

**Submission on Draft Georges River Local Environmental Plan (LEP) 2020 - Reference SF20/881
- Friends of Oatley**

FOO strongly objects to the proposed reduction of the existing FSPA under the HLEP 2012.

The existing FSPA is a significant area for scenic protection, environmental attributes and constraints (including bushfire risk and evacuation).¹

However, the draft LEP proposes the removal of 2,380 properties from the existing FSPA, with half of those in Oatley West alone.

Whilst the draft LEP does not seek to remove any existing zones², the proposal to remove more than 2000 properties from the existing FSPA is up-zoning by any other name.

Despite the community telling Council during consultation for the Local Strategic Planning Statement (LSPS) that it has a strong desire for low density areas to retain their character³, Council is proposing to increase housing density of our neighbourhood. In other words, Council is not only ignoring the wishes of the community, but it is acting contrary to the spirit of its own LSPS.

¹ CCL240-10 DRAFT HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2011 - REPORT TO ENDORSE FOR PUBLIC EXHIBITION

² Page 21

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Section A - Council's proposed foreshore planning controls

1. Draft LEP inconsistent with its own aims in relation to environment

Section 3.33(2) of the Environmental Planning & Assessment Act (EP&A Act) outlines that a planning proposal must include a statement of the objectives.

Four of the nine proposed aims/objectives of this draft LEP are:

- To promote and facilitate an ecologically and economically sustainable, well designed and vegetated urban environment in which the needs and aspirations of the community are realised,
- To protect and preserve the natural, built, cultural and Aboriginal heritage of Georges River, to build upon and enhance the character of local areas,
- To protect, preserve and enhance the natural landform, vegetation and open space, especially foreshores or bushland, in order to maintain landscape amenity and public access and use, and
- To facilitate infrastructure to support new development.

However, given the proposed removal of 2,380 properties from the existing FSPA under the Hurstville LEP 2012 (HLEP 2012) means that the minimum dual occupancy lot size will be reduced from 1000m² to only 650m²sqm and the landscaped area requirements will be reduced from 25% to only 20%, thereby enabling about 740 properties to gain the potential to develop dual occupancies, these aims or objectives appear to be only **motherhood statements**.

2. Clause 6.7 Foreshore scenic protection area

The draft LEP proposes a reduction in the extent of the existing FSPA under the HLEP 2012, which will result in the removal of 2,380 properties from the existing FSPA, to enable about 740 lots to gain the potential to develop dual occupancies.

This will result in increased housing density, increased size of building footprints and reduced size of garden areas which will lead to a loss of vegetation (including native) and wildlife habitat, increased traffic and parking congestion, increased urban stormwater run-off resulting in increased water pollution, views not so scenic to and from the Georges River and more pressure on the stormwater and sewerage networks, particularly in the western and foreshore areas of our LGA.

As such, FOO strongly objects to this radical reduction of the FSPA for the following reasons:

- **Tree canopy**

One of the key issues identified in the [Local Strategic Planning Statement](#) (LSPS) p.7/75 was:

Maintaining and increasing the tree canopy is overwhelmingly important and removed trees need to be replaced with appropriate native species and additional trees on public land.

However, the removal of thousands of properties from the FSPA will be moving in the wrong direction. Tree planting on public land to "compensate" for loss of those on private land will be unable to keep up with the demand.

Dual occupancies in particular often lead to multiple driveways into the street where currently there may only be one. The end result is less space for street trees on public land leading to further loss of tree canopy.

Increased urban densities and diminishing tree cover will undermine the council's ability to achieve the 'low cost' ecosystem benefits provided by dense canopy cover, including the amelioration of

stormwater impacts and climate change impacts. The simple metrics for this, are that reducing lot size and taking out 5% from the required landscape area can be the difference between having trees, and removing them. Cumulatively, that effect for hundreds of properties is significant. The fact that this LEP2020 will enable this is directly contradictory to the Greater Sydney Commission's South District Planning Priority S15 "Increasing urban tree canopy cover and delivering Green Grid connections".

