

19 November 2019

218335

Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Dear Commission,

SECTION 4.55(1A) MODIFICATION APPLICATION: SSD 7228 SYDNEY ZOO MODIFICATION 3

This submission has been prepared by Ethos Urban on behalf of Sydney Zoo, in relation to the ongoing review and assessment of Modification Application No.3 for Sydney Zoo, Bungarribee, in the Western Sydney Parklands (SSD 7228).

Sydney Zoo is the proponent for the Sydney Zoo development, and the Applicant for Modification Application No. 3.

This submission responds to matters that have been raised in objections to Modification Application No.3 by Calmsley Hill City Farm and Featherdale Wildlife Park. Detailed response to these matters are provided below.

DPIE Report

We support the conclusions of the Department of Planning, Industry and Environment's assessment report and its recommendation for approval of Modification Application No.3.

We also support the Department's analysis of proposed condition E16, in that the proposed condition is inappropriate and unworkable. Sydney Zoo will be a world class facility that is intended to provide a high quality educational and recreational experience for residents and tourists (inter-State and international) alike. Sydney Zoo will also provide high quality animal care services to support industry-wide conservation initiatives. Consistent with the Department's conclusion, Sydney Zoo submits that there is no planning basis to support the imposition of a condition that prevents guests who are already inside the zoo, as part of a guided tour, from looking at (or not looking at) a particular animal at a particular time of the day. Such a condition appears to be designed to constrain commercial competition and is not for a proper planning purpose. In addition, Sydney Zoo's Australiana exhibit has been developed in compliance with Condition B6 so that its Australian animal display is wholly integrated with an Aboriginal Cultural Experience. Accordingly, any tours involving Sydney Zoo's Aboriginal Cultural Experience would necessarily involve interactions with its Australian animals.

Submissions Not Relevant

We also highlight that the issues raised by Featherdale and Calmsley Hill in their most recent submissions are not relevant to Modification Application No. 3. In particular, Modification Application No. 3 does not seek to change any of the conditions of consent which are relevant to the matters raised in these submissions. In particular, Sydney Zoo's compliance with the 'differentiation' conditions of consent (B6 to B9) is not impacted by the modification. As such, whilst Sydney Zoo's ongoing compliance is clearly of paramount importance to its nearest competitors, there is no basis for these issues raised by Featherdale and Calmsley Hill to further delay the determination of Modification Application No. 3 by the Independent Planning Commission (IPC).

1.0 Calmsley Hill City Farm

Issues raised by Calmsley Hill City Farm include:

1.1 Regional Tourism

Calmsley Hill submitted that:

- *It is not in the public interest to extend operating hours and increase public access to the Zoo before Sydney Zoo has complied with its obligations in relation to the Development of Regional Tourism required by Condition C9. The Zoo has not made any attempts at all to consult with us on enhancement of regional tourism. As the Zoo has not made any genuine and reasonable attempts to consult with us we can only assume the report required by Consent Condition C9 has not been submitted, or if it has that the Secretary has not approved it.*

As identified above, Sydney Zoo's compliance with Condition C9 is unrelated to the assessment of Modification Application No. 3, which is limited to opening hours. Nonetheless, we note that Sydney Zoo is in full compliance with Condition C9 and will ensure it remains in full compliance with all of its conditions of consent.

For Condition C9, Sydney Zoo has prepared a comprehensive report on initiatives to enhance regional tourism, prepared in consultation with Tourism NSW and involving collaboration with a wide range of tourism operators in Western Sydney. The report has been the subject of detailed review and assessment by the Department of Planning, Industry and Environment and has been approved by the Secretary of the Department. Sydney Zoo therefore has satisfied Condition C9. We note however that the enhancement of regional tourism is an ongoing matter of great importance to Sydney Zoo, and many of the initiatives identified in the report will require ongoing actions, as well as reviews and updates over time. In particular, we note that Sydney Zoo has established the Western Sydney Tourism Business Leaders Think Tank to identify opportunities for collaboration in order to grow regional tourism. Sydney Zoo has invited 15 parties to attend the second Think Tank in December 2019, all of whom have responded except for Featherdale and Calmsley Hill. Sydney Zoo has also had a number of new organisations seeking to be part of the group, and is supportive of its expansion in this way. Penrith and Blacktown Council will also attend the Think Tank.

We also note that both Featherdale and Calmsley Hill have rejected Sydney Zoo's proposal to undertake joint marketing/ticketing. However, they have recently undertaken joint marketing/ticketing together. Whilst it is disappointing for Sydney Zoo that this opportunity wasn't able to be progressed collectively, Sydney Zoo takes great satisfaction in being the catalyst for these two operators to work together in a more collaborative way to enhance regional tourism. Indeed we see this as a natural benefit of competitive tension, which can drive collaboration and innovation in relation to new ideas, and can ultimately lead to better services and offerings for all customers (i.e. tourists and residents).

Sydney Zoo remains genuinely committed to growing tourism in Western Sydney, and the offer from Sydney Zoo to both Featherdale and Calmsley Hill remains open in relation to collectively collaborating on new ideas to enhance regional tourism. Sydney Zoo considers that the proposed modification to operating hours will enhance regional tourism by increasing the diversity and availability of attractions in Western Sydney and is therefore in the public interest.

