna. These include:

- 1. Breakfast with the Rhino.*
- 2. Meerkat interactions*
- 3. “Keeper for a day”*
- 4. Aboriginal cultural experiences involving bush tucker sampling and Australian species educational discussions, including a wide range of species such as echidnas, wombats and snakes.”*

25. On 4 March 2019, Council formally advised the Department that it withdraws its objection on the basis that the Secretary is satisfied that the requirements of Condition C9 of the Existing Development Consent have been adequately met. That condition provides:

Development of Regional Tourism

C9. *Prior to the commencement of operations, the Applicant shall submit a report to the satisfaction of the Planning Secretary demonstrating it has made genuine and reasonable attempts to consult with local recreational facilities and businesses (including Featherdale Wildlife Park) to enhance regional tourism in conjunction with the Development. The report shall include:*

- (a) details of how the operation of the Development will differ from the existing recreational facilities and businesses;*
- (b) detail consultation undertaken with local recreational facilities and businesses;*
- (c) outline initiatives implemented to encourage and enhance continued operation in conjunction with local recreational facilities and businesses;*
- (d) detail the success or otherwise of these initiatives using recognised social indicators; and*
- (e) include detail of the additional activities that will be undertaken for the duration of the Development.*

The Planning Secretary may request updates on these initiatives at any time.

2.2 The Department's Assessment Report

26. The Department's Assessment Report considered the key assessment issues particularly in relation to the proposal to conduct private zoo experiences/small group tours outside the previously approved opening hours, to relate to:

- socio-economic impacts
- type of modification assessment
- traffic impacts.

27. In relation to socio-economic impacts, the Department's Assessment Report concluded that the proposed modification:

“is unlikely to have any adverse social or economic impacts in the locality. The proposed out-of-hours activities reflect Sydney Zoo's response to the requirement to encourage and enhance regional tourism in conjunction with the Department and do not affect the differentiation requirements on the consent. Permitting the extended operating hours will allow Sydney Zoo to cater for a range of community events consistent with those offered by

other recreational facilities across the Greater Sydney Region, providing an overall positive social impact and contributing to the social benefits of Sydney Zoo."

28. In relation to traffic impacts, the Department's Assessment Report concluded that with the types of private zoo experiences/small group tours outside the previously approved opening hours and the reduced number of those activities proposed by the Department, the proposed modification:

"is unlikely to result in any additional off-site traffic impacts. The requirement for a traffic verification report within six months of the commencement of operation will ensure the Applicant verifies the predicted traffic impacts. The existing requirement for an Annual Review will also ensure the Applicant demonstrates its compliance with the limitation on visitor numbers. Any on-site traffic impacts can be managed through an update to the OTMP. The Department's assessment concludes the traffic impacts of the proposed modification are minimal and manageable subject to the implementation of the existing and recommended conditions of consent."

29. The Department's Assessment Report considered that the "development will operate with minimal adverse environmental, social and economic impacts" and that Sydney Zoo will "provide social benefits to the community through increased opportunities for social interaction and the enhancement of regional tourism initiatives."
30. The Department's Assessment Report concluded that "the proposed modification is in the public interest and the application is approvable, subject to conditions".

3. THE COMMISSION'S MEETINGS

31. As part of its determination, the Commission met with the Applicant, Featherdale and the Department.

3.1 Meeting with the Applicant

32. On 28 August 2019, the Commission met with the Applicant to discuss the Application. Copies of the transcript and material provided by the Applicant were made available on the Commission's website on 5 September 2019.

3.2 Meeting with Featherdale

33. On 28 August 2019, the Commission met with Featherdale to discuss its views in relation to the Application. A copy of the meeting transcript was made available on the Commission's website on 5 September 2019.

3.3 Meeting with the Department

34. On 28 August 2019, the Commission met with the Department to discuss the Department's Assessment Report, the Application and the key issues identified by the Department as part of its assessment. A copy of the transcript was made available on the Commission's website on 5 September 2019.