- **Biodiversity**

The draft LEP references 'biodiversity' six times, four times in relation to the FSPA clause:

1. "Whilst this is an existing clause under the *HLEP 2012*, additional considerations regarding the protection and maintenance of the biodiversity within the foreshore scenic protection area ("FSPA") are proposed to be included in the *GRLEP 2020*.
2. "This Planning Proposal also seeks to extend the existing FSPA under the *HLEP 2012* to the whole LGA in accordance with the principle of achieving equity across the LGA to consistently regulate built form outcomes, reduce impacts of development on biodiversity and reinforce the dominance of vegetation and landscape over hard surfaces in the foreshore localities.
3. "this Planning Proposal seeks to strengthen landscaping requirements within residential and environmental zones for the purpose of promoting enhanced biodiversity across the LGA.
4. "This Planning Proposal seeks to extend the foreshore scenic protection area across the LGA, to protect environmentally sensitive areas, increase the tree canopy and enhance biodiversity within the LGA.

However, Council failed to use the former Kogarah Council's 2012 Flora & Fauna Study, the former Hurstville Council's 2014 Biodiversity study or even its own 2018 Vegetation Mapping Report, which informed the LSPS which is supposed to have informed this draft LEP.

Council also failed to consult information on wildlife occurrence.

These failures have resulted in a draft plan that does not acknowledge or seek to protect the natural values of the LGA and puts at risk the survival of much of the native vegetation in the LGA and the wildlife that is dependent on that vegetation.

- **Urban stormwater run-off and water pollution**

This proposal threatens water quality in the Georges River. With increased housing density comes more hard paved surfaces leading to less infiltration into the soil and more stormwater runoff. This carries with it pollutants from the catchment including sediment, nutrients, organic matter, oils and greases from increased traffic, and litter and other gross pollutants. All of this flows into our wetlands and creeks and then the Georges River.

Some of the most significant and sensitive environmental assets of the Georges River LGA are the Myles Dunphy Reserve, Oatley Park and the Lime Kiln Bay wetlands, and each of these reserves either fringe or drain into the Georges River. The Hurstville LEP 2012 recognised implicitly the importance of maintaining a FSPA buffer zone around these assets. The creek lines and wetlands within these bushland reserves have been recognised by a body of robust research, as poor in both ecological function and water quality performance. ([Georges Riverkeeper Health Report Card 2017-2018](#)). This justifies the retention of the FSPA as it exists around them, and the further strengthening of development controls to reduce their impact on downstream water quality of the Georges River. Alarming the draft LEP will increase the threat, with denser urban development and a lessening of the absorbing capacity of soft landscaping, leading to greater volumes of polluted urban runoff entering waterways.

- **Character of local neighbourhood**

The local neighbourhood is typified by the generally abundant vegetation, mature trees and large garden areas giving it a very leafy character. The vegetation shades houses and streets keeping them cooler and making it easier to enjoy outdoor recreation in backyards and street frontages. This is a big

factor in residents' decisions to buy into and live in this area. Much of this character will be at risk with the proposed removal of the FSPA protections from 2380 properties.

- **Scenic views to and from the river**

The radical reduction of the existing FSPA from the proposed FSPA will not afford these 2,380 properties the protection of their scenic views to and from the Georges River currently afforded by the existing FSPA.

- **Infrastructure**

Sewerage and stormwater drainage networks

There is inadequate information in the draft LEP as to whether the existing infrastructure such as the sewerage and stormwater drainage networks have the capacity to cope with the scale of planned development and population growth.

FOO and other members of the public have **also not had the benefit of sighting comments from government agencies and departments, such as Sydney Water.**

Ethos Urban, who prepared the Foreshore Scenic Directions Paper (Paper), invited industry representatives from 18 government agencies and departments to attend a workshop. Unfortunately however, representatives from only 3 government departments attended namely the EPA, NSW Fisheries and Biodiversity Reforms. This means that members of the public do not know the key issues and/or priorities of other government agencies, such as Sydney Water in relation to foreshore development and management in our LGA, or whether Council's current planning controls are working well in responding to development, protection of visual amenity/character and climate change.

Traffic network

According to the guide prepared by the DPIE for preparing Planning Proposals, Council was also required to consider traffic and transport considerations when preparing this draft LEP under s3.33 (2) (a-e) of the EP&A Act.

However, the draft LEP does not address traffic or transport issues with regard to the proposed increase in housing density in the western and foreshore areas of the LGA. In other words, the draft LEP ignores the impacts of the increased traffic generated by the increased housing density.

The removal of 2,380 lots from the existing FSPA to enable 740 dual occupancy developments is up-zoning by any other name.

Public transport is already limited in the LGA's western and foreshore areas.⁴ And council wants to put more people in these areas. It appears that Council has yet to look at innovative public and private transport measures to address these shortfalls.