1.2 Social and Economic Impacts

Calmsley Hill submitted that:

- *Modification 3 will have social and economic impacts in the locality because the increased opening hours will allow Sydney Zoo to target more international tourists – who are interested in native animal and Australiana farmyard animal experiences (which are the same experiences offered by us). Our review of documentation on the IPC Website hasn't found any assessment of that impact in relation to our business and flow on impacts in the locality*

Calmsley Hill opens at 9am, and is therefore not currently accessing the market segment that Sydney Zoo hopes to target with the early opening hours for guided tours and private zoo experiences. If Calmsley Hill genuinely considered that this segment of the market was beneficial to their financial viability, then it is a surprise that they have not sought to access it. We note that guided tours and private zoo experiences are a normal part of operating a zoo, and Sydney Zoo will provide these offerings during its already consented operating hours commencing from 9am. Modification Application No. 3 will therefore have no bearing on the degree of competition between Sydney Zoo and Calmsley Hill from 9am onwards, and therefore cannot result in any social or economic impacts. It is noted that the Sydney Zoo proposal was the subject of intense scrutiny during the development assessment period for its main approval, in particular in relation to socio-economic issues, which ultimately found that Sydney Zoo will have a net positive community benefit in the locality.

1.3 Differentiation

Calmsley Hill submitted that:

- Since the Zoo was announced in 2015, we have been concerned about the affect it will have on our business. When we reviewed their development applications and consents it appeared to be a facility for native and exotic animals only, not farm animals. Our first contact with the Zoo was 4 weeks ago when an ex-employee, who left us to take up a position with the Zoo, contacted us to buy farm animals - we were shocked to find out the Zoo intends to have a Farm Experience exhibit. For the last four weeks we have been reviewing the documentation on the NSW Planning and Independent Planning Commissions Portals. In that documentation we only see applications for and approval of native and exotic animals so we question if they have consent for keeping and exhibiting farm animals.*

A farmyard experience is a normal exhibit for any zoo and has always been a part of Sydney Zoo's proposal. Particularly, the Farm experience is identified as Building 9 in the schedule of buildings in the EIS, as Building 7 in the Landscape Master Plan (at Appendix B of the EIS), and as Building 9 in the Architectural Plans (at Appendix C of the EIS). We note that Calmsley Hill City Farm is a working farm which seeks to "showcase the best of rural Australia" with a clear focus on farming and agriculture. Conversely, Sydney Zoo is a zoo – of which the farmyard experience is a very small part of the overall attraction (albeit an important part of being able to provide a whole zoo experience, as in the case of Taronga Zoo). Calmsley Hill shows include stock whip, cow milking, working dog and sheep shearing as well as tractor rides and a permaculture garden. Sydney Zoo does not intend to provide any of these shows or experiences. As such, we consider Calmsley Hill to be extremely well differentiated from Sydney Zoo.

2.0 Featherdale Wildlife Park

Featherdale raises concerns about a Koala statue that was temporarily located near the Sydney Zoo entrance, and extends this to general concerns about Sydney Zoo's commitment to compliance with the conditions of consent.

The Koala is not a structure that has been constructed. It is a moveable statue that has been temporarily stored near the entrance whilst a location is determined and made suitable. Sydney Zoo is not attempting to mimic any koala structure or statue at Featherdale. Sydney Zoo has in fact sourced a number of animal statues including a gorilla, a chimpanzee, 2 crocodiles and a lion for placement throughout the zoo. Notwithstanding, it should be highlighted that placement or otherwise of a koala statue has nothing to do with Modification Application No. 3. Further, we note that there is no restriction in the consent on Sydney Zoo advertising its Australiana exhibit, including koalas, or that doing so would in any way affect Sydney Zoo's compliance with its differentiation obligations under the consent.

We take this opportunity to also highlight that Sydney Zoo are extremely frustrated at the way in which they have been portrayed by Featherdale as somehow guilty of obtaining their development consent by anything other than due process, and since then being either in flagrant non-compliance with the consent, or seeking to undermine the consent. Nothing could be further from the truth. The Sydney Zoo proposal was the subject of intense scrutiny during the development assessment period, in particular in relation to socio-economic issues. As a result of this very comprehensive, robust and transparent assessment process, the Department of Planning and the Planning

Assessment Commission (as it was at the time) determined that on balance the development of Sydney Zoo would have a net positive community benefit. Further, Sydney Zoo has never at any time sought to avoid strict compliance with, or to undermine the intent of, the conditions of consent, especially the conditions that relate to socio-economic issues (such as the differentiation conditions and condition C9 relating to regional tourism).

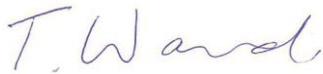
Featherdale has also sought in its submission to reframe Sydney Zoo's representations to the IPC, as well as the differentiation provisions within the consent, as seeking to ensure that "the new zoo and Featherdale's offerings are complimentary [sic] (and not competing) to enhance regional tourism". Contrary to Featherdale's submission, the differentiation conditions are limited to ensuring that the vast majority of Sydney Zoo is devoted to exotic animals (as proposed and from Day 1 of opening) and to differentiate the facilities in relation to the Australiana exhibit including, in particular, the Koala interaction experience for a transitional period of 3 years. Sydney Zoo will be a full service zoo with a primary focus on exotic animals (as proposed and from Day 1 of opening), and it will comply with the development consent conditions, including in relation to its differentiation obligations. Featherdale's submission therefore misrepresents Sydney Zoo's representations and the differentiation obligations, and the implications of Featherdale's submission are inconsistent with Australian competition law.

3.0 Conclusion

This submission provides a response to issues raised by Featherdale and Calmsley Hill City Farm in relation to Modification Application No. 3 for Sydney Zoo.

We trust that this response will support the IPC in making a prompt assessment of the proposed modification request.

Yours sincerely,



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