



6 November 2019

**By Email: [Bradley.james@ipcn.nsw.gov.au](mailto:Bradley.james@ipcn.nsw.gov.au)**

Copy to:

Anna Summerhayes  
IPC, Acting Executive Director - Secretariat

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Independent Planning Commission NSW

### **Sydney Zoo – SSD 7228 Modification 3**

We refer to the IPC's advice that it will not accept the submission lodged by Calmsley Hill City Farm dated 2 October 2019, and the supplementary submission lodged by Featherdale Wildlife Park dated 10 October 2019 in relation to Modification 3. A copy of the submissions are attached.

For the reasons set out in this letter, we respectfully submit that:

(a) the IPC is obliged to accept and consider the submissions, and the new evidence set out in this letter (together referred to as the **Supplementary Submissions**), in relation to its assessment of Modification 3 on procedural fairness grounds; and

(b) based on its consideration of the Supplementary Submissions (and the other matters raised in Featherdale Wildlife Park's objections to date) it should:

- (i) delay any decision in relation to Modification 3 until our significant concerns in relation to the validity of the Department's decision to approve Sydney Zoo's Condition C9 Regional Tourism Report is resolved; or
- (ii) determine to refuse Modification 3.

### **Obligation to Consider the Supplementary Submissions**

IPC has advised us that it will not accept the submissions lodged by Calmsley Hill City Farm and Featherdale Wildlife Park in early October 2019 because it had already published a statement on the Commission's website on 20 September 2019 that no further comments in relation to Modification 3 would be considered after that date.

That statement was placed on the IPC's website immediately after it accepted detailed and lengthy supplementary submissions from Sydney Zoo on 19 and 20 September 2019 which sought to discredit the concerns raised by Featherdale Wildlife Park in relation to Sydney Zoo's conduct in significant breach of the Development Consent.

The IPC adopted that position even though:

- both of Sydney Zoo's supplementary submissions were accepted by the IPC well outside the formal exhibition period for comments in relation to Modification 3;
- Calmsley Hill Farm and Featherdale Wildlife Park's submissions contain new evidence in relation to Sydney Zoo's improper conduct and non-compliance with conditions of the Development Consent. These are matters which are clearly relevant and mandatory considerations for the IPC in its assessment of the merits of Modification 3 including, among other matters, its assessment of whether it is in the public interest to approve Modification 3; and
- the IPC did not provide any person with a reasonable opportunity to respond to the statements made in Sydney Zoo's submissions of 19 and 20 September 2019 (many of which are factually incorrect and/or misleading).

In light of the above, we respectfully submit that:

- the IPC is obliged to accept and consider the submissions lodged by Calmsley Hill Farm and Featherdale Wildlife Park in early October 2019, and the new evidence set out in this letter, in relation to its assessment of Modification 3 on procedural fairness grounds; and
- request the IPC to reconsider its position and adopt this approach.

### **Condition C9 Regional Tourism Report – Unlawful Decision**

As the IPC is aware, Condition C9 of the Development Consent required Sydney Zoo to, prior to the commencement of operations, submit a report to the Secretary demonstrating that, among other matters, it has made genuine and reasonable attempts to consult with local recreational facilities and businesses to enhance regional tourism in conjunction with the new zoo.

The Minister for Planning and Public Spaces, The Hon. Rob Stokes, and Group Deputy Secretary of the Department of Planning, Industry and Environment, Marcus Ray, have both recently acknowledged that Condition C9 requires, at a minimum, Sydney Zoo to consult with Calmsley Hill City Farm and Featherdale Wildlife Park to develop strategies to enhance the Western Sydney region. See attached transcript of the Portfolio Committee Meeting No. 7 Planning and Environment on Thursday 31 October 2019.

In particular, we draw the IPC's attention to the following statements in the transcript:

- the Group Deputy Secretary made the following statements [at page 15] in relation to Condition C9, and the requirement for consultation as between Sydney Zoo, Featherdale Wildlife Park and Calmsley Hill City Farm:

*'... It put I would have to say unprecedented conditions requiring during the development of the zoo before it opened a very great degree of consultation to be carried out by the zoo with other entities, if I could say tourism entities, in western Sydney.'*

*'... I am sure the commission was concerned that there were genuine attempts made to develop a whole-of-area strategy where all parties could benefit from the fact that there were a range of different tourism venues, even though they would appeal to different segments of the market.'*

- the Minister also made the following statements [at page 15] in relation to Condition C9, and the requirement for consultation as between Sydney Zoo, Featherdale Wildlife Park and Calmsley Hill City Farm:

*'The Hon. ADAM SEARLE: ... Calmsley Hill offers a traditional petting farm experience for city children particularly. Featherdale is about conserving and protecting native species, so that is distinct. The proposed Sydney Zoo is said to offer an exotic and imported species experience. Given their proximity and given what Mr Ray has just indicated about the need to balance an appeal to different segments of the tourism market, do you agree it is important that these distinct themes be preserved, particularly given their relatively close proximity in the planning sense.'*

Mr ROB Stokes: Yes, I do...

...

*Mr ROB STOKES: The wording I have been provided is that it is required to submit ..... 'a report detailing initiatives and consultation undertaken with nearby businesses to enhance regional tourism in western Sydney.' Those sorts of issues would be precisely the issues that a report like this would look at to ensure that the whole is greater than the sum of the parts. By working collaboratively together these three destinations can actually support one another.'*

We attach a copy of the Condition C9 Report that Sydney Zoo submitted to the Department – and has recently been approved by the Secretary (under delegation).

