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ABN 50 105 256 228

06 August 2019

Mr Chris Ritchie  
Director – Industry Assessments  
NSW Department of Planning Industry and Environment  
Via email [REDACTED]

Dear Chris,

## **MODIFICATION TO SYDNEY ZOO: SSD 7228 MOD NO 3**

On behalf of Elanor Investors Group (Elanor), the owners and operators of Featherdale Wildlife Park, we submit our significant concerns regarding the Department's assessment and recommendation to the Independent Planning Commission on proposed Modification No 3 to SSD 7228 for Sydney Zoo.

We summarise our concerns as follows:

1. We reiterate our previous objection that the expansion and intensification of public access to Sydney Zoo proposed in this application is premature given the absence of an acceptable and approved approach to 'enhance regional tourism' as required by Condition C9 of SSD 7228.

Condition C9 was imposed to enforce Sydney Zoo's commitment to work cooperatively with Featherdale and other local business in fostering a collaborative business environment. To date, a comprehensive and acceptable regional tourism plan has not been provided to Elanor or accepted by the Secretary of the Department. It is unacceptable for approval of expansion to the scale proposed in this application in the absence of satisfaction of this overarching condition of consent. This is particularly the case in circumstances where Sydney Zoo's proposed private zoo experience/small group tours between the hours of 7.30am and 9am is clearly intended to give Sydney Zoo a competitive advantage over Featherdale in relation to the international 'morning tour group' market.

2. The socio-economic impacts arising from the proposed expansion of activities at Sydney Zoo are of such significance that the Department cannot be satisfied the proposed modification is 'of minimal environmental impact' as defined in Section 4.55(1A) of the EP&A Act.

We note 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 not in fact minor, as demonstrated by the recommended imposition of conditions of consent relating to reducing operating hours and restricting patron numbers at certain hours.

We submit that these conditions are imposed in an endeavour to mitigate detrimental impacts arising from the significant increase in operations associated with the modified consent. Even with those conditions – the modification will still allow up to 300 additional visitors to the zoo between the hours of 7.30am and 9am – the vast majority of which will be international visitors and in direct competition with Featherdale. On any view of it, the flow on impacts of such a significant increase in visitors could not sensibly be considered 'of minimal environmental impact'.



Accordingly, we reiterate our submission that the application has been incorrectly assessed and should be withdrawn or resubmitted as a Section 4.55(2) application.

We also take this opportunity to highlight our client's concerns in relation to the underlying 'scope creep' driving Sydney Zoo's modification strategy. Sydney Zoo has now lodged four substantive modifications which change, among other matters, the native animal offering at the new zoo. We remind the Department that Section 4.55(3) of the EP&A Act requires the consent authority to take into consideration the reasons given by the PAC for the grant of the Development Consent which would include, relevantly, that Sydney Zoo must adequately differentiate itself from Featherdale. As set out above, Sydney Zoo's proposed private zoo experience/small group tours is just another example of Sydney Zoo seeking to side step its differentiation obligations by making itself more attractive to the Asian international market.

In support of this submission, please find attached a letter from Gilbert and Tobin, Solicitors acting for Elanor Investors, reiterating serious concerns regarding the processing and determination of Modification No 3 under the provisions of Section 4.55(1A) of the Act.

We request the Department's immediate review of this recommendation. The proposed modified consent will result in increased detrimental social, economic and environmental impacts that need to be more thoroughly considered before being determined. We advise we have copied this submission to the Independent Planning Commission to ensure they are alerted to these concerns.

Please contact me if you have any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Wynne".

**JOHN WYNNE**  
**GROUP DIRECTOR**

Enclosure: Gilbert and Tobin letter

Copy: Independent Planning Commission

Partner Ben Fuller  
Contact Ben Fuller

Our ref BDF:1037599



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**6 August 2019**

**By Email:** [REDACTED]

Chris Ritchie  
Director, Industry Assessments  
NSW Department of Planning, Industry and Environment

Copy to:

Independent Planning Commission

Copy to:

Sarah Hill  
Deputy Secretary DoPIE  
[REDACTED]

Dear Chris

**Sydney Zoo Development Consent SSD 7228 (Development Consent)  
Modification Application 3**

We refer to the Department's Assessment Report dated July 2019 in relation to Modification Application 3.

Our client is seriously concerned that the Department has recommended Modification 3 for approval to the Independent Planning Commission.

It is incomprehensible to our client that the Department has accepted Sydney Zoo's position that Modification 3 is of 'minimal environmental impact' for the purposes of section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

Sydney Zoo's Modification 3 seeks approval for, among other matters, to modify the Development Consent so that it can allow private zoo experiences/small group tours of up to 600 additional visitors between 7am to 9am. The commercial driver behind that change is to target morning tour groups for international visitors on their way to the Blue Mountains. Those international visitors are interested in native animal experiences. This is the very same tour group that Featherdale targets. Sydney Zoo's position that this change will not present any socio-economic impacts over and above what was already assessed and approved for the operation of the Sydney Zoo is factually incorrect and, to be frank, misleading. It is clear 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.

Case law provides that the word 'minimal' in the context of section 4.55(1A) of the EP&A Act means 'very small' or 'negligible' environmental impact. In practice, and based on our experience, that is a very difficult threshold test to satisfy for any State Significant Project unless the proposed changes are minor in nature. For the reasons set out in Elanor's original objection to Modification 3, and Urbis' letter of 6 August 2019, on any sensible view of it 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.

Our client is exasperated that the Department continues to allow Sydney Zoo to 'pull the wool over its eyes' in relation to Sydney Zoo's underlying commercial driver for Modification 3. Sydney Zoo's proposed private experience/tour groups between 7am to 9am is not about breakfast with hippos or zookeepers for the day (as suggested by Sydney Zoo in its assessment documentation). It is a clear, deliberate and intentional strategy to target morning tour groups for international visitors on their way to the Blue Mountains.

Our client accepts that Sydney Zoo is entitled to seek approval for such changes. But it must do so in accordance with the EP&A Act – and it is critical for public faith and transparency in the planning system (both cornerstone objectives of the EP&A Act) that the Department ensures that this occurs.

The Department's approach to Modification 3 presents a very dangerous precedent for planning law in NSW. Why would a proponent subject a key (and controversial) aspect of its operations to the public guise and scrutiny of a PAC process - when it can just slip it through as a 'minimal environmental impact' modification with the Department after that consent has been granted? We ask the Department to think very carefully about this issue, and immediately review its recommendation.

Our client will not hesitate to pursue all forums (legal and public) to ensure that the EP&A Act is correctly applied to Modification 3 (and the new zoo facility more generally), and reserves all of its rights in relation to this matter.

Yours faithfully  
**Gilbert + Tobin**

A handwritten signature in black ink, appearing to read 'Ben Fuller', written in a cursive style.

**Ben Fuller**  
Partner