4. THE COMMISSION'S CONSIDERATION

4.1 Material considered by the Commission

35. In this determination, the Commission has carefully considered the following material (the **Material**), including:

- the Applicant's Environmental Impact Statement (EIS), dated 7 December 2015;
- the Applicant's Transport Impacts Assessment (TIA), dated 7 December 2015;
- the Department's Assessment Report titled 'State Significant Development Assessment: Sydney Zoo SSD 7228', dated 22 November 2016;
- the PAC Determination Report, dated 8 September 2017;
- previous modifications approved as set out in Table 1;
- the Applicant's section 4.55(1A) modification application, dated 4 December 2018, and all associated documentation;
- all submissions made to the Department in respect to the Application during exhibition, 18 January 2019 to 7 February 2019;
- the Applicant's RtS, dated 25 February 2019;
- the Applicant's Request for Further Information Response, dated 23 May 2019;
- the Applicant's response titled 'SSD 7228 Sydney Zoo Modification 3- Private Zoo Experiences', dated 13 June 2019;
- the Department's Assessment Report, dated July 2019;
- Featherdale's comments to the Department, dated 6 August 2019;
- Featherdale's comments to the Commission, dated 28 August 2019;
- the Applicant's comments to the Commission, dated 2 September 2019;
- the Applicant's Aboriginal Cultural Experience Strategy dated 5 November 2018, provided to the Commission on 6 September 2019;
- the Applicant's comments to the Commission, dated 13 September 2019;
- the Applicant's comments to the Commission, dated 18 September 2019;
- Featherdale's comments to the Commission, dated 19 September 2019;
- the Applicant's comments to the Commission, dated 20 September 2019;
- the Department's response to the Commission, dated 29 September 2019;
- Calmsley Hill City Farm's (City Farm) comments to the Commission, dated 2 October 2019;
- Featherdale's comments to the Commission, dated 10 October 2019;
- City Farm's comments to the Commission, dated 16 October 2019;
- Featherdale and City Farm joint comments to the Commission, dated 6 November 2019;
- Applicant's comments to the Commission, dated 19 November 2019; and
- Featherdale's comments to the Commission, dated 19 November 2019.

The Commission notes that the Planning Secretary has approved the C9 Report, a copy of which has been provided to the Commission by the Applicant and Featherdale and City Farm.

4.2 Mandatory Considerations

36. In determining this application, the Commission has taken into consideration the following relevant mandatory considerations, as provided in s 4.15 of the EP&A Act (**mandatory considerations**):
- the provisions of all:
 - environmental planning instruments;
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - development control plans;
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4;

- the *Environmental Planning and Assessment Regulations 2000* (**Regulations**) to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act; and
 - the modification of consents under section 4.55 of the EP&A Act.
- that apply to the land to which the Application relates;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
 - the suitability of the site for development;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest.

4.3 Type of Modification Assessment

Featherdale's Consideration

37. Featherdale submitted that the Application does not meet the test of minimal environmental impact for it to be assessed under section 4.55(1A) of the EP&A Act and should, therefore, be assessed as a section 4.55(2) application. Featherdale claimed that permitting private zoo experiences/small group tours outside the previously approved opening hours would have more than a minimal socio-economic impact for the reasons discussed below at paragraphs 38 to 40.
38. Featherdale stated in its comments to the Department (dated 6 August) that *"the Department's assessment report provides significant commentary on the potential for social and economic impacts, along with other environmental impacts including traffic, arising from the proposed modification. The assessment report confirms that the impacts are in fact not minor, as demonstrated by the recommended imposition of conditions of consent relating to reducing operating hours and restricting patron numbers at certain hours"*. Accordingly, Featherdale reiterated its concern that *"application has been incorrectly assessed and should be withdrawn or resubmitted as a Section 4.55(2) application"*.
39. Featherdale stated in its meeting with the Commission that *"It is a material change to the differentiation obligations 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"*.
40. To support its submission relating to the appropriate approval pathway, Featherdale provided legal advice which stated that *"the proposed changes materially expand the native animal offering (in terms of opening times and increased international visitation) to that which the PAC assessed and approved. It enables Sydney Zoo to side step the limits and differentiation obligations imposed by the PAC to ensure that the new zoo would not give rise to adverse social and economic impacts in the locality."* The advice stated, consequently, that *"the environmental impacts arising from Modification 3 cannot be characterised as 'very small' or 'negligible'. It follows that section 4.55(1A) is not a valid approval pathway for Modification 3"*.

