



New South Wales Government
Independent Planning Commission

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President Private Hospital (SSD-10320)

Statement of Reasons for Decision

Ms Dianne Leeson (Chair)
Professor Richard Mackay AM
Professor Helen Lochhead

23 December 2022

Executive Summary

The NSW Independent Planning Commission has determined to refuse consent to the State significant development application for President Private Hospital (SSD-10320). The application, made by The Macquarie Health Corporation Pty Ltd (the applicant), relates to the refurbishment and expansion of existing hospital facilities at 369–381 President Avenue, Kirrawee.

The Commission, constituted for this determination by Commissioners Dianne Leeson (Chair), Professor Richard Mackay AM and Professor Helen Lochhead, found that the application would have unacceptable impacts on Hotham House, a listed local heritage item comprised of a federation bungalow with landscaped garden, which would be demolished if the development were to go ahead. Although the Commission found that the site is a suitable location for a hospital, it concluded that because of the proposed impacts to Hotham House – as well as flood management risks, traffic access, and construction noise impacts – the application, in its current form, is not in the public interest.

In reaching its determination, the Commission agreed with the views of Sutherland Shire Council that the demolition of Hotham House is an unacceptable outcome for the site. The Commission found that:

- Hotham House is an item of local heritage significance;
- the applicant has not adequately demonstrated that the retention, conservation and adaptation of Hotham House is not feasible; and
- the application is not consistent with the Objects of the *Environmental Planning and Assessment Act 1979* or the objectives of clause 5.10 of the *Sutherland Shire Local Environmental Plan 2015*.

Flood management, traffic access, and construction noise impacts were contributory reasons for refusal of the application.

The Commission acknowledge that the application would result in positive health and community benefits and found that other key issues associated with the application – including built form and urban design; operational noise and vibration; parking; and environmental amenity – could be appropriately managed if the unacceptable impacts to historic heritage could be avoided. As such, these issues were not reasons for refusal of the application.

Similarly, the Commission considered whether the heritage impacts of the application could be appropriately managed if the application were approved. Given that the application proposes to demolish Hotham House entirely, and that the Commission was not satisfied that design alternatives to retain Hotham House had been appropriately considered by the applicant, the Commission could not impose conditions that in its view would appropriately manage the impacts of the application.

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Defined Terms

ABBREVIATION	DEFINITION
Acoustic Report	'Noise and Vibration Assessment', prepared by Acoustic Directions, dated 29 June 2020
AEP	Annual Exceedance Probability
Amended SOHI	Amended 'Statement of Heritage Impact', prepared by GBA Heritage, dated 7 May 2021
Amended TPIA	Amended TPIA, prepared by ML Traffic Engineers, dated February 2022
Applicant	The Macquarie Health Corporation Pty Ltd
Application	President Private Hospital Redevelopment (SSD-10320)
AR	Department's Assessment Report, dated November 2022
AR para	Paragraph of the Department's Assessment Report
Biodiversity and Conservation SEPP	<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>
CEMP	Construction Environmental Management Plan
CIV	Capital Investment Value
Commission	NSW Independent Planning Commission
Commission's RFI	The Commission's request to the Applicant for the detailed feasibility studies, dated 6 December 2022
Council	Sutherland Shire Council
DCP	Development Control Plan
Department	Department of Planning and Environment
Design Report 2019	'Design Report', prepared by Imagescape Design Studios, dated 15 March 2019
EIS	Environmental Impact Statement prepared by Imagescape Design Studios dated November 2020
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
Flood Review	'Flood Review', prepared by GRC Hydro, dated 19 September 2022
FSR	Floor Space Ratio
GANSW	Government Architect NSW
GTP	Green Travel Plan
Heritage Assessment	'Heritage Assessment Review', prepared by Architectural Projects, dated 4 March 2019
Heritage Review	'Hotham House Heritage Documentation Review' report, prepared by Mott MacDonald, dated August 2022
Hotham House Retention Options Report	'Design Option for Retention of Hotham House', prepared by, Imagescape Design Studios, dated 12 July 2021
ICNG	Interim Construction Noise Guideline
Industry and Employment SEPP	<i>State Environmental Planning Policy (Industry and Employment) 2021</i>
LGA	Local Government Area
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in section 3.1
Minister	Minister for Planning
NPfl	NSW Noise Policy for Industry
Planning Systems SEPP	<i>State Environmental Planning Policy (Planning Systems) 2021</i>
PMF	Probable Maximum Flood
Regulations	<i>Environmental Planning and Assessment Regulation 2000</i>
Resilience and Hazards SEPP	<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>

Response to RFI	The Department's response to the Commission's Request for Information, dated 9 December 2022
RtS	Response to Submissions, prepared by Imagescape Design Studios, dated March 2022
SDRP	State Design Review Panel
SDRP Session 1	Session 1 of the SDRP, held on 27 September 2019
SDRP Session 2	Session 2 of the SDRP, held on 15 November 2019
SDRP Session 3	Session 3 of the SDRP, held on 10 March 2020
SEARs	Planning Secretary's Environmental Assessment Requirements, dated 28 May 2019
Site	No. 369 - 381 President Avenue, Kirrawee, No. 2 & 4 Bidurgal Avenue, Kirrawee, and No. 61 & 65 Hotham Road, Gynea Lot 1/ DP 841502, Lot 24A/ DP26995, Lot 23/ DP 26995, Lots 53/ DP 29493 and Lot 54/ DP 29493
SOHI	'Statement of Heritage Impact', prepared by GBA Heritage, dated 29 June 2020
SSD	State Significant Development
Sutherland Shire LEP	<i>Sutherland Shire Local Environmental Plan 2015</i>
TfNSW	Transport for NSW
TPIA	'Traffic and Parking Impact Assessment Report', prepared by ML Traffic Engineers, dated November 2020
Traffic Review	Traffic and Transport Review, prepared by TTPP, dated 19 August 2022
Transport and Infrastructure SEPP	<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>
TTPP	The Transport Planning Partnership

1. Introduction

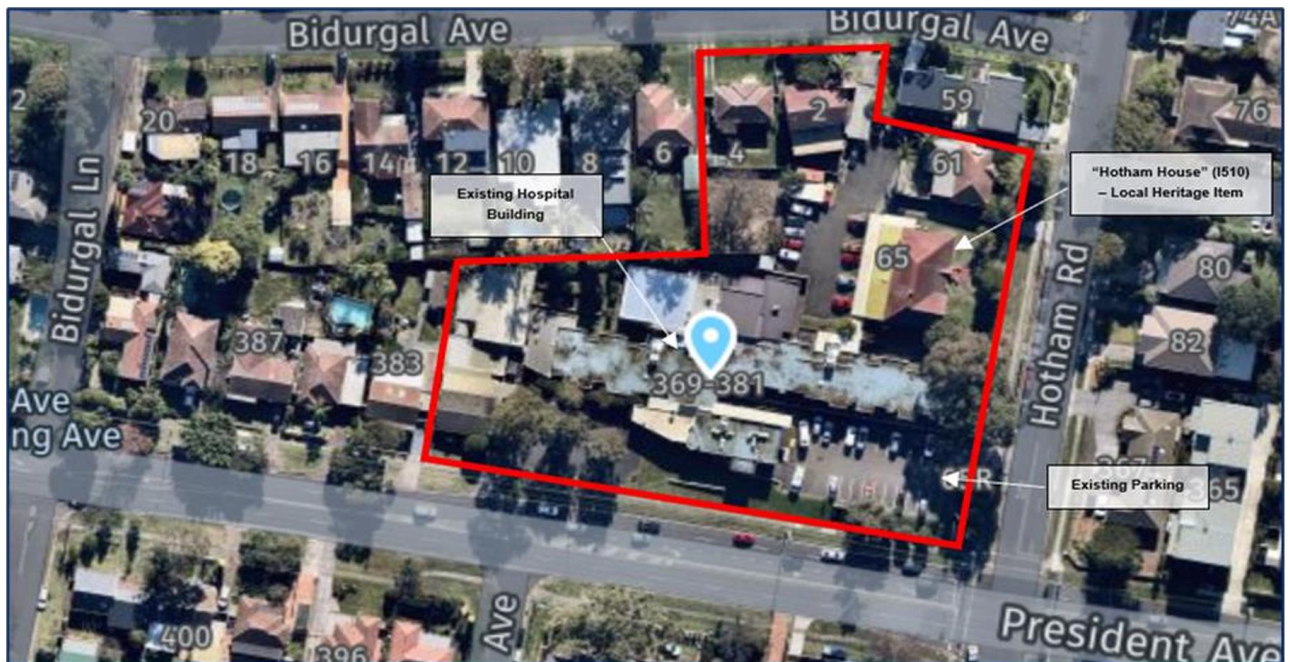
1. On 4 November 2022, the Department of Planning and Environment (**Department**) referred State significant development (**SSD**) application SSD-10320 (**Application**) from the Macquarie Health Corporation (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Application seeks approval under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) for the President Private Hospital Redevelopment located in the Sutherland Shire Council (**Council**) Local Government Area (**LGA**).
3. The Application comprises the redevelopment of the existing hospital to provide improved and new health facilities, including mental health services.
4. The Application constitutes SSD under section 4.36 of the EP&A Act and under clause 14(a) of Schedule 1 of the *State Environmental Planning Policy (Planning Systems) 2021* (**Planning Systems SEPP**) because it is a hospital development with a capital investment value (**CIV**) of more than \$30 million (approx. \$87 million).
5. The Commission is the consent authority in respect of the Application under section 4.5(a) of the EP&A Act and clause 2.7(1) of the Planning Systems SEPP as the Department received more than 50 public objections and Sutherland Shire Council objected to the Application.
6. Professor Mary O’Kane AC, Chair of the Commission, nominated Dianne Leeson (Chair), Professor Richard Mackay AM and Professor Helen Lochhead to constitute the Commission in exercising its functions regarding the Application.