The draft LEP has ignored the increased road noise, air pollution and road congestion associated with any increase in density of our neighbourhood.

The draft LEP ignored access issues with only one narrow road in and out of the Yarran Rd peninsula, which would pose a problem with evacuation if there is any bushfire.

As stated above, public transport is already limited in the LGA's western and foreshore areas, but there is no sign in this draft LEP or anywhere else that Council has looked at innovative public and private transport measures to address this shortfall.⁵

⁴ LSPS

⁵ LSPS

Council has failed to consider whether the traffic likely to be generated by the extra dwellings in Oatley West could be accommodated adequately on the road system and whether adequate provision is made for the parking and movement of vehicles. The only traffic study supporting the draft LEP does not refer to “dual occupancy” or “duplex” or even Oatley.

There will be more service delivery trucks for Oatley Coles. This will increase the likelihood of more trucks reversing in and out of the loading dock in Mulga Rd, Oatley. As council knows, this is a breach of a Land and Environment Court condition of consent.

Oatley West has two main exit/entry points, at River Rd at Oatley Station and the Gungah Bay Rd/Roberts Av/Boundary Rd intersection, which already a black spot intersection. Both these intersections are already choked during peak hour.

Further, and of more concern is that there is bushfire prone land in Oatley West, but there is limited access, in particular for the Yarran Rd peninsula which has only one road over a narrow bridge.

The bushfire prone land in Oatley West is rated Vegetation Category 1, Vegetation Category 2 and Vegetation Buffer – 100m & 30m. The draft LEP however fails to address the problem for residents living near this bushfire prone land and for emergency vehicle access in the case of a bushfire

The bushfire prone land on the Yarran Rd peninsula is rated Vegetation Category 1 and Vegetation Buffer – 100m & 30m. Access to and from this peninsula is even more limited. The draft LEP however fails to address the problem for residents living near this bushfire prone land and for emergency vehicle access in the case of a bushfire.

Lugarno has only one entry/exit point, via Forest Rd. The bushfire prone land in this suburb is rated Vegetation Category 1, Vegetation Category 2 and Vegetation Buffer – 100m & 30m. However the draft LEP fails to address the problem for residents living near this bushfire prone land and for emergency vehicle access in the case of a bushfire.

The amenity and character of our neighbourhood will not be protected from the increased traffic and noise impacts generated by the increased density.

- **Other issues in relation to Clause 6.7**

The draft LEP states:

1. “This clause seeks to control development within the foreshore area to protect, maintain and improve the scenic amenity, significant views, diversity and condition of native vegetation and habitats, and environmental, social and character values of the Georges River foreshore in line with the overarching principles of this LEP.”

However, Council’s contention that the clause seeks to protect, maintain and improve diversity and condition of native vegetation and habitats (in other words the biodiversity) and environmental and character values of the Georges River foreshore is **hollow**, given that neither the Hurstville 2014 Biodiversity Study or the Kogarah 2012 Flora and Fauna Study or even its own 2018 Vegetation Mapping Report inform the draft LEP.

2. “Whilst this is an existing clause under the *HLEP 2012*, additional considerations regarding the protection and maintenance of the biodiversity within the foreshore scenic protection area (“FSPA”) are proposed to be included in the *GRLEP 2020*.”

However, Council’s contention that additional considerations regarding the protection and maintenance of the biodiversity within the FSPA are proposed to be included in the *GRLEP 2020* would be **laughable if it was not so serious**. As previously stated, Council did not use three relevant environmental studies when preparing the draft LEP.

3. “This Planning Proposal also seeks to extend the existing FSPA under the *HLEP 2012* to the whole LGA in accordance with the principle of achieving equity across the LGA to consistently

regulate built form outcomes, reduce impacts of development on biodiversity and reinforce the dominance of vegetation and landscape over hard surfaces in the foreshore localities.”

However, Council’s contention that the draft LEP seeks to extend the existing FSPA under the HLEP 2012 to the whole LGA **is patently untrue**, given that 2380 properties are to be removed from the existing FSPA and only 1297 properties are to be added to the former Kogarah LGA. Council’s contention that the so-called extension of the FSPA is in accordance with achieving equity to reduce the impacts of development on biodiversity and reinforce the dominance of vegetation and landscape over hard surfaces in the foreshore areas would also be laughable, if it wasn’t so serious. *How would Council know if it didn’t refer to its three environmental studies?*

4. “The extent of the existing FSPA in the former Hurstville LGA has been reduced in accordance with the principles of equity and consistency. The extent of the proposed FSPA is based on the character typologies, covering areas with higher sensitivities to change, as identified by the Foreshore Strategic Directions Paper as discussed above.”