Applicant's Consideration

41. The Applicant submitted that the modification application has been appropriately submitted for determination under Section 4.55(1A) of the EP&A Act.
42. The Applicant advised in its Application that:

"the development as proposed to be modified is substantially the same development as the development for which consent was granted as:

 - *the proposed modification does not alter the key components of the approved*

- development description;
 - the proposed amendment does not seek to amend the approved land use;
 - the proposed change does (sic) propose any physical changes to the approved design of the development, and does not affect the overall footprint of the development, or its interaction with the public domain and urban design;
 - there are no changes to car parking areas, access arrangements or the vehicular/pedestrian circulation paths;
 - there are no changes to the overall capacity of the development in regard to staff numbers or visitors; and
 - the environmental impacts of the modified development remain the same as the approved development.”
43. The Applicant further submitted, in the RtS, that there will “not be any socio-economic impacts over and above what was already assessed and approved for the operation of Sydney Zoo”.
44. The Applicant stated, in the RtS, that the “prior assessment of social and economic matters completed by the PAC and Department through the assessment of Sydney Zoo have addressed potential impacts and considered these potential impacts to be acceptable, subject to the adopted of appropriate mitigation measures”.

Department’s Assessment

45. In relation to the type of modification assessment, the Department’s Assessment Report stated that “sufficient information has been provided on the proposed private zoo experiences / small group tours and temporary and community events to determine whether the activities can be considered to have minimal environmental impact. The proposed extension of hours to allow for these activities is unlikely to have any adverse environmental, social or economic impacts subject to compliance with the existing and recommended modified conditions of consent.”
46. The Department’s Assessment Report further stated that the Department “considers the application can be characterised as a modification involving minimal environmental impact and relates to substantially the same development as the original development consent on the basis that:
- the primary function and purpose of the approved development would not change as a result of the proposed modification
 - any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent
 - the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act”.
47. The Department’s Assessment Report concluded that “the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application (DA). Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new DA to be lodged”.

Commission’s Findings

48. In determining whether the modification involves minimal environmental impact, the Commission’s task requires a comparative assessment of the environmental impacts of the development as originally approved and the development as proposed to be modified. This is an exercise that involves an appreciation, qualitative as well as quantitative, of the impact of the modification for which approval is sought. The Commission agrees with the conclusion of the Department’s Assessment Report set out in paragraph 47 that the Application is

appropriately made under section 4.55(1A) of the EP&A Act.

49. In that respect, the modifications to permit maintenance activities, emergency activities, delivery of goods and waste collection are qualitatively and quantitatively minor.
50. In relation to the temporary and community events and the private zoo and Aboriginal heritage small group tours, in undertaking a comparative assessment the Commission considers below whether the proposed modification, if approved, involve minimal environmental impact.

4.3 Socio-economic impact

Applicant's Consideration

51. The Applicant stated in its Application that the modification *"will continue to have positive socio-economic and conservation benefits for Western Sydney. It is expected that the zoo will become a destination of choice and will contribute to the economic growth of Western Sydney."*
52. The Applicant acknowledged in the RtS that a comprehensive assessment was undertaken during the original approval process for SSD 7228 and the conditions of consent that were imposed by the PAC to maintain differentiation between the native animal offerings of Sydney Zoo and Featherdale, including:
 - Condition B6 – the display of Australian native animals shall comprise less than 1.6 ha of the overall exhibited animal collection and shall be displayed as part of an Aboriginal Cultural Experience;
 - Condition B7 – two-thirds of the nominated exotic species must be on display from the commencement of opening;
 - Condition B8 – a three year prohibition from having Interactive Programs that involve touching a koala; and
 - Condition B9 – the exhibition of birds is limited to ratites (flightless birds) and penguins only.
53. The Applicant confirmed in the RtS that *"the proposed modification does not propose any change to the differentiation between Sydney Zoo and Featherdale in that it does not alter the types of exhibits, or the size or nature of the native animal display."*
54. The Applicant refuted in the RtS that the proposed changes to the approved hours of operation will be detrimental to the operation of Featherdale on that basis that the proposal *"seeks to maintain the existing approved general public hours of operation for the site, while allowing extended hours for certain temporary and community events, and private tours and zoo experiences, outside of the base operational hours for the zoo."*
55. In its meeting with the Commission on 28 August 2019, the Applicant confirmed that its approach to the tourism market is to provide an *"iconic, must-do attraction to the people of Western Sydney ... to capture the visiting friends and family market"*. The Applicant affirmed that its commercial focus is on being a *"full service zoo for the people of Western Sydney"*. It also acknowledged that the PAC had *rightly said* that Sydney Zoo and Featherdale should operate together.
56. In its meeting with the Commission the Applicant reaffirmed the example provided in the RtS (see paragraph 24), stating that *"we're looking at things, as I said, rhino feeds, meerkat feeds, we've got our Aboriginal cultural component"*.
57. The Applicant subsequently confirmed to the Commission that Sydney Zoo's primary

community will be those that either live in, or are visiting friends and family from, Western Sydney. But the Applicant also stated that there is demand from coach groups for Aboriginal cultural experiences with breakfast and also demand for feeding exotic animals such as rhinoceros.