2. The Application

2.1 Site and Locality

7. The Department’s Assessment Report dated November 2022 (**AR**), identifies the Site as being located at 369-381 President Avenue, Kirrawee (**Site**) (AR para. 1.1.1). The Site is legally described at AR para. 1.1.2.
8. President Private Hospital is an existing health services facility. Existing development at the Site includes a single storey hospital building fronting President Avenue, two residential dwellings, car parking, landscaping and Hotham House (AR para. 1.1.5).
9. Hotham House is a locally listed heritage item under the *Sutherland Shire Local Environmental Plan 2015* (**Sutherland Shire LEP**) (AR para. 1.1.7).
10. The Site is generally surrounded by low density residential development. A health service facility (skincare clinic) is located adjoining the Site on the eastern side of Hotham Road (AR para. 1.2.2).
11. The Site is bound by President Avenue to the south, Hotham Road to the east, and Bidurgal Avenue to the north. The Site is located on the north-west corner of the President Avenue and Hotham Road intersection
12. The location and local context of the Site is illustrated in **Figure 1**.

Figure 1 – The Site and adjoining development (source: AR Figure 3)



2.2 The Application

13. The Application seeks approval for the refurbishment and expansion of the existing hospital facilities. The Application includes a new mental health facility, alterations to the existing operating theatre suite to provide a new operating theatre and upgrades and refurbishment of the existing rehabilitation spaces, including the hydrotherapy pool (AR Table 1).
14. The completed Application would include 182 beds (comprised of 110 surgery and rehab beds and 72 mental health beds), 168 car parking spaces, and vehicular access to the Site from President Avenue and Hotham Road (AR Table 1).
15. Demolition of several buildings, including Hotham House, is proposed to facilitate the Application.
16. Key components of the Application are set out at Table 1 of the Department's AR.

3. The Commission's Consideration

3.1 Site Inspection

17. On 25 November 2022, the Commission conducted a site inspection and locality tour. Notes and a photographic log of the site inspection and locality tour were made publicly available on the Commission's website.

3.2 The Commission's Meetings

18. As part of its determination process, the Commission met with representatives of various parties as set out in **Table 1**. All meeting and site inspection notes have been made available on the Commission's website.

Table 1 – Commission's Meetings

Meeting	Date	Transcript/Notes Available on
Department	29 November 2022	1 December 2022
Applicant	30 November 2022	2 December 2022
Council	30 November 2022	2 December 2022
Community Stakeholder Meetings	28 November 2022	29 November 2022
Site Inspection	25 November 2022	30 November 2022

19. The meeting with the Department on 29 November 2022 was also attended by a representative of the NSW Government Architect (**GANSW**).

Sutherland Shire Council Position

20. The Commission met with representatives of Council on 30 November 2022 to hear Council's views on the Application. Council also made a written submission to the Commission, which was received on 7 December 2022. Council noted its main areas of concern regarding the Application are the demolition of local heritage item Hotham House; traffic, parking and access to the Site; and flooding and stormwater. During its meeting with the Commission, Council confirmed that it objected to the Application in its present form, but regarded the proposed use as suitable for the Site (Council Meeting Transcript p.4).

Public Comments

21. Section 4 of this report sets out the matters raised in submissions made to, and considered by, the Commission. Consideration has been given to these submissions in the Commission's assessment of the Application as set out in section 5.

3.3 Material Considered by the Commission

22. In this determination, the Commission has carefully considered the following material (**Material**), along with other documents referred to in this Statement of Reasons:

- the Secretary's Environmental Assessment Requirements (**SEARs**) issued by the Department, dated 28 May 2019;
- the written advice to the Applicant from the GANSW dated:
 - 27 September 2019 (State Design Review Panel (SDRP) Session 1);
 - 15 November 2019 (SDRP Session 2); and
 - 10 March 2022 (SDRP Session 3);
- the Applicant's Environmental Impact Statement (**EIS**), dated November 2020, and its accompanying appendices;

- the Applicant's Response to Submissions (**RtS**), dated March 2022, and its accompanying appendices;
- all public submissions on the EIS made to the Department during public exhibition;
- Council's submission to the Department dated 1 June 2022, provided to the Commission by Council;
- all Government Agency advice to the Department;
- independent specialists review on the following matters:
 - heritage, prepared by Mott MacDonald, dated August 2022;
 - drainage and flood risk, prepared by GRC HYDRO, dated 19 September 2022; and
 - transport and accessibility, prepared by The Transport Planning Partnership, dated 19 August 2022;
- the Department's AR, dated November 2022;
- the Department's recommended conditions of consent, received 4 November 2022;
- comments and presentation material at meetings with the Department, Applicant and Council, as referenced in **Table 1**;
- all speaker comments made to the Commission at the community stakeholder meetings held 28 November 2022;
- all written submissions received by the Commission up until 5pm AEDT Wednesday 7 December 2022;
- Council's written submission to the Commission, dated November 2022;
- the visual observations made at the site inspection and locality tour on 25 November 2022;
- the Department's responses to the Commission:
 - response to Request for Documents, dated 29 November 2022, including its attachments; and
 - response to Request for Information, dated 9 December 2022 (**Response to RFI**);
- the following submissions made to the Commission by the Applicant:
 - submission to the Commission, dated 6 December 2022, including its attachments; and
 - the Applicant's response to the Commission's Request for Information as included in the Department's Response to RFI;
- all written comments on the Department's Response to RFI received by the Commission between Friday 9 December 2022 and 5pm ADST Thursday 15 December 2022.

3.4 Strategic Context

23. The Department identifies that the "population of the Sutherland Shire LGA is growing and the demand for health care and associated needs are increasing. The increase in services that the hospital would provide, including additional beds and a new operating theatre, would alleviate pressure on these facilities" (AR para. 3.1.3).
24. The Applicant has identified that there are "currently no private overnight mental health facilities in the Sutherland Shire, and the existing hospital is operating at full capacity" (AR para. 3.1.2). The Application would provide direct CIV of around \$86,900,000 supporting 50 construction jobs and 77 operational jobs (AR para. 3.1.4).

25. The Commission notes the Department and the Applicant's position as to the strategic merit of the proposed hospital. The Commission recognises the strategic benefits the hospital would provide and is of the view that the use of a hospital is an appropriate use of the Site. However, the Commission does not consider that the strategic merit necessarily justifies the demolition of a local heritage item.

3.5 Statutory Context

Permissibility

26. The proposed hospital is consistent with the definition of a health service facility. The Site is comprised of land zoned Low Density Residential (R2) and Special Activities (Health Services Facility) (SP1) under Sutherland Shire LEP. Under clause 2.60 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)*, health service facilities are permissible with consent in both these zones (AR para. 4.2.1).

3.6 Mandatory Considerations

27. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The mandatory considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the mandatory considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 2 – Mandatory Considerations

Mandatory Considerations	Commission's Comments
Relevant Environmental Planning Instrument (EPIs)	<p>Appendix B of the Department's AR identifies relevant EPIs for consideration. The key EPIs (in the present, consolidated form) include:</p> <ul style="list-style-type: none"> • Planning Systems SEPP; • <i>State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)</i>; • Transport and Infrastructure SEPP; • <i>State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)</i>; • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)</i>; and • Sutherland Shire LEP.
Relevant proposed EPIs	The Commission has considered relevant proposed EPIs in making its determination.
Relevant Development Control Plans (DCP)	<p>Section 2.10 of the Planning Systems SEPP states that development control plans do not apply to SSD. Nevertheless, the Department has given consideration to the relevant DCP in section 6 of the AR.</p> <p>The Commission has considered the Department's assessment against the relevant DCP as part of its consideration of the Application, however notes that DCPs do not apply to the SSD.</p>