However, the draft LEP failed to disclose the actual or even estimated number of properties to be removed from the existing FSPA in the former Hurstville LGA. Further, the extent of the proposed FSPA does not truly reflect the character typologies, as identified by the Paper.

5. “However, it should be noted that whilst the character area of “Garden Suburban (Large Lots)” is identified as having higher sensitivity to change by the Paper, this area has been excluded from the proposed FSPA as most of the residential properties located in this character area are not included within the existing FSPA under the *HLEP 2012*.”

This is a flawed argument. Just because the character area of “Garden Suburban (Large Lots)” isn’t in the existing FSPA doesn’t mean that it not be included in the proposed FSAP.

6. “The inclusion of these properties within the FSPA would impose more stringent development controls such as an increased lot size for dual occupancy developments, thereby significantly reducing the development potential of this area which will reduce the LGA’s capacity to meet the projected housing targets.”

However, this statement is telling in itself. On the flip side, the exclusion of these properties from the FSPA would allow less stringent development controls such as decreased lot size for dual occupancy development controls, thereby significantly increasing the development potential of our neighbourhood.

7. “The proposed extent of the FSPA in the former Kogarah LGA has primarily been informed by the location of the foreshore localities identified within the existing Kogarah DCP and supplemented by the character typologies with higher sensitivities to change as identified by the Paper. This is due to the correlation between the existing larger lot size requirements in the foreshore localities and the FSPA.”

However, the proposed extent of the FSPA does not reflect the E4 – Environmental Living zone which was introduced to the Kogarah LEP in January 2013 and was applied to the areas formerly covered by the Foreshore Scenic Protection Areas (FSPA) and Waterfront Scenic Protection Areas (WSPA).

8. “It should also be noted that whilst the character area of “Jetty’s and Marina Edge” is identified as having lower sensitivity to change in the Paper, these areas are included in the proposed FSPA for the purpose of consistently applying the FSPA to all waterfront localities across the Georges River foreshore, in accordance with the principle of achieving equity through harmonisation.’

However, the argument that this character area in the former Kogarah LGA with a lower sensitivity to change should be included to achieve equity through harmonisation is **flawed**.

9. “The proposed extent of the FSPA is shown on the Foreshore Scenic Protection Area Map as provided in **Appendix 7**.

However, this map is misleading at best, as it includes water, whereas the existing FSPA map generally applies to land-based locations that are visually identified **from** the Georges River.⁶

10. "Under this clause, developments within the proposed FSPA will have to respond to the existing environmental, social and character values of the foreshore by ensuring development is compatible with the desired future neighbourhood character and minimise potential impacts on views to and from the Georges River, foreshore reserves, residential areas and public places."

This statement sounds promising. However, the proposed increase in housing density is contrary to what residents told the council last year about their strong desire for low density areas to retain their character⁷. Further, it is hard to understand how environmental and character values will be maintained and protected with any increase in housing density on our foreshore.

3. Harmonisation of the LEPs descended to the lowest common denominator

FOO notes that this draft LEP is also a Planning Proposal (PP).

The first stage of preparing the draft LEP was to harmonise the existing LEPs.⁸

According to this draft document, the provisions in this PP are in accordance with the *Standard Instrument (Local Environmental Plans) Order 2006* and are intended to harmonise and consolidate the planning controls within the following LEPs currently in force across the Georges River LGA:⁹

Also according to this draft document, this PP was prepared in accordance with a number of overarching principles, including:

- Achieve equity across the LGA through the harmonisation process, particularly in respect to development potential and the management of environmental hazards and risks;
- Retain existing controls where the status quo can be maintained;
- Protect the amenity and local character of low density residential zoned areas and
- Enhance and protect the natural environment, especially in the foreshore localities along the Georges River.¹⁰

However, instead of retaining existing foreshore planning controls, protecting the existing amenity local character of our neighbourhood and enhancing and protecting the natural environment in our foreshore areas, the draft LEP actually enables more dual occupancy development on our foreshore and in our neighbourhoods. This increased density will mean less trees and vegetation, more traffic and parking congestion, and increased urban stormwater run-off, increasing the likelihood of more pollution of our waterways.