58. The Applicant in its submission to the Commission dated 13 September 2019, acknowledged that *“Opposition has been raised to the modification on the premise that it is seeking to circumvent the differentiation obligations that the Planning Assessment Commission (PAC) required under the Sydney Zoo development consent”*. The Applicant reiterated its view that it is in compliance with the differentiation conditions set out in paragraph 52 as well as Condition C9 – Development of Regional Tourism and C21 – Aboriginal Cultural Experience.

Featherdale’s Consideration

59. Featherdale’s submission (dated 6 August 2019) provided in response to the Department’s Assessment Report, reiterated its objection to the Application on the basis that the proposed amendments to the operating hours for Sydney Zoo are premature as Condition C9 has not been satisfied. In the absence of Condition C9 being satisfied (at that time), Featherdale considered that the private zoo experiences and small group tours proposed between the hours of 7:30 am and 9 am will *“give Sydney Zoo a competitive advantage over Featherdale in relation to the international ‘morning tour group’ market.”*
60. In its meeting with the Commission on 28 August 2019, Featherdale advised that its commercial feasibility would be affected if the Application is approved. A further consequence is that it would be unable to maintain its existing programs which have significant social, educational, employment and conservation benefits for the region and the local community.
61. Featherdale’s submissions to the Commission were consistent with its submissions previously made to the Department. Featherdale’s submission to the Department, dated 25 February 2019, stated that the proposed expansion of the public access operating hours of Sydney Zoo *“significantly increases the likelihood of detrimental economic and social impacts affecting the operation of Featherdale Wildlife Park compared with the proposal that was assessed and approved by the Planning Assessment Commissioner (sic) on 8 September 2017”*.
62. In addition to paragraph 61, Featherdale stated in its submission to the Department that the proposal *“seeks to expand, intensify and introduce new public events on the site that were not considered in the determination of SSD 7228, creating a range of new and unacceptable competitive conflicts with operations at Featherdale – that will lead to broader adverse and unacceptable social and economic impacts on the locality.”*
63. Featherdale also advised the Commission that, based on its experience, there is no demand from the Western Sydney local community to access Featherdale prior to 9 am and that Sydney Zoo’s request to extend its operating hours between 7:30 am and 9 am to include private zoo experiences and small group tours is entirely to attract international visitors and associated tour groups.
64. Featherdale advised the Commission that *“If Modification 3 were approved – on an average day it would enable Sydney Zoo to target 100% of the existing market for international visitors on the morning tour groups on the way to the Blue Mountains. It would mimic Featherdale’s offering to the morning tour group market – not differentiate itself from Featherdale.”*