Likely Impacts of the Development	The likely impacts of the Application have been considered in section 0 of this Statement of Reasons.
Suitability of the Site for the Development	<p>The Commission notes its position, as outlined at section 3.4 above, that a hospital is a suitable form of development at the Site.</p> <p>However, as set out in section 5.1 of this Statement of Reasons, the Site is not suitable for the Application as carrying out the Application would require the demolition of a listed heritage building which the Applicant, Council and the Department have all agreed is an item of local heritage significance. In addition, the proposed development, the subject of the Application, has material issues with flood management, traffic access and construction noise that are contributory reasons for refusal of the Application.</p>
Objects of the EP&A Act	In this determination, the Commission has carefully considered the Objects of the EP&A Act and, for the reasons set out in this Statement of Reasons, is of the view that the Application is not consistent with the Objects of the EP&A Act. The Application does not, for example, <i>'facilitate ecologically sustainable development'</i> (see below) and does not <i>'promote the sustainable management of built and cultural heritage'</i> .
Ecologically Sustainable Development (ESD)	<p>The Commission has considered the principles of ESD in its determination as set out below.</p> <p>a) The precautionary principle</p> <p>The precautionary principle was considered by the Commission but was not a reason for refusal of the Application. The Commission found that the Application did not trigger the two threshold tests of: a threat of serious or irreversible environmental damage; and scientific uncertainty as to that environmental damage.</p> <p>b) inter-generational equity</p> <p>'Inter-generational equity' is the principle that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.</p> <p>The Commission has considered inter-generational equity in its assessment of the potential environmental, social and economic impacts of the Application. The Commission finds that the Application would have significant and irreversible impacts on the existing heritage value of the Site. These impacts could be avoided by the retention and adaptation of Hotham House and the Applicant has failed to demonstrate to the Commission that adequate consideration was given to the retention of Hotham House.</p> <p>The Commission finds inter-generational equity would be significantly and irreversibly compromised by granting consent to the Application in its current form.</p> <p>c) conservation of biological diversity and ecological integrity</p> <p>Impacts to biological diversity and ecological integrity were considered by the Commission and were not considered to be a reason for refusal of the Application.</p> <p>d) improved valuation, pricing and incentive mechanisms</p> <p>Improved valuation, pricing and incentive mechanisms were considered by the Commission and were not considered to be a reason for refusal of the Application.</p>

In summary, the Commission finds that the Application is inconsistent with ESD principles because the Application cannot achieve inter-generational equity.

The Public Interest

The Commission has considered whether the granting of consent to the Application is in the public interest. In doing so, the Commission has considered the predicted benefits of the Application and its predicted negative impacts.

The Commission has given considerable thought to the heritage impacts of the Application, having regard to submissions made by the public and Council, and comments made by the Government Architect's Office at the Department's meeting with the Commission on 29 November 2022; these matters are discussed in detail in section 5.1 of this Statement of Reasons. Similarly, the Commission has considered the flood management, traffic access and construction noise aspects of the Application, which in the present form of the Application weigh against the public interest.

The Commission's consideration of the public interest has been informed by consideration of the principles of ESD (principally, inter-generational equity), as discussed above. Overall, the Commission finds the Application, in its current form, is not in the public interest.

3.7 Additional Considerations

28. In determining the Application, the Commission has also considered:

- NSW Noise Policy for Industry (**NPfI**);
- Interim Construction Noise Guideline (**ICNG**);
- Greater Sydney Regional Plan 2018;
- South District Plan 2018;
- Sutherland Shire Council Community Strategic Plan 2032;
- NSW Future Transport Strategy 2056; and
- 20 Year Health Infrastructure Strategy 2020.

4. Community Participation & Public Submissions

4.1 Community Group Attendance at the Site Inspection

29. On 25 November 2022, the Commission conducted an inspection of the Site, in the company of representatives of the Applicant. Commissioners Ms Dianne Leeson (Chair), Professor Richard Mackay AM and Professor Helen Lochhead attended the Site Inspection. The Commission invited representatives from community groups to attend and observe at the Site Inspection. A representative of the Sutherland Shire Historical Society attended.

4.2 Community Stakeholder Meetings

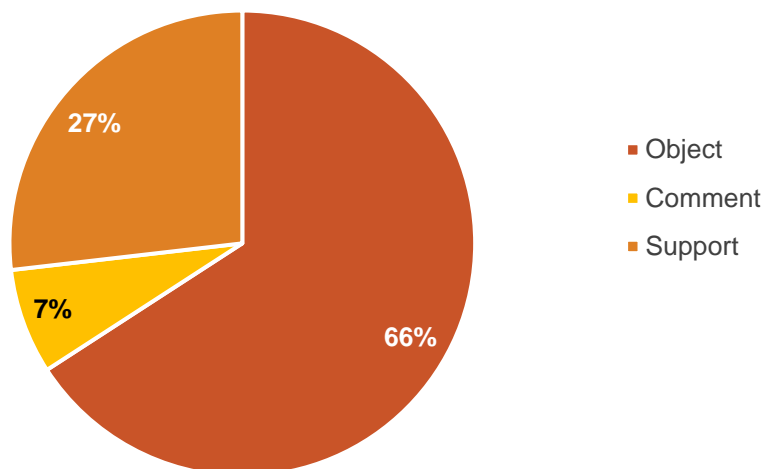
- 30. Due to limited registrations for the Public Meeting scheduled for 28 November 2022, the Commission cancelled the Public Meeting. Instead, the Commission met separately with three interested individuals/groups who registered to speak at the Public Meeting to hear their views. The Community Stakeholder Meetings were held electronically on 28 November 2022 with the three community members presenting to the Commission via video and tele conference. A transcript of the community stakeholder meetings was uploaded to the Commission’s website on 29 November 2022.
- 31. Presentations made at the Community Stakeholder Meetings have been considered by the Commission as submissions and are referenced below in section 4.3 below.

4.3 Public Submissions

- 32. This section of the report sets out the matters raised in the submissions made to, and considered by, the Commission. Consideration has been given to these submissions in the Commission’s assessment of the Application as set out in the Key Issues section of this report (see section 0 below).
- 33. As part of the Commission’s consideration of the Application, all persons were offered the opportunity to make written submissions to the Commission until 5 pm AEDT Wednesday 7 December 2022.
- 34. The Commission received a total of 41 written submissions from the public on the Application comprising:
 - 11 submissions in support (27%);
 - 27 objections (66%); and
 - 3 comments (7%).
- 35. **Figure 2** provides an overview of written submissions received by the Commission.

Figure 2 – Overview of submissions received by the Commission

Submission Type Overview

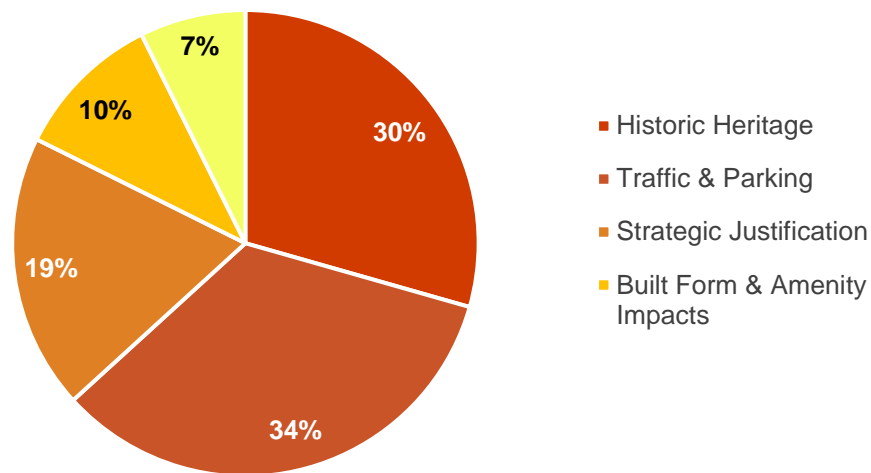


Topic Analysis

36. Key themes raised in submissions are illustrated in **Figure 3**, which provides a thematic breakdown of submissions received by the Commission. The Commission observes that the majority of submissions relate to historic heritage (30%), traffic and parking (34%), strategic justification (19%), built form and amenity impacts (10%) and noise (7%).

Figure 3 – Thematic analysis of submissions received by the Commission

Thematic Analysis of Submissions



Key Issues Raised

37. Submissions to the Commission raised a number of issues, which are outlined below. The Commission notes that the submissions referred to below are not an exhaustive report of the submissions considered by the Commission, they are reflective and illustrative of what the Commission regards as the key issues that emerge from the submissions.
38. Overall, 66% of written submissions received object to the Application. Topics raised in objection to the Application include:
- impacts to historic heritage, in particular, the proposed demolition of Hotham House;
 - impacts from traffic and parking;
 - impacts from flooding and overland flow;
 - amenity impacts, including built form;
 - construction and operational noise impacts; and
 - strategic justification, including inappropriateness of the Site for the development.
39. Overall, 27% of written submissions support the Application. Topics raised in support of the Application predominantly emphasise the strategic merit of the Application, noting the need for improved hospital facilities within the Sutherland Shire.

Public Submissions on Additional Material

40. On 6 December 2022, the Commission wrote to the Department requesting additional information to assist the Commission in its determination of the Application. On 9 December 2022, the Commission received a letter and attachments from the Department responding to its request (Department's Response to RFI).
41. The Commission considered the Department's Response to RFI as additional material and considered that it would be assisted by public submissions on the additional material. In accordance with the Commission's Public Submissions Guidelines, the Commission re-opened public submissions on the Department's Response to RFI (with submissions permitted by email only) between 9 Friday December 2022 and 5pm AEDT Thursday 15 December 2022.
42. The Commission received a total of 12 submissions on the Response to RFI. These submissions raised concern with the proposed demolition of Hotham House, emphasising their opposition to the removal of the local heritage item. Submissions also raised concerns regarding increased traffic within the local road network and the proposed vehicular Site access, noting existing traffic conditions would likely be exacerbated.
43. Submissions also argued that the proposed built form is inappropriate for the Site and raised concerns that the proposed noise reduction measures would not effectively reduce noise impacts during construction.