The FSPA currently only applies to land in the former Hurstville LGA zoned under the HLEP 2012. The former Kogarah LGA does not have a FSPA. However, instead of replicating the Hurstville FSPA in the former Kogarah LGA, the draft LEP instead proposes reducing the size of the FSPA by 2380 properties but only adding 1297 properties to the former Kogarah LGA, with a net loss of 1083 properties. The draft LEP also proposes landscaped area requirements that do not include minimum 2m dimensions (in former Hurstville DCP) or deep soil planting (in former Kogarah DCP).

⁶ Foreshore Strategic Directions Paper

⁷ Appendix 3 – Development Standards

⁸ PP

⁹ PP

¹⁰ PP

In other words, the attempt at harmonisation with regard to foreshore planning controls and landscaped area requirements have been taken down to the lowest denominator.

4. Council ignored key issues, emerging directions and key principles identified in Foreshore Strategic Directions Paper

Council prepared the **Foreshore Strategic Directions Paper** to inform the preparation of draft LEP in relation to the new foreshore planning controls.

According to this Paper, the “study area boundary was generated using a **viewshed** analysis from GIS data provided by Council. The viewshed (see Figure 31) is a theoretical demonstration of what areas of land can be viewed from both the Georges River and Sutherland side of the Georges River foreshore. “

However, when preparing the draft LEP, Council ignored these views demonstrated by the **viewshed**. This viewshed shows views of many parts of Riverwood, Lugarno, Peakhurst Heights, Mortdale Heights, Oatley, Hurstville Grove, Connell’s Point, Kyle Bay, Blakehurst, Carss Park, Kogarah Bay, Beverley Park and Sans Souci. However, many if not most of those properties in the former Hurstville LGA are proposed to be removed from the existing FSPA, and many if not most properties in the former Kogarah LGA are not to be included in the proposed FSPA.

5. Draft LEP ignores key issues and/or priorities identified by Council’s own staff and government agencies in relation to foreshore development and management

Ethos Urban, the author of the **Foreshore Strategic Directions Paper**, undertook a workshop with internal council staff in the planning, environmental, infrastructure and projects departments with regard to development on the foreshore, with the aim of collecting “information to assist with the identification of key issues and development of strategic directions.”¹¹

However, when preparing the draft LEP, Council ignored most key issues and priorities identified by Council staff and three government agencies, the EPA, NSW Fisheries and Biodiversity Reforms.

Some of those **key issues** identified by Council staff, but ignored by Council were:

- There has been a significant reduction in waterway health due to inappropriate development and encroachments.
- The increase in private tree removal and resultant impact on the visual amenity and character of the foreshore areas concerned many stakeholders.
- The lack of supporting evidence and statutory weight to refuse inappropriate developments was a point of frustration for development assessment officers. An example was cited relating to the lack of mapping for threatened species.
- There are risks and impacts associated with permissibility of certain ‘complying development’ standards in relation to coastal hazards.
- Inconsistent land use and development policy and foreshore protection outcomes.
- Lack of public access and connectivity along the foreshore has resulted in the privatisation of the waterfront environment.
- Development standards in the former Kogarah LEP 2012 planning controls are not strong enough to protect community values.

Some of those **key priorities** identified by Council staff, but ignored by Council were:

¹¹ FSDP

- Improve the statutory protection of key environmental, social and character values to support the refusal or modification of inappropriate developments
- Develop a consistent and coordinated approach in protecting environmental values across the LGAs.
- Stronger protection for the environmental values and visual character of the foreshore including retention and enhancement of trees, habitat and urban canopies.
- Greater protection of existing flora and fauna habitats.
- Ensure new development is in keeping with the environmental characteristics of the area.
- Prevent over-development of the foreshore area including unnecessary increases in impermeable surfaces.
- Retain the foreshore building line and strengthen existing foreshore controls - Sutherland Shire cited as a good example.
- Ensure new development provides for the protection of water quality and river health and development controls adequately address stormwater management.
- Strengthen Kogarah LEP 2012's development standards to reduce the prevalence of inappropriate developments.
- Develop clear land use and development policy for a consistent approach to foreshore protection and the management of land use and development. To assist with interpretation, consider use of diagrams, illustrations and graphics.