Department's Assessment

65. The Department's Assessment Report stated that the Applicant has *"drawn upon the findings of the economic review and Social Impact Assessment (SIA) prepared as part of the consideration of the original DA to support its request to modify the consent"*. Accordingly, the Department's Assessment Report included a summary of the key findings of these reports, including the Review of Economic Impacts (HillPDA, 2016) and Social Impact Assessment (UTS, 2017) prepared during the assessment of SSD 7228.
66. The Department's summary of the Review of Economic Impacts stated that the *"HillPDA review indicated there would be sufficient market within greater Sydney to sustain both Sydney Zoo and Featherdale. In addition, the review indicated that if the offering of the proposed development were differentiated to that of Featherdale, there may be an opportunity for the facilities to coexist, creating a tourist destination within Western Sydney."*
67. The Department's summary of the Social Impact Assessment stated that the *"SIA concluded the potential threats to the social, education and conservation programs carried out in the locality, including those at Featherdale, were unlikely to be realised due to the different offerings at Featherdale as compared to Sydney Zoo"*. The Department's summary further stated that the *"significant social benefits offered by Sydney Zoo were found to outweigh the potential adverse social impacts associated with the loss of Featherdale's programs or its existing market"*.
68. The Department's Assessment Report also acknowledged the limitations imposed on the operations of Sydney Zoo through conditions of consent to ensure its differentiation from Featherdale. The differentiation conditions included in the Existing Development Consent are listed and described at paragraph 52.
69. The Department's Assessment Report acknowledged that the estimated number of visitors for the proposed private zoo experiences and small group tours, including up to 600 per day, is significantly greater than other zoos in the Sydney region. The Department, therefore, recommended a limit of 300 visitors per day in order to *"be more in line with the scale of similar out-of-hours offerings at other zoos in the Greater Sydney Region"*.
70. In response to the social and economic issues that were raised by Featherdale in its submission on the Application, the Department's Assessment Report stated that these relate to the *"impacts affecting the operation of Featherdale, rather than the broader community."* Further to this, the Department's Assessment Report stated that the *"HillPDA report and the former Commission's conclusion makes it clear that the consideration of competitive conflict is not appropriate in the planning context and was therefore not considered in the former Commission's assessment. It is therefore not a matter for consideration in the assessment of this modification."*
71. The Department's Assessment Report concluded that *"the proposed modification is unlikely to have any adverse social or economic impacts in the locality. The proposed out-of-hours activities reflect Sydney Zoo's response to the requirements to encourage and enhance regional tourism in conjunction with the Development and do not affect the differentiation requirements on the consent."*

PAC Determination

72. The PAC's determination of SSD 7228 noted that, in assessing whether or not to approve the construction of the Applicant's planned zoo, the relevant issue is the broader social and economic impacts, rather than increased competition. The PAC's determination report stated:

“Legal authorities suggest that care should be taken in considering the economic impact of a proposed development upon private traders when assessing the economic and social impacts of that development. According to these authorities, the relevant issue in a planning context is the broader social and economic impacts stemming from any economic impact on existing businesses, rather than the fact of increased competition.”

73. While accepting that there were social and economic benefits delivered by Featherdale, the PAC stated in its determination report that it was:

“satisfied that the potential impacts to social goods in the localities that might be affected by Sydney Zoo do not warrant refusal of the Sydney Zoo proposal. ... If the risks of a significant contraction or loss of social benefits associated with Featherdale’s operations do materialise, the Commission recognises that the social benefits that would be offered by Sydney Zoo, together with its proposed mitigation strategies, will generate other positive social outcomes for the localities in which Sydney Zoo would be present.”

74. Nevertheless, the PAC’s view was that the social and economic impact of the proposal was likely to be optimised if the two facilities co-existed, providing differentiated offerings to the people of and visitors to Western Sydney. For that reason the PAC’s determination included conditions designed to ensure that the Applicant’s offerings were differentiated, reflecting proposed mitigation strategies.

Commission’s Findings

75. The task for the PAC was to determine whether the construction of a zoo, as proposed by the Applicant, met the tests set out in the Act. The task for the Commission under s 4.55(1A) of the EP&A Act is different. The Commission is required to decide whether the proposed modification *“is of minimal environmental impact”*. As noted in paragraph 48, this involves considering all relevant information, including the views of the Applicant, the Department and Featherdale, to determine the likely impact of the modification for which approval is sought.
76. The Commission acknowledges the concerns raised by Featherdale, as set out in paragraphs 59 to 64, in relation to the social and economic impacts affecting its ongoing operations. The Commission agrees with the PAC’s view set out in paragraphs 72 to 74. The Commission’s view is that the differentiation conditions decided upon by the PAC, should largely ameliorate any potential negative broader social or economic impacts. The Commission also finds that the threat of economic competition to Featherdale alone is not an impact that takes the modification outside the scope of 4.55(1A).
77. Turning to the positive social and economic impacts of the Modification, the Commission accepts the assurances provided by the Applicant set out in paragraphs 52 to 56 and notes that Condition B6 requires the Applicant to ensure that exhibited Australian native animals are to be *‘displayed as part of an Aboriginal Heritage Experience’* to which Condition C21 applies.
78. The Commission finds that conducting private zoo experiences and small group tours, differentiated as the PAC had required, are likely to have positive social and economic impacts for the Western Sydney community, although not significantly so. The Commission also finds that temporary events and community events outside of the approved public opening hours are also likely to provide positive social and economic benefits for the Western Sydney community.
79. The Commission is also of the view that approval of the following operational activities to be conducted outside of the approved public opening hours will have minimal environmental impact:

- maintenance activities;
 - emergency activities; and
 - delivery of goods, waste collection and food delivery.
80. Consequently, weighing the positive and potential negative social and economic impacts, the Commission concludes that, provided the Sydney Zoo's private zoo experiences and small group tours outside the previously approved opening hours are differentiated from those of Featherdale (as envisaged originally by the PAC), the Modification is of minimal environmental impact.
 81. The Commission notes that the Application does not propose any amendments to the differentiation requirements set by the PAC and that those conditions (in particular Conditions B6, B7, B8, B9 and C21) will apply equally to the Approval as modified by this decision. Therefore, the Applicant would continue to be bound by the requirements of those conditions.
 82. The Commission agrees with the recommendation made by the Department, as set out at paragraph 69, to limit the number of visitors for the proposed private zoo experiences and small group tours to 300 persons per day.
 83. In summary, the Commission finds that the modifications proposed as part of the Application, including the extended hours of operation and the introduction of private zoo experiences and small group tours, would not lead to additional adverse and unacceptable social and economic impacts at a regional scale.

4.4 Other considerations

Traffic

84. The Department considered the impact of additional traffic generated by the Application including traffic associated with the delivery of goods, waste collection, temporary and community events and the private zoo experiences and small group tours. The Department's Assessment Report found that *"the proposed modification is unlikely to result in any additional off-site traffic impacts. The requirement for a traffic verification report within six months of the commencement of operation will ensure the Applicant verifies the predicted traffic impacts"*. The Department concluded that *"traffic impacts of the proposed modification are minimal and manageable subject to the implementation of the existing and recommended conditions of consent"*.
85. The Commission accepts the findings of the Department and agrees that the Application is unlikely to result in any additional traffic impacts.

Noise

86. The Department considered the potential for out-of-hours activities to generate additional noise impacts to off-site sensitive receivers. The Department's Assessment Report found that *"the noise impacts from the proposed modification will not introduce additional noise impacts and will not exceed those levels previously assessed"*. The Department concluded that *"noise impacts from the site will continue to be appropriately managed subject to compliance with the existing conditions of consent"*.
87. The Commission accepts the findings of the Department and agrees that the Application will not result in additional noise impacts. The Commission agrees with the Department's conclusion that noise impacts can be appropriately managed through compliance with the existing conditions of consent. Nonetheless, given that the Project has not commenced operations and that noise impacts are accordingly only predictive, for abundant caution the

Commission agrees with the Department's recommended condition of consent for noise impact verification.

Condition C9

88. Featherdale's submission to the Department stated that it is unacceptable for any expansion of Sydney Zoo to occur prior to the satisfaction of Condition C9 – Development of Regional Tourism, which was imposed by the PAC *"to enforce Sydney Zoo's commitment to work cooperatively with Featherdale and other local business in fostering a collaborative business environment"*. In their joint comments to the Commission dated 6 November 2019, Featherdale and City Farm has further submitted, after the Applicant prepared a report under Condition C9 that the C9 Report does not demonstrate any consultation between the Applicant and City Farm and that the C9 Report does not demonstrate that the Applicant undertook genuine and reasonable consultation with Featherdale.
89. The Department advised the Commission that it regarded the obligations under Condition C9 as separate from the subject matter of this Application.
90. The Commission agrees that compliance with Condition C9 is a separate matter and that its consideration of this Application is not dependent on the satisfaction of Condition C9. The Commission notes that the Department approved the C9 Report on 18 October 2019. It is not a function of the Commission to enforce Condition C9 or to review or second-guess the Planning Secretary's state of satisfaction with the report prepared under Condition C9. Furthermore, the Commission notes that the Planning Secretary may request updates to this report at any time.

Marketing conduct

91. Featherdale raised concern in its briefing with the Commission that the *"marketing conduct does not comply with the differentiation obligations"* for reasons relating to pricing, hours of operation and differentiation between a zoological facility and a wildlife park. Featherdale provided examples of marketing material that supported this statement.
92. While the Commission agrees that compliance with the conditions that form part of any development consent is of fundamental importance, it is not for the Commission to determine whether or not the Applicant is complying and compliance with conditions of consent is not a relevant consideration for the Commission in determining the Application.