5. Key Issues

5.1 Historic Heritage

44. Hotham House is a local heritage item located at 65 Hotham Road and forms part of the Site. Hotham House is listed as Item 1510 (house and garden) under Schedule 5 of Sutherland Shire LEP. It is comprised of a federation bungalow with a landscaped garden, including a circular path and Cook pine directly to the east (front) of the building.
45. Hotham House was originally part of Hotham Farm, a large poultry farm within the Sutherland area, where poultry farming was an important local industry in the early twentieth century (AR para. 6.4.8). Alterations have been made to Hotham House to allow for its use as a sports rehabilitation clinic, including accessibility alterations such as a ramp and handrails (AR para. 6.4.6).
46. The Department commissioned Mott MacDonald to complete an independent heritage review, 'Hotham House Heritage Documentation Review', dated August 2022 (**Heritage Review**). The Heritage Review states that Hotham House was originally proposed for listing as a heritage item in The Sutherland Heritage Study in 1993, but listing did not proceed at this time. During 2013 and 2014, Hotham House was again proposed as a heritage item, but at the time an independent review did not support heritage listing. .

47. Development application DA18/0788 for redevelopment of the hospital, including demolition of Hotham House, was submitted to Council on 3 July 2018. Following this submission, Council placed an Interim Heritage Order over the property on 23 November 2018 to allow Council time to conduct a detailed heritage assessment. DA18/0788 was subsequently withdrawn on 23 March 2019. Council engaged Architectural Projects who prepared a Heritage Assessment Review dated 4 March 2019 (**Heritage Assessment**) which confirmed that the house and garden met the threshold for listing as a heritage item. On 3 April 2020, Hotham House was included in Sutherland Shire LEP as a local heritage item.
48. The SEARs for the Application were issued by the Department on 28 May 2019. On 7 December 2020, the Application (including the EIS and accompanying appendices) was lodged with the Department.
49. The Application was accompanied by a Statement of Heritage Impact (**SOHI**) dated 29 June 2020 prepared by GBA Heritage with the EIS (**SOHI 2020**). An Amended SOHI dated 7 May 2021 was submitted with the RtS (**Amended SOHI**).
50. The Applicant proposes demolition of Hotham House as part of the redevelopment of the hospital asserting that retention of Hotham House “is not possible without compromising the efficient layout and operation of the hospital” (AR para. 6.4.17).
51. The Commission received written submissions and heard from people at the community stakeholder meetings objecting to the proposal, raising concerns related to the demolition of Hotham House. Submissions noted that the building is a representative example of a federation-style residence and is one of the few remaining buildings of this era within the locality. Submissions also noted the local historical significance of Hotham House as a large poultry farm.
52. The Heritage Council of NSW, in its submission to the Department through Heritage NSW dated 15 January 2021, stated that as Hotham House is not listed on the State Heritage Register, is not in the immediate vicinity of any State Heritage Register items, and does not have any known archaeological deposits, it did not propose to make any further comments. Heritage NSW went on to note:
...the proposal includes the demolition of Hotham House, a locally listed item that was previously subject to an Interim Heritage Order and subsequently listed by the Sutherland Shire Council and backed by extensive public support. Due to the contentious nature of the listing of Hotham House, it is recommended that the Department undertake detailed consultation with the Sutherland Shire Council prior to the issue of an approval.
53. Following submission of the Applicant’s RtS, the Department further consulted with Heritage NSW regarding the demolition of Hotham House. The Department states that on “24 March 2022 Heritage NSW outlined the demolition of a listed item must only be undertaken after significant consideration and that consultation with Council was recommended.” (AR para. 6.4.14).

54. In its submission to the Department dated 29 January 2021 (**Council's Submission January 2021**), Council stated that it had several serious concerns with the application as currently proposed and that it "strongly opposes" the demolition of Hotham House. Council stated that it opposes the "findings of the GBA Heritage Impact Statement that the house at Hotham Road lacks significance" (Council's Submission January 2021, p.1). Council emphasised that Hotham House has local heritage significance, and that conserving Hotham House could be a "strategy to ameliorate the impacts of the hospital scale, creating an interface between the hospital and the residential character of Hotham Road" (Council's Submission January 2021, p.2). Council stated that the proposed demolition contravenes the objectives of Clause 5.10 of Sutherland Shire LEP.
55. Council, at its meeting with the Commission on 30 November 2022, confirmed that while it supports the use and further development of the Site as a private hospital, it does not support the Application in its current form (Council Meeting Transcript, p.4) and does not support the demolition of Hotham House. Council stated that a more desirable outcome would include adaptive reuse and incorporation of Hotham House into the design of the hospital (Council Meeting Transcript, p.13).
56. Following its meeting with the Commission, Council provided a letter dated November 2022 to the Commission on 7 December 2022 (**Council's Submission November 2022**). Council's submission to the Commission emphasises that Council "remains unsupportive of the demolition of Hotham House" (Council's Submission November 2022).
57. In Council's submission to the Commission, it referenced its two previous letters "dated 29 January and 1 June 2022" (Council's Submission November 2022). The Commission notes that Council's submission from 29 January 2021 is the only submission from Council on the Department's website. As such, the Commission requested Council to provide a copy of the 1 June 2022 submission. Council provided the 1 June 2022 submission (**Council's Submission June 2022**) to the Commission on 8 December 2022, which is now available on the Commission's website.
58. The Commission notes that Council's Submission June 2022 was not addressed by the AR with the Department stating the "RtS was made publicly available on the Department's website and referred to relevant agencies and Council. No further comments were received" (AR para. 5.5.5). The Commission notes that Council provided additional comments in its June 2022 submission.
59. Council's June 2022 submission sets out a series of reasons why Hotham House should be conserved, interpreted and re-used. Council stated that "(g)iven the heritage value of this dwelling to the local community, Council strongly opposes the demolition of the cottage. The cottage can and should be conserved and integrated into the proposal. Clause 5.10 of SSLEP2015 supports and encourages the conservation of Sutherland's heritage. The proposed demolition contravenes the objectives of the Clause" (Council's Submission June 2022, p.2).
60. The Department states that following public exhibition, the Department requested the Applicant provide an options analysis detailing options that were explored to retain or incorporate Hotham House. The Department noted that Council was invited to comment on the options analysis and amended documentation on 5 August 2022 however, Council did not provide further comments (AR para. 5.6.7 & 5.6.8).
61. The Applicant met with the Government Architect's Office State Design Review Panel three times prior to lodgement of the Application:

- 27 September 2019 (**SDRP Session 1**);
 - 15 November 2019 (**SDRP Session 2**); and
 - 10 March 2020 (**SDRP Session 3**).
62. The SDRP Session 1 advice recommends the “retention and reuse of Hotham House” (SDRP Session 1, p.1). The SDRP Session 2 Advice states that it supports the “reuse of foundation materials from Hotham House for inclusion in landscaping” (SDRP Session 2, p.1). The Commission notes the Government Architect advice provided in SDRP Session 1 included a request to retain Hotham House, while the advice provided in SDRP Session 2 accepted the demolition of Hotham House.
63. At its meeting with the Department on 29 November 2022, the Commission also met with the representative of the Government Architect, who was the Chair of the SDRP advising on this Application. The Government Architect noted that its role in the process is advisory and that it responds to the proposals that are presented to it. The Government Architect explained that the material presented in SDRP Session 1 was very preliminary in nature and that its advice supporting the retention and reuse of Hotham House was based on a “fairly undeveloped proposal” (Department Meeting Transcript, p.9). At SDRP Session 2, the Applicant communicated to the SDRP that it would not be possible to deliver the program and retain Hotham House (Department Meeting Transcript, p.9).
64. The Government Architect stated that in its meetings with the Applicant, the Applicant demonstrated some analysis of options, however, the SDRP did not consider that these were comprehensive. The Government Architect noted that the SDRP felt that it would be possible to achieve a workable outcome with the retention of Hotham House and urged the Applicant to further explore retention of Hotham House and to demonstrate that it had clearly interrogated and extinguished all options (Department Meeting Transcript, p.11-12).
65. The Department requested the Applicant provide an options analysis in order to demonstrate that there was no viable option available to retain Hotham House (AR para. 6.4.14). As part of its RtS, the Applicant submitted Appendix R Design Option for Retention of Hotham House dated 12 July 2021 prepared by Imagescape Design Studios (**Hotham House Retention Options Report**) which discussed the retention options for Hotham House in relation to the current design layout and presented written arguments explaining why the retention of Hotham House was not considered feasible by the Applicant. The Hotham House Retention Options Report did not present any explanatory drawings or diagrams which included options that retained Hotham House.
66. The Applicant contends that the retention of Hotham House would compromise the efficient layout and operation of the hospital and would affect the Application in the following ways (AR para. 6.4.17, summarised):
- reduced hospital floor area and therefore reduced number of beds and services;
 - relocation of ground floor access, hospital lobby and reception area displacement and administration area reduced;
 - access and circulation reduced due to the level change across the Site;
 - loss of parking with parking arrangement compromised by constrained layout and access configuration;
 - built form and design outcomes compromised;
 - increased height to the hospital building to accommodate changing built form; and
 - the heritage value of Hotham House may be compromised by Building Code of Australia upgrades.