Despite the PAC's intention for Condition C9, the clear wording of the Condition, and the Minister for Planning and Group Deputy Secretary's correct interpretation of its requirements, the Condition C9 Report does not demonstrate any consultation between Sydney Zoo and Calmsley Hill Farm at all.

In addition, the Condition C9 Report does not demonstrate that Sydney Zoo undertook genuine and reasonable consultation with Featherdale Wildlife Park in circumstances where Sydney Zoo did not table one initiative that would operate to enhance regional tourism. Featherdale Wildlife Park voluntarily engaged, at its cost, tourism development and marketing experts, Stafford Strategy, to prepare a report which identifies strategies that Sydney Zoo could employ to enhance regional tourism. The Stafford Report was provided to Sydney Zoo and Sydney Zoo did not accept a single recommendation or strategy suggested by leading experts in this area. Instead, Sydney Zoo decided to submit the Condition C9 Report to the Department in circumstances where it knew that its consultation with Featherdale Wildlife Park was unresolved. Featherdale Wildlife Park offered to meet with Sydney Zoo to try and resolve those issues. Sydney Zoo did not provide Featherdale Wildlife Park with the courtesy of any response to that request until after the Department had notified it that it intended to approve Sydney Zoo's Condition C9 Report.

We would also seriously question any suggestion in the Condition C9 Report that Sydney Zoo has undertaken any genuine and reasonable consultation with other local businesses and facilities in the Western Sydney Region based on Featherdale Wildlife Park's experience at Sydney Zoos' 'flagship'

Think Tank Seminar in December 2018. To be frank, the 'Think Tank Seminar' was a farcical attempt by Sydney Zoo to brush over its obligations under Condition C9 for a number of key reasons including: (i) Calmsley Hill Farm (a key tourism facility in the locality) wasn't invited at all; and (ii) Sydney Zoo did not identify a single initiative that would operate to 'grow the pie' for tourism in Western Sydney.

It is our position that the Secretary's delegate could not validly be satisfied that Sydney Zoo has satisfied its consultation obligations under Condition C9 in the above circumstances.

The Department's Director Industry Assessments, Chris Ritchie, sought to justify his decision (under delegation) to approve the Condition C9 Report by adopting the position that Condition C9 leaves it open to Sydney Zoo to select the facilities and businesses with which it is to consult and does not require consultation with all such facilities and businesses. See attached copy of letter dated 16 October 2019 to Calmsley Hill Farm.

With the greatest respect, the Department's Director of Industry Assessment has adopted a non-sensical interpretation of Condition C9 which is both unlawful, and entirely at odds with the Minister for Planning and Group Deputy Secretary's expectations for the Condition C9 Report.

It cannot possibly be the case that Sydney Zoo can legally satisfy its consultation obligations under Condition C9 without consulting with one of the key tourism facilities which is clearly intended to be captured by that obligation.

We have written to the Department requesting the Secretary's delegate to, on an urgent basis, revoke its decision to approve the Condition C9 Report and to require Sydney Zoo to undertake genuine and reasonable attempts to consult with Calmsley Hill Farm and Sydney Zoo for the purposes of that obligation.

We have also reserved our position to challenge the validity of the Secretary's decision.

We trust the IPC would agree that the situation described above, where the Department is making invalid decisions directly at odds with the views of the Minister for Planning and Group Deputy Secretary, is completely and utterly unsatisfactory. It provides us, and the broader public, with no faith in the planning system and the Department's ability to properly administer and regulate the Development Consent.

We respectfully submit that the IPC should delay any decision in relation to Modification 3 until our significant concerns in relation to the validity of the Department's decision to approve Sydney Zoo's Condition C9 Regional Tourism Report is resolved. This is particularly the case in circumstances where we objected to Modification 3 on the basis that it is premature to approve any expansion of operating hours until such time as the broader regional tourism strategy has been lawfully approved by the Secretary.

#### **Condition B7 – Exotic Species Differentiation Obligation**

Condition B7 of the Development Consent provides:

*'For the commencement of opening to the public the Development must have for display to the public at least two-thirds of the exotic species nominated in the Additional Information.'*

Condition B7 is a critical differentiation obligation imposed in the Development Consent. The PAC inserted Condition B7 into the Development Consent in response to commitments made by Sydney Zoo to the PAC to differentiate its facility so that Sydney Zoo does not open as a native-only facility like Featherdale Wildlife Park.

Since the grant of the Development Consent, Sydney Zoo has proceeded to make representations to the Department, the IPC and the Land and Environment Court (in the civil enforcement proceedings commenced by Featherdale Wildlife Park) that it is 100% committed to satisfying the two-thirds exotic species obligation, and taken vehement objection to any concerns raised by Featherdale Wildlife Park that Sydney Zoo's conduct suggests otherwise.

Despite the above, and in circumstances where Sydney Zoo has announced to the market that it will open in late 2019, we have become aware today that Sydney Zoo has lodged Modification 5 'to allow Sydney Zoo to display alternate exotic species'. There is no documentation, or any other information, on the Department's website other than to state that the current status is 'Prepare Mod Report'.

We submit that this is yet another serious example of Sydney Zoo's conduct back pedalling and side stepping on the representations it made to the PAC in order to obtain the Development Consent. It is further evidence which supports our submission to the IPC that it should place very little weight, and should have no comfort, that Sydney Zoo will stand by any of the representations that it has made to the IPC in relation to Modification 3.

We would greatly appreciate a response to this letter as soon as practicable, and by no later than **Wednesday 13 November 2019**.

Both Featherdale Wildlife Park and Calmsley Hill Farm reserve their positions in relation to all of the matters set out in this letter.

Yours Sincerely



Carl Small  
Director  
City Farm Pty Ltd



Tony Chiefari  
General Manager  
Featherdale Wildlife Park