Condition B8

93. Featherdale submitted that Condition B8 of the modified Development Consent should be 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 7:30 am to 9:00 am for the first three years of operation of the facility.
94. The Commission has decided that such a condition is not warranted having regard to the conclusions it has reached on the socio-economic impact of the modification, nor does the public interest warrant such a condition for the reasons set out in Section 4.5 below.

4.5 The public interest

Applicant's Consideration

95. The Applicant addressed the public interest in its Application which states that *"the proposed modifications to the approved development are considered to be in the public interest as they will facilitate the optimal operation and functioning of the zoo"*.

Department's Assessment

96. The Department's Assessment Report stated that the Department considers *"the modification request is in the public interest and is approvable, subject to the recommended conditions of consent, including:*
- *clarification of the hours of operation for the Development*
 - *limiting the number of temporary and community events to a maximum of eight events per calendar year*
 - *limiting the visitor number for private zoo experiences / small group tours commencing between the hours of 7:30 am and 9 am to a maximum of 300 people*
 - *revision of the OTMP to ensure management of traffic on site for the out-of-hours proposed between 7:30 am and 9 am*
 - *preparation of a traffic verification report within six months of the commencement of operation of the Development*
 - *an additional requirement to report on private zoo experience / small group tour visitor numbers and transport mode share in the Annual Review*
 - *preparation of a noise verification report within six months of the commencement of operation of the Development."*
97. The Department's Assessment Report concluded that the development *"will operate with minimal adverse environmental, social and economic impacts. Sydney Zoo will also provide social benefits to the community through increased opportunities for social interaction and the enhancement of regional tourism initiatives."*

Commission's Findings

98. In considering the public interest merits of the Application, the Commission has had regard to the objects of the EP&A Act.
99. Under section 1.3 of the EP&A Act, the relevant objects applicable to the Application are:
- a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
 - b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
 - c) *to promote the orderly and economic use and development of land,*
 - e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
 - i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, and*
 - j) *to provide increased opportunity for community participation in environmental planning and assessment.*
100. A key relevant object of the EP&A Act to the Application, as set out in paragraph 99, is the facilitation of Ecologically Sustainable Development (ESD). The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* states that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can be achieved through the implementation of:
- a) *the precautionary principle;*
 - b) *inter-generational equity;*
 - c) *conservation of biological diversity and ecological integrity; and*
 - d) *improved valuation, pricing and incentive mechanisms.*
101. The Commission finds that the Application is generally consistent with the ESD principles

(set out in paragraph 100), the objects of EP&A Act (set out in paragraph 99), and is in the public interest because it extends the opportunity for the Sydney Zoo to offer programs of benefit to the community.

5. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

102. The views of the community were expressed through the public submissions that were received during the notification period, as discussed and summarised through **section 4**.
103. The Commission carefully considered all of these views as part its decision-making process. The way in which these concerns were taken into account by the Commission is set out in **section 4** above.

6. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

104. The Commission has carefully considered the Material before it and has determined to grant consent to the Application, for the reasons set out in paragraphs 105 to 109 below.
105. For the reasons set out at paragraph 80, the Commission finds that the Application will not introduce any additional social and economic impacts that have not been previously assessed by the PAC, in its determination of the original application (SSD 7228).
106. For the reasons set out at paragraph 78, the Commission finds that the Application has potential to increase social and economic benefits throughout Western Sydney by providing increased opportunities for interactions between Sydney Zoo and other regional operators which is a requirement of Condition C9 of the Existing Development Consent.
107. For the reasons set out at paragraphs 77 to 80, the Commission finds that, given the differentiation required by current Conditions granting consent to the Application would not lead to additional adverse or unacceptable social and economic impacts.
108. For the reasons set out at paragraph 81, the Commission finds that the differentiation requirements imposed by the PAC to address the social and economic impacts of Sydney Zoo (Conditions B6 to B9 and C21 on the Original Development Consent) remain relevant.
109. For the reasons set out in this Statement of Reasons, the Commission:
- finds that the Application has been correctly lodged under section 4.55(1A) of the EP&A Act;
 - is satisfied that the Application is of minimal environmental impact; and
 - is satisfied that the development to which the consent as modified relates (SSD 7228) is substantially the same development as the development for which the consent was originally granted.
110. The reasons for the Decision are given in this Statement of Reasons for Decision, dated 25 November 2019.



Russell Miller AM (Chair)
Member of the Commission



Alan Coutts
Member of the Commission