67. The Applicant ultimately concluded that if “the retention of Hotham House were to proceed the hospital would be unable to operate as an efficient modern hospital with maximum levels of patient care. This is not viable” (Hotham House Retention Options Report p.15).
68. The Heritage Review confirmed that both the Heritage Assessment prepared for Council by Architectural Projects and the SOHI prepared for the EIS by GBA Heritage indicate that Hotham House has heritage significance at a local level and concluded that “identification of Hotham House as a Local Heritage Item is soundly based and that retention and adaption of the building are possible” (Heritage Review p.38). With respect to retention options prepared by the Applicant, the Heritage Review commented (Heritage Review p.38):
- while the impact of the retention of Hotham House upon the current proposed redevelopment design of the Hospital has been well analysed and expressed, neither report has considered in any depth how the design of the hospital could be altered, reduced or rearranged to accommodate and reuse Hotham House within the new hospital.*
69. The Heritage Review notes that local heritage listing does not preclude demolition of the building “if the opinion of the consent authority is that the health benefits provided by the hospital outweigh the value of the retention of this locally listed heritage building” (Heritage Review, p.39).
70. The AR notes that Hotham House is not of state or national significance but is of local heritage significance (AR para. 6.4.19). The Department finds that it has been sufficiently demonstrated by the Applicant that redevelopment of the Site at the proposed scale may only reasonably be achieved with the demolition of Hotham House (AR para. 6.4.21).
71. The Department provides the following conclusion (AR para. 6.4.19):
- Considering the detailed assessment of the heritage item and upon review of all heritage assessments completed, the Department concludes that the substantial health and community benefits that the hospital would provide are significant and outweigh the local heritage values of Hotham House.*
72. On 25 November 2022 the Commission wrote to the Applicant, via the Department, to request the “detailed feasibility studies” referenced in the SOHI that were undertaken to test the option of retaining Hotham House and incorporating it into the Application (SOHI, Section 5.2, page 26). In response, on 29 November 2022, the Applicant, via the Department, provided RtS Appendix R – Hotham House Retention Options Report.
73. The “detailed feasibility studies” that were requested by the Commission are referenced by the Applicant at EIS Appendix 14, which is dated 29 June 2020. The document the Applicant provided, Hotham House Retention Options, is dated 12 July 2021 which is more than 12 months after the reported detailed feasibility studies were first referenced in the EIS. The Commission therefore did not consider that the document the Applicant provided comprised the referenced detailed feasibility studies. As such, on 6 December 2022, the Commission again wrote to the Applicant via the Department to request a copy of the detailed feasibility studies (**Commission’s RFI**). This letter also included questions to the Department and Applicant and made a request for the drawings which the Applicant had presented at its meetings with the SDRP.
74. The Commission received a response on 9 December 2022 (**Response to RFI**) that included:
- the Department’s response to the questions;

- the Applicant's response;
 - Design Report ref sp190315 design report v3 dated 15 March 2019 (**Design Report 2019**); and
 - SDRP presentations, including drawings.
75. The presentation slides used for the SDRP meetings do not identify the retention of Hotham House among the stated "Project Objectives" (Response to RFI, Attachment C – SDRP Drawings, p. 2). However, Hotham House is noted as a "Constraint". The Site analysis and drawings illustrating the design development as presented to the SDRP do not show any arrangement which retains or adapts Hotham House (Response to RFI, Attachment C – SDRP Drawings).
76. As part of the Response to RFI, the Applicant included a statement that provided additional background on the options investigated for the retention of Hotham House and the timeline. The Applicant also stated that the feasibility options report "is the Design Report ref sp190315 design report v3 dated 15 March 2019" (Response to RFI, p.12) and included this Design Report as part of its response. The stated purpose of the Design Report 2019 includes: "to document the alternatives explored to determine if the cottage could be retained". The Design Report describes design parameters, current deficiencies, The relationship of existing buildings, conflict with Hotham House, and potential Site access options, but does not present even indicative schemes illustrating the retention of Hotham House and the consequences of that retention for other project objectives.

Commission's Findings

77. Hotham House is an item of local heritage significance and, therefore, clause 5.10 of the Sutherland Shire LEP is relevant to the determination of the Application. While a heritage item *may* be demolished with development consent under this provision, the first objective contained in clause 5.10(1)(a) is "to conserve the environmental heritage of Sutherland Shire" and the second objective contained in clause 5.10(1)(b) is "to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views". For the reasons that follow, the Commission considers that the proposed demolition of Hotham House is inconsistent with the objectives of clause 5.10.
78. The Commission considers that, consistent with the Objects of the E&PA Act, "to promote the sustainable management of built and cultural heritage" (EP&A Act section 1.3 (f)), a primary purpose in the identification and statutory listing of heritage items is to facilitate their conservation, noting that conservation may include adaptation to a new and compatible use, in order to achieve sustainable management.
79. Noting that clause 5.10 of Sutherland Shire LEP seeks to conserve the environmental heritage of Sutherland Shire and to conserve heritage items, and that the independent Heritage Review commissioned by the Department indicates that retention and adaption of the building are possible, the Commission finds that the objectives of the Application should have included the retention and conservation of Hotham House.
80. The Commission notes that Council has been clear with its position that, while it supports the use of the Site as a hospital, it does not support the demolition of the heritage item as proposed by the Application.

81. The Commission sought to review the reported detailed assessment of the development options considered as part of the Application, including options for the retention of Hotham House. To date, the Commission has not been presented with any information which shows a detailed interrogation of options, nor design schemes which are predicated on retaining and designing around Hotham House so as to avoid its demolition, having only been provided with relatively brief written analyses and indicative diagrams following a request by the Commission.
82. The Commission finds that, from the outset, the Application has been predicated on demolition of Hotham House and that it has not been adequately demonstrated that the retention and adaptation of Hotham House could not co-exist with the redevelopment of the Site as a private hospital.
83. Therefore, based on the information before it, the Commission does not consider that the Applicant has sufficiently demonstrated that the redevelopment of the Site cannot proceed without demolishing the local heritage item. The Commission considers this to be fundamental because Hotham House is listed as a local heritage item.
84. The Commission finds that the Applicant has not demonstrated that it has made a reasonable attempt to design the Application in a way that would avoid the demolition of Hotham House in accordance with the express intent of the Objects in section 1.3 (f) and (g) of the E&PA Act, i.e. "to promote the sustainable management of built and cultural heritage" and "to promote good design and amenity of the built environment", nor in accordance with the Objectives (a) and (b) of clause 5.10 of the Sutherland Shire LEP, i.e. "to conserve the environmental heritage of Sutherland Shire" and "to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views".
85. The Commission notes that, in making its decision, it has given careful consideration to the health and community benefits that the hospital would provide and has weighed this against the local heritage values of Hotham House. However, the Commission finds that the impacts to the heritage item are unacceptable and are not justified by a hospital in the proposed form, notwithstanding the health and community benefits that would be derived.
86. In summary, the Commission considers the use of the Site as a hospital is an appropriate use of the Site; however, the Commission has not been presented with sufficient evidence to justify the proposed demolition of a heritage item. The Commission considers impacts to historic heritage to be the primary reason for refusal of the Application.

5.2 Built Form and Urban Design

87. Under Sutherland Shire LEP the Site is zoned SP1 and R2. The R2 zoned land permits a maximum building height of 8.5m and maximum floor space ratio (**FSR**) of 0.55:1. The SP1 zoned land has no height or FSR limit (AR para. 6.2.5 & 6.2.8). Within the R2 zoning the building exceeds the maximum building height by 1.7m and an FSR of 1.16:1 is proposed. The Applicant submitted a request to vary the height limit and FSR standard set out in Sutherland Shire LEP (AR para. 6.2.7 & 6.2.8).
88. The Commission received submissions that raised concern with the proposed built form, particularly in the context of its relationship with surrounding development. During the Community Stakeholder Meetings held on 28 November 2022, a member of the public noted (Community Stakeholder Meeting transcript p. 7):

I object to your proposal on the grounds a development of this scale is inappropriate amidst a residential area bounded on three sides by R2 zoning and R3 on the third and to demolition of Hotham House.

89. Council at its meeting with the Commission on 30 November 2022, noted that (Council Stakeholder Meeting transcript p. 10):

... this is a very low density neighbour[hood] and most of the dwellings surrounding the area or the site are single-storey modest dwellings. ... we do require compliance with height requirements, particularly in the R2 zone and it would be better obviously if this - ... in terms of bulk and scale it already is such a bulky building they should have complied with our height requirement so, yeah, we are concerned. I mean, that goes to the actual nature and design of the building in terms of its bulk and scale as well.

90. If it were to determine to approve the Application, the Commission agrees with the Department that the exceedance of the above-mentioned applicable development standards is relatively minor in its spatial extent and that it is reasonable to accept the variation requests (AR para. 6.2.9). As such, the Application's built form and urban design were not considered to be a reason for refusal of the Application.

91. However, the Commission restates that it has not seen any evidence that justifies the demolition of Hotham House. The Commission acknowledges that, if the heritage item were to be retained, the built form and urban design of the Application would be distinctly different from that which is before the Commission.

92. In regard to an alternative built form allowing for the retention of the heritage item, the Commission notes that increasing the density of the built form at the south-eastern corner of the Site, near the intersection of President Avenue and Hotham Road, may provide a positive urban design outcome.