Some of those **key issues** identified by three government agencies, but ignored by Council were:

- There is currently a lack of consideration for the impacts of water-based ecosystems due to increase in waterfront development including:
 - construction of board-walks, jetties and marinas within riparian zones;
 - floating berths; and
 - increase in larger boats (cause ecological damage and stir up sediment).
- Private tree removal is becoming an increasing issue. Feedback from participants suggested that developers are increasingly including the cost of Council fines as part of their costings. Fines for tree removal are minor within the context of future uplift of developments (increased GFA and height).
- There is currently no integration of state, regional and local plans into a single document. There is already a large body of literature relating to other relevant guidelines, strategies and documents that already cover many of the issues [sic] this project (Georges River Foreshore Planning Controls).

Some of the **key priorities** identified by three government agencies, but ignored by Council were:

- Monitor the new policy initiatives, such as the Medium Density SEPP to ensure that new policy does not over-ride or dilute foreshore protection objectives.
- Ensure planning controls protect and enhance waterway health, quality and habitats.
- Revised planning controls should encourage more sustainable development outcomes that respond to climate change risk and broader environmental, social and cultural values.

6. Draft LEP not informed by Council's biodiversity studies and Vegetation Mapping Report

A stated aim of the draft LEP is "To protect, preserve and enhance the natural landform, vegetation and open space, especially foreshores or bushland, in order to maintain landscape amenity and public access and use".

It is be noted that Council's own 2018 Vegetation Mapping Report was used to inform the Georges River **Local Strategic Planning Statement (LSPS)**, and that this LSPS was used to inform the draft LEP.

However Council did not use any key environmental studies such the former Hurstville Council's 2014 Biodiversity Study, the former Kogarah Council's 2012 Flora & Fauna Study or even its own 2018 Vegetation Mapping Report to inform the draft LEP.

7. Weakened landscaping requirements

The proposed landscaped area requirements are very weak.

The proposed minimum landscaped area required for dwelling house or a dual occupancy in the FSPA is 25%. The proposed minimum landscaped area required for dwelling house or a dual occupancy not in the FSPA is only 20%. This means that the minimum required landscaped area of those 2,380 properties currently in the FSPA but the Council proposes to remove, has been weakened.

Further, the proposed landscaped area requirements do not include minimum dimensions (as per Hurstville DCP) or deep soil requirements (as per Kogarah DCP).

8. Claim that FSPA clause is not an environmental protection or biodiversity provision

Consultant's claim FSPA clause is not an environmental protection provision

Sandhya Davidson, in Council's LEP Project Team advised our president on 21/5/20 "that FSPA is a scenic protection provision rather than an environmental protection provision and therefore the information within these documents may not be directly relevant". This is a nonsense.

Four of the six of the objectives of the proposed local planning control **6.7 Foreshore scenic protection area** are:

- to protect, maintain and improve the diversity and condition of native vegetation and habitats,
- to reinforce and improve the dominance of landscape over built form, hard surfaces and cut and fill,
- to encourage the recovery and repopulation of threatened species and their communities, populations and their habitats and
- to enhance existing environmental, social and character values of the foreshore.

Further, the FAQ Sheet for the Foreshore Scenic Protection Area states:

- "The FSPA is a continuous area along the foreshore that is visible from the Georges River with significant character, environmental and scenic values. It is identified on the Foreshore Scenic Protection Area Map and by a local provision clause in Part 6 of the draft Georges River Local Environmental Plan (LEP) 2020." ¹²
- That the draft LEP proposes the FSPA provision "to strengthen the protection and conservation of foreshore areas". ¹³

¹² Page 1/10

¹³ Page

- That the objective of the FSPA “clause is to protect, maintain and improve the scenic amenity, significant views, diversity and condition of native vegetation and habitats, and environmental, social and character values of the Georges River foreshore in line with the overarching principles of this LEP.”¹⁴
- “The proposed local provision will require that developments within the FSPA address a number of considerations, including protection of the natural environment, retention of vegetation and habitats, minimising height and bulk, and the impact on views and the visual environment.” Twice!¹⁵
- “Inclusion of this local provision will assist in ensuring the desired future neighbourhood character for the Georges River FSPA is achieved and is aligned with the principles of the draft LEP 2020 to enhance and protect the natural environment, especially in the foreshore area.” Twice!¹⁶

Council’s claim FSPA clause is not a biodiversity provision

Council’s own FAQ Sheet for the **Foreshore Scenic Protection Area**, uploaded more than six weeks into the Public Exhibition period states: “The FSPA provision is not a biodiversity”. This is also nonsense.