5.3 Drainage and Flooding

Overland Flow Path (South-Western)

93. The Department's AR notes that the Applicant's flood studies identify a primary overland flow path located along the southwestern corner of the Site, with the overland flow path directing onto President Avenue (AR Figures 35 and 36). The flood hazard within this overland flow path is generally assessed as high during a 1% AEP flood event (AR para. 6.5.7).

94. The Applicant proposes an at-grade car park (referred to as the 'west car park' in the AR) and a vehicular entry/exit along the President Avenue frontage, both of which are proposed within an area currently affected by the southwestern overland flow path.

95. To manage the southwestern overland flood water flows and these uses, the Applicant proposes to construct a swale to prevent inundation of the proposed west car park, with a discharge location east of the proposed driveway crossing located along the President Avenue frontage (AR para. 6.5.10). Regarding the overland flood water flows from the proposed swale and the impact to President Avenue, the Department notes (AR para. 6.5.29):

The flood modelling submitted by the Applicant indicates that there will be some localised increases in water levels in the range of 0.1 – 0.2 m on President Avenue, as well as localised increases in flood hazard category from H5 to H6 hazard.... Modelled flood impacts are localised to the road corridor and no substantial increases in flood depth or velocity are predicted to occur on neighbouring residential lots.

96. The driveway entry/exit on President Avenue is proposed to cross over the swale, at a height above the Probable Maximum Flood (**PMF**) level and with a crest height of 70.2m AHD (AR para. 6.5.20).
97. Additionally, the Applicant proposes a flood protection wall located along the southwestern extent of the west car park, constructed to a minimum height of 71m AHD to provide flood immunity during the modelled PMF event (AR para. 6.5.21).
98. The Department considers impacts to President Avenue are generally acceptable, subject to recommended conditions requiring further development of the swale design to consider additional widening, lengthening, and discharge spread along the length of the swale to manage and reduce off-site impacts (AR para. 6.5.21). The Department's position in relation to the swale's impact on President Avenue is reinforced in its Response to RFI dated 9 December 2022.
99. The Department engaged GRC Hydro to conduct an independent specialist review of the Application regarding drainage and flood risks. GRC Hydro prepared the Flood Review dated 19 September 2022 (**Flood Review**). Regarding the proposed swale, the Flood Review noted (Flood Review p.4-5):
- The concentration of flow and abrupt termination of the swale is not a good design outcome and may increase risk to vehicles on President Avenue and entering the southern carpark. Some improvement may be made through conditioning a design outcome, however, it is likely that flood impacts at this location will persist during site operation.*
100. Council's submission to the Commission raised concern of the impact of the swale on President Avenue, noting that the swale channels the overland flow waters, "... in a manner that results in better land use but increases the risk to unacceptable levels, in particular, the submitted Flood Hazard Map for 1% AEP details higher hydraulic hazard within the property and crossing from the property to the carriageway of President Avenue" (Councils' Submission November 2022). Council's concern was reinforced in its stakeholder meeting with the Commission, noting that further refinement of the swale may be needed to address this issue.

Proposed Floor Levels and Existing Operating Theatres

101. The Department's AR notes that the Applicant's flood studies recommend habitable floor levels be located no lower than the PMF level, or the 1% Annual Exceedance Probability (**AEP**) level plus 500 mm freeboard, whichever is higher, noting that "hospitals are an essential community facility, and that the strictest flood level planning applies" (AR para. 6.5.6).
102. The Applicant proposes finished floor levels of the proposed built form (excluding the existing operating theatres) that are above the PMF level and flood planning levels described in the Sutherland Shire DCP 2015 (AR Table 10).
103. The Department (AR para. 6.5.20) notes that the proposed southern basement car park and west car park have been designed to be protected against the PMF flood event with the proposed flood protection wall described in AR para. 90, and the driveway entry/exit on President Avenue with a crest height above the PMF level as described in AR para. 89.
104. The Department, however, notes that the floor levels of the existing operating theatres to be retained as part of the Application are below the PMF level and notes that, "without mitigation, they could be subject to flooding during a PMF event which has the potential to impact on hospital operations and human safety" (AR para. 6.5.14).

105. The Department further notes that the Applicant's flood studies identify overland flow from the northwest of the Site and Bidurgal Avenue, and that (AR para. 6.5.15):
- The PMF modelling indicates that water may pool against the operating theatres at levels of 0.9 m and above. The water level contours show a height level of 71.87 m AHD whereas plans indicate that operating theatre floor is at 70.09 m AHD.*
106. At AR para. 6.5.16 the Department notes that the Applicant identifies these impacts may be the result of 'conservative flood modelling', however it is committed to construct an overland flow path to convey flood waters through the Site to Hotham Road during a PMF flood event.
107. Regarding the flood depths identified by the PMF modelling identified in para. 105, the Department's independent Flood Review noted that (Flood Review, Table 1):
- ... it is likely that the flood depths along the northern property boundary are due to flood model resolution issues and can likely be resolved by further refinement of the flood model and/or mitigation measures..... Detailed flood modelling and/or development of flood mitigation measures is required at detailed design to ensure that above floor inundation does not occur for events up to and including the PMF.*
108. Noting that the existing operating theatres are below the PMF level and the risk of flood water pooling due to overland flow, the Department recommends conditions requiring:
- the existing operating theatres to be floodproofed to a minimum of 600 mm above the existing finished floor level (AR para. 6.5.19);
 - an overland flow path within the Site to convey overland flow from the northwest of the Site and Bidurgal Avenue in a generally north-eastern direction to Hotham Road during a PMF event (AR para. 6.5.16); and
 - the inclusion of a more detailed flood model which includes the overland flow path design (AR para. 6.5.18).
109. Regarding the flood proofing of the existing operating theatres, Council, at its stakeholder meeting with the Commission, noted that (Council Meeting Transcript p.18):
- ... if it's a solid impermeable-type structure then that's sort of a common practice to keep water out from areas to provide the freeboard and appropriate protection for a lower floor level. So if it's adequately designed and suitably structurally stable then I guess from that point of view it's satisfactory to keep the water out. It's common practice.*

Council Drainage Infrastructure and Easement

110. The Department's AR notes that a minor tributary was previously located along the southwest corner of the Site and that, currently, an easement exists along this tributary path containing underground stormwater pipes (AR para. 6.5.5).
111. In response to the Department's letter to the Applicant dated March 2022, the Applicant has indicated that it proposes to realign the existing stormwater pipe easement to better represent the alignment of Council's infrastructure under the Site and to avoid interaction with proposed built form (AR para. 5.5.7).
112. Council, in its submission to the Commission, noted that (Council's Submission November 2022 p.4):
- *..... The Applicant has not obtained "in principle" support to amend the alignment of Council's stormwater drainage easement.*
 - *Council's Easement Policy only allows construction of demountable carports and pavements over a drainage easement. Therefore, all other structures, such as foundations, retaining walls, stairs, and basement are not covered by this Policy.*

113. In its meeting with the Commission, Council noted that (Council Meeting Transcript p.20):

If the trunk system is found to be more to the south we're happy to work with the applicant and redefine and reshape our easement that would better accommodate their aspirations.... So if the alignment of the pipeline can be established we're more than willing to be cooperative and alter our easement, that's notwithstanding the fact that there might be other complications with regards to the overland flow path which may have a slightly different shape easement about it.

114. The Commission notes that the Department recommends a condition requiring an access and realignment application to address the proposed easement realignment, which must be submitted to and approved by Council prior to the commencement of construction within the existing stormwater easement.

Commission's Findings

115. The Commission notes that the floor levels of the the proposed built form (excluding the existing operating theatres) are above the PMF level and flood planning levels described in the Sutherland Shire DCP 2015, and considers this acceptable.

116. The Commission notes that the Applicant identifies, in its PMF modelling, that water pooling against the operating theatres may be the result of 'conservative flood modelling'. The Commission further notes that the Department's independent Flood Review identifies that the flood depths determined by the Applicant's PMF modelling are likely due to flood model resolution issues and can likely be resolved by further refinement of the flood model and/or mitigation measures.

117. The Commission also notes Council's comments relating to the flood proofing of the existing operating theatres at para. 109.

118. The Commission considers that conditions recommended by the Department could adequately address the following:

- Flood proofing of the existing operating theatres and treatment of overland flow from the northwest of the Site to mitigate the risk of flood water pooling due to overland flow, and the inclusion of a more detailed flood model which includes the overland flow path design as described in para. 108.
- Resolution of Council stormwater easement realignment as described in para. 114.

119. The Commission, however, is concerned about the concentration of overland flow waters from the proposed swale and the impact to President Avenue during the 1% AEP flood event. The Commission is not confident that the conditions recommended by the Department as described in para. 98 effectively address the swale's potential impacts on President Avenue and Council's drainage infrastructure during the 1% AEP flood event. The Commission considers further design development of the swale to mitigate the impacts of overland flow waters, including demonstration that no further impacts to President Avenue and Council's stormwater system during the 1% AEP flood event, would be necessary to reasonably address this concern.

120. The Commission notes that the Department's recommended conditions relating to the proposed swale would require further refinement to be considered reasonably capable of addressing those impacts.

121. Accordingly, issues associated with the proposed swale are a contributory reason for the refusal of the Application.

5.4 Traffic Access and Parking

122. The Site is currently accessed by three separate vehicle access points, comprising two driveways on Hotham Road and one driveway on President Avenue.
123. The Application proposes three vehicular access points, one left in/left out splayed driveway from President Avenue and two access points along Hotham Road, one being entry only and the other entry and exit (AR Table 1). An ambulance bay is located within the basement car park and accessed by the northern driveway from Hotham Road. Pedestrian and bicycle access are provided via the President Avenue and Hotham Road driveways (AR para. 6.6.33 and 6.6.4).
124. The Commission received written submissions and heard from people at the community stakeholder meetings that raised concerns regarding traffic and parking impacts from the development's construction and operational phases. Specific concerns included insufficient on-site car parking for staff and visitors; adverse traffic impacts on the surrounding narrow local roads; and safety issues relating to the access from President Avenue and proximity to the intersection.

Operational Traffic and Parking

125. The EIS was supported by a Traffic and Parking Impact Assessment Report dated November 2020 and prepared by ML Traffic Engineers (**TPIA**) which assessed the impacts of the Application's expected traffic generation on the surrounding road network and car parking provisions. An Amended TPIA dated February 2022 prepared by ML Traffic Engineers was submitted with the RtS (**Amended TPIA**).

Car Parking

126. Existing car parking at the Site comprises 65 car spaces, dispersed across three locations (AR para. 6.6.33). The Applicant is proposing to provide a total of 168 car spaces, including 8 accessible car spaces and a single ambulance space across and two basement car park levels (AR para. 6.6.36).
127. The Amended TPIA stated that implementing a Green Travel Plan (**GTP**) would reduce staff car parking demand and that the proposed parking complies with RTA Guide to Traffic Generating Developments. The Amended TPIA concluded that the project would have minimal impact on the surrounding network traffic.
128. The Commission notes that Transport for NSW (**TfNSW**) considered that the TPIA failed to address TfNSW policies for integrating transport with land use and the Sutherland Shire DCP 2015 regarding off-street bicycle parking and end-of-trip facilities. TfNSW recommended that a GTP should be submitted to promote sustainable transport modes and reduce dependence on single-occupant car travel.
129. The Department engaged The Transport Planning Partnership (**TTPP**) to conduct an independent specialist review of the Application and TTPP prepared a Traffic and Transport Review dated 19 August 2022 (**Traffic Review**). The Traffic Review stated that matters relating to parking and green travel planning remain unresolved. The Traffic Review recommends conditions of consent to address these issues, including (Traffic Review p.8 and 9):
- the implementation of a Green Travel Plan;
 - the completion of a parking demand survey of a similar facility to determine an appropriate on-site parking rate for the Application; and
 - the preparation of a parking management plan in consultation with the Department and/or Council.

130. During its meeting with the Commission on 30 November 2022, Council agreed with the Traffic Review's recommendation of a parking demand survey of a similar facility, noting that (Council Meeting Transcript p. 5):

Absolutely..... that will provide a much better guide on the parking demands on site, both staff and patients or guests of the site rather than using the Guide to Traffic [Generating] Development which was published in 2002 and is rather generic.

President Avenue Access

131. The Department's independent Traffic Review, dated 19 August 2022, identified the proposed vehicle access from President Avenue to be the key issue (Traffic Review p.9). The Traffic Review recommends the proposed vehicle access at President Avenue be modified as follows (Traffic Review p.7):

- *the proposed vehicle access via President Avenue be removed from the development proposed and all vehicle access provided via Hotham Road; or*
- *a deceleration lane (slip lane) be provided for the left turn entry movements from President Avenue into the site...; or*
- *barriers or similar design modifications be installed such that the proposed vehicle link be between the ground level car parking area fronting President Avenue and the main basement parking area be disconnected.*

132. In its submissions to the Department and the Commission, Council stated it does not support sole ingress and egress from Hotham Road. Regarding vehicular access from President Avenue, Council has stated it does not support the proposed splayed driveway due to safety concerns and note that "Council's support for this option is only on the provision of a 45m deceleration lane in President Avenue on approach to the driveway entry" (Council's Submission November 2022, p.3). Regarding vehicular access to the Site from Hotham Road and Council's position on the retention of Hotham House, Council have stated that "Hotham House can be retained with regards to the access points off Hotham Road, either utilising the proposed access or as proposed in the Design Options" (Council's Submission November 2022, p.1).

133. The Commission notes Council's position in regard to the splayed driveway as outlined above. The Commission notes that in the Department's proposed conditions of consent, the splayed driveway to President Avenue would be subject to a Road Safety Audit prior to construction. In the Commission's RFI, the Commission queried what the Applicant would do in the event that the Road Safety Audit found that the splayed driveway to President Avenue was insufficient.

134. In the Response to RFI, the Department referred to the Applicant's TPIA findings that concluded "a splayed driveway will not pose any unacceptable risks to pedestrians and motor vehicles accessing or egressing the premises" (Response to RFI p.4) and stated that the proposed splayed driveway is "suitable to minimise the safety risk of traffic queues at the entry and exit driveways" (Response to RFI p.4).

135. The Department noted that the development could only occur once the Road Safety Audit and the recommendations were adopted. If the Road Safety Audit found that the splayed driveway to President Avenue resulted in unsafe conditions, the Applicant would be required to adopt recommendations and, potentially, suitable design revisions (Response to RFI p.4).

Construction Traffic and Parking

136. The Applicant's Construction Traffic Management Plan (**CTMP**) provides a breakdown of total workers that will be onsite as well as truck movements for the demolition, excavation and construction stages of the Application (AR para. 6.6.8). The total number of workers and truck movements are summarised in AR Table 12.
137. The Department notes that the Applicant has identified a maximum of six truck movements per day would be required during demolition and excavation, with a maximum of four truck movements per day during construction (AR para 6.6.9 and para 6.6.10).
138. At AR para. 6.6.10, the Department states that truck access to the Site for demolition and excavation would be via Hotham Road, while construction vehicles accessing the Site during the construction stage would access the Site only via Hotham Road until the new access along President Avenue is operational. A work zone would also be required along Hotham Road during construction to facilitate the truck loading and unloading.
139. Regarding construction parking, the Applicant's CTMP identifies that all construction parking would occur onsite, as well as directly adjacent to the Site (AR para. 6.6.11).
140. The Department considers that construction generated traffic is unlikely to have a significant impact on the surrounding road network, and recommends conditions to manage residual impacts including:
- a requirement for the "implementation of a revised Construction Traffic and Pedestrian Management Sub-Plan (CTPMSP) prior to the commencement of construction, to establish management measures including designated parking locations for construction workers and construction route access" (AR para. 6.6.14); and
 - detailed "specific measures to ensure vehicles entering the site do not cause additional queuing on President Avenue, and measures to prohibit vehicular access along President Avenue, until the final access is operational" (AR para. 6.6.13).

Commission's Findings

141. The Commission acknowledges the concerns raised by Council and the public regarding traffic access and parking related matters.
142. The Commission agrees with the recommendations of the Traffic Review noted in para. 131 in relation to on-site car parking and considers a parking demand survey of a similar facility is necessary to determine an appropriate on-site parking rate for the Application. The Commission considers that further consultation with Council should be required to ensure car parking impacts to surrounding local streets can be appropriately mitigated.
143. The Commission considers that if it had determined to grant consent to the Application, car parking could be appropriately managed through conditions of consent.
144. The Commission notes Council's position that access to the Site from President Avenue should be provided via a slip lane and not a splayed driveway. The Commission also notes that one of the recommendations of the Department's independent Traffic Review is for the inclusion of a slip lane leading up to the President Avenue entry. The Commission is of the view that a slip lane would provide the most appropriate access to the Site from President Avenue, and considers that the design and management of vehicular access to the Site from President Avenue should be determined in consultation with Council.

145. Consequently, the Commission considers that issues associated with the access from President Avenue is a contributory reason for the refusal of the Application.
146. With respect to construction traffic, the Commission agrees with the Department that, if it were to determine to approve the Application, there would not be significant impact on the surrounding road network and impacts are reasonably capable of being managed. As such, issues associated with construction traffic were not considered to be a reason for refusal of the Application.

5.5 Noise and Vibration

147. The Applicant submitted a Noise and Vibration Assessment prepared by Acoustic Directions and dated 29 June 2020 (**Acoustic Report**). The Acoustic Report included attended and unattended noise monitoring at specific noise receiver locations surrounding the Site to establish background noise levels within the locality, as indicated in Figure 48 and Table 17 of the Department's AR.
148. The Department notes that the Site is adjacent to residential properties to the north and west, with the nearest dwellings (being residential receivers R2 and R10) located approximately 4-5m from a Site boundary (AR para. 6.7.3).

Construction Noise and Vibration

149. Table 6 of the Acoustic Report establishes 'noise affected' management goals of between 49dB to 56dB to affected residential receivers during construction. These 'noise affected' levels were determined by assessing background noise prior to the project construction and operation, and adding an additional 10dB in accordance with the ICNG (AR para. 6.7.10).
150. The Acoustic Report notes that construction on Site is proposed in three phases, with each phase involving demolition and excavation expected to generate the highest level of noise and vibration (Acoustic Report p.20). Construction works are proposed to take place during standard construction hours outlined in the ICNG, being 7am to 6pm Mondays to Fridays, and 8am to 1pm on Saturdays (AR para. 6.7.8).
151. The Department notes that when determining the noise affected levels in each construction phase, the Applicant adopted a 2.4m high noise barrier around each construction phase when modelling the anticipated construction noise levels (AR para. 6.7.14).
152. Construction noise levels are predicted to exceed 'noise affected' levels at all residential receivers during all stages of construction by up to 39dB (AR para. 6.7.15). As noted in AR Table 18, noise levels at some receivers are predicted to exceed the 'highly noise affected' level of 75 dB(A).
153. The Department notes that any receiver which is assessed to have a noise affected level of 75 dB(A) or more, is considered to be a 'highly noise affected' receiver (AR para. 6.7.11).
154. The Applicant notes that (Acoustic Report p.28):
Residences adjacent to hospital with no distance separation ([receivers] R2, R9, R10) and the hospital itself will receive the highest levels of construction noise. The noise prediction indicates that when high-noise construction activities occur close to these noise receivers, noise levels may exceed 80dB....

155. The Commission notes that a number of the nominated receivers are actually multiple dwellings and therefore more individuals are likely to be m noise affected than might be immediately apparent from the noise tables provided in the Acoustic Report, EIS and AR.
156. In its response to the Commission regarding the up to 39dB exceedance of the ICNG, the Applicant stated that the “predicted noise is a worst case scenario” (Response to RFI p.15).
157. Public submissions received by the Commission raised concerns of noise caused by construction vehicles, machinery, and excavation activities, as well as the overall length of time required to complete all phases of construction. Submissions also questioned whether the proposed noise reduction measures would genuinely reduce noise impacts during construction.
158. The Department considers that surrounding residential receivers would be substantially impacted by noise during construction, noting that ‘highly noise affected’ level represents the point above which there may be strong community reaction to noise. The Department notes that further mitigation measures are required to reduce and minimise potential construction noise impacts (AR para. 6.7.19).
159. The Department states that it is satisfied that construction noise and vibration impacts can be appropriately managed through the implementation of the Applicant’s proposed mitigation measures listed at AR para. 6.7.18 (AR para. 6.7.23), and subject to additional recommended conditions by the Department including:
- a Construction Noise and Vibration Management Sub-Plan to be prepared as part of a Construction Environmental Management Plan (**CEMP**) by a suitably qualified person, and include a consultation strategy for engaging with the community (AR para. 6.7.20);
 - a requirement for the CEMP to describe procedures to achieve the noise management levels in line with the ICNG and include the development of strategies with the community to manage high noise generating works (AR para. 6.7.21); and
 - a requirement for the CEMP to include specific consideration of the ongoing use of the hospital during all stages of construction, and that the appropriate noise management levels are identified and complied with throughout construction (AR para. 6.7.22).
160. In its response to the Commission, the Department further reinforces its position that (Response to RFI p.2):
- ... it is feasible to reduce both the intensity and duration of actual impacts through appropriate mitigation measures. The Applicant has described the adopted goals for construction noise in Table 6 of the acoustic report (Acoustic Directions, 2020) and these are consistent with the guideline management levels described within the Interim Construction Noise Guideline (ICNG) for noise affected receivers. Recommended condition D12 requires the development to be constructed to achieve these noise goals.*
161. In its submission to the Commission, Council noted “that conditions regarding to construction noise are acceptable and no further or modified conditions are necessary” (Council’s Submission November 2022).

Operational Noise and Vibration

162. The Department notes that noise generated by vehicle movements (including cars from visitors and patients, ambulances, and delivery truck movements) within the hospital have potential to cause disturbance to surrounding receivers (AR para. 6.7.29). These vehicular movements on Site are estimated to exceed night-time levels of up to 5dB to receivers R2 and R10 and are considered to have marginal impact (AR para. 6.7.31).
163. The Department considers that noise can be suitably managed during operation subject to recommended conditions to mitigate noise resulting from these vehicular movements (AR para. 6.7.31)

Commission's Findings

164. The Commission agrees with the Department that surrounding receivers would be substantially impacted by noise during construction and that further mitigation measures are required to reduce and minimise potential impacts (AR para. 6.7.19).
165. The Commission is concerned with the excessive exceedance of up to 39dB relative to the adopted goals for construction noise, and predicted noise levels of between 75 and 88 dB for 'highly noise affected' receivers and finds that the Application is not acceptable in its current form owing to excessive noise exceedances predicted during construction.
166. The Commission does not agree that the Department's recommended conditions and mitigation measures recommended by the Applicant's Acoustic Report alone would appropriately manage and mitigate construction noise and vibration impacts to surrounding residential receivers.
167. The Application would require further refinement to be considered acceptable in being reasonably capable of addressing those impacts. These refinements may require:
- Further detail on construction staging to understand the length of time over which these very high construction noise impacts would occur to particular receivers;
 - More definitive mitigation and effective noise reduction (or other measures such as attenuation); and
 - Negotiation with affected receivers/residents regarding compensation, noise management protocols and/ or temporary relocation.
168. As such, the Commission finds that the issues associated with construction noise and vibration are a contributory reason for refusal of the Application.
169. With respect to operational noise, the Commission agrees with the Department that, if it had determined to grant consent to the Application, there would not be significant operational noise impacts to the surrounding receivers and impacts are reasonably capable of being managed. As such, issues associated with operational noise were not considered to be a reason for refusal of the Application.

5.6 Environmental Amenity

170. The Commission has considered the amenity impacts of the Application, in particular visual privacy, lighting impacts and overshadowing. The Commission notes it received submissions that raised concern regarding visual and amenity impacts the proposed built form may have. The Commission acknowledges that the Site adjoins low density residential uses and as such, there is potential for the amenity of adjoining residences to be impacted.

171. The Commission agrees with the Department's assessment of amenity impacts (AR para. 6.3.7 & 6.3.10) and overshadowing (AR para. 6.2.25).
172. The Commission finds that, if it had determined to approve the Application, amenity impacts could be appropriately managed.

5.7 Other Issues

173. The Commission notes the assessment of issues at Table 20 of the AR. If it had determined to approve the Application, the Commission agrees with the Department's assessment of these issues and that these issues could be appropriately managed through conditions of consent. As such, these issues are not considered to be a reason for refusal of the Application.

6. The Commission's Findings and Determination

174. The Commission has carefully considered the Material before it, as set out in section 3.1 of this Statement of Reasons. In addition, the views of the community were expressed through public submissions as well as in oral presentations at the Community Stakeholder Meetings. The Commission carefully considered all of these views as part of making its decision.
175. Based on its consideration of the Material and the public submissions, the Commission finds that the Application should be refused for the reasons set out in this Statement of Reasons, as summarised below:

a) Primary reasons for refusal relating to Historic Heritage

- the Commission notes that Hotham House is an item of local heritage significance and considers that its proposed demolition is inconsistent with the objectives of clause 5.10 of Sutherland Shire LEP (para. 77);
- the Commission finds that the objectives of the Application should include retention and conservation of Hotham House, noting that clause 5.10 of Sutherland Shire LEP seeks to conserve the environmental heritage of Sutherland Shire and to conserve heritage items, and that the independent Heritage Review commissioned by the Department indicates that retention and adaption of the building are possible (para. 79);
- the Commission has not been presented with any information which shows a detailed interrogation of options, nor design schemes which are predicated on retaining and designing around Hotham House so as to avoid its demolition, having only been provided with relatively brief written analyses and indicative diagrams following a request by the Commission (para. 81);
- the Commission finds that, from the outset, the Application has been predicated on demolition of Hotham House and that it has not been adequately demonstrated that the retention and adaptation of Hotham House could not co-exist with the redevelopment of the Site as a private hospital (para. 82);

b) Contributory reasons for refusal

- drainage and flooding: the Commission finds further design development of the swale to mitigate the impacts of overland flow waters, including demonstration that no further impacts to President Avenue and Council's stormwater system during the 1% AEP flood event, is necessary (para 119);

- traffic access: the Commission finds that a slip lane would provide the most appropriate access to the Site from President Avenue and considers that the design and management of vehicular access to the Site from President Avenue should occur in consultation with Council (para. 145);
- construction noise and vibration: the Commission finds the exceedance of up to 39dB relative to the adopted goals for construction noise, and predicted noise levels of between 75 and 88 dB for 'highly noise affected' receivers, to be excessive and not acceptable (para. 165);

c) Objects and Public Interest

- in relation to inter-generational equity, the Commission finds that the demolition of Hotham House on the Site would constitute a significant loss to future generations, and therefore the Application is not consistent with the principle of inter-generational equity; and
- the Commission finds that the Application, if approved, would not achieve an appropriate balance between relevant environmental, economic and social considerations, and therefore, when considered in respect of the relevant Objects of the EP&A Act, and ESD principles, the impacts associated with the Application (primarily related to historic heritage) are not able to be appropriately managed. The likely impacts of the Application, notwithstanding the likely benefits, warrant the conclusion that refusal of the Application is in the public interest.

176. The reasons for the Decision are given in this Statement of Reasons for Decision dated 23 December 2023.



Ms Dianne Leeson (Chair)
Member of the Commission



Professor Richard Mackay AM
Member of the Commission



Professor Helen Lochhead
Member of the Commission



New South Wales Government
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