This very same FAQ sheet also states:

- “The *HLEP 2012* contains a FSPA provision. This existing provision has been modified for inclusion in the draft LEP 2020 to include additional considerations regarding the protection and maintenance of the biodiversity within the FSPA. The proposed local provision will require that developments within the FSPA address a number of considerations, including protection of the natural environment, retention of vegetation and habitats, minimising height and bulk, and the impact on views and the visual environment.”¹⁷ Twice!

The FAQ sheet for **Vegetation and tree protection** also refers to biodiversity in relation to Clause 6.7 (Foreshore scenic protection area) of the draft LEP, stating that this clause identifies the following matter for consideration before determining a DA on land in the FSPA: the “maintenance of native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors”.

Further, the draft LEP itself states:

- Whilst this is an existing clause under the *HLEP 2012*, additional considerations regarding the protection and maintenance of the biodiversity within the foreshore scenic protection area (“FSPA”) are proposed to be included in the *GRLEP 2020*.¹⁸
- This Planning Proposal also seeks to extend the existing FSPA under the *HLEP 2012* to the whole LGA in accordance with the principle of achieving equity across the LGA to consistently

¹⁴ Page 2/10

¹⁵ Page 3/10 and page 8/10

¹⁶ Page 3/10 and page 8/10

¹⁷ Page 3/10 and page 8/10

¹⁸ Page 55/75

regulate built form outcomes, reduce impacts of development on biodiversity and reinforce the dominance of vegetation and landscape over hard surfaces in the foreshore localities. ¹⁹

Furthermore, in relation to S9.1 Direction by the Minister, the reports to Council on 25 November 2019 and the Local Planning Panel on 6 February 2020 state:

“This Planning Proposal seeks to extend the foreshore scenic protection area across the LGA, to protect **environmentally** sensitive areas, **increase the tree canopy** and **enhance biodiversity** within the LGA. In addition, this Planning Proposal seeks to include local provisions for the foreshore area and coastal hazards which will ensure the protection of **ecological habitats**, riparian lands and watercourses and ensure that development does not impact on the **natural** foreshore processes. These new local provisions will strengthen the **environmental controls** applicable to new development across the LGA and mitigate or prevent any adverse environmental impacts of development.”

9. Failure to address bushfire risks

According to the DPIE’s Guide for Preparing Planning Proposals it is important that any bushfire hazards are identified in the PP.

Council’s [Bushfire Prone Land Map](#) details risk areas for Peakhurst, Mortdale and Hurstville Wards. However, the PP made no reference to these risk areas and did provide imagery to confirm such land was prone to bushfire.

10. Proposed inclusion of ‘dual occupancy’ in low density zone

The proposed hierarchy of residential density is outlined as follows: • Low density: dwelling houses and dual occupancies

Section B - LEP Process

1. LEP process driven with undue haste

According to the *Georges River Local Strategic Planning Statement 2040* (LSPS), the focus of this draft LEP “was to be on delivering housing targets and harmonising the 2 former LGAs planning instruments.”²⁰

However, given the draft Local Housing Strategy and draft Inclusive Housing Strategy are currently on public exhibition along with the draft LEP, the focus of the draft LEP appears to be only on harmonising the LEPs of the former LGAs.

Council is pushing the progress of the draft LEP because of the terms of the Funding Agreement with the NSW Government. Council keeps saying that it is unable to extend the exhibition beyond this date due to our commitments to the State Government under the Accelerated LEP Program. This Funding Agreement requires Council to submit this Planning Proposal for the Georges River LEP to the DPIE for Gateway Determination by 20 December 2019 and the LEP needs to be submitted for final legal drafting by 30 June 2020.

It should be noted however that Council did not meet the mandated timeframe of 20 December 2019.

*Given Council apparently did not lose any funding for this breach of the Funding Agreement, why isn't Council prepared to breach this Funding Agreement again? After all, “a consequence of not meeting these mandated timeframes **may** include not receiving State Government funding of up to \$1,125,000 and as such Council needing to meet the cost of relevant LEP related expenses” [emphasis added].*

In other words, Council may not lose any funding if it extends the Public Exhibition period until the **Covid-19** restrictions are lifted. This would allow Council to hold essential face-to-face public information sessions about an important plan that will affect the lives and lifestyles of not only those of us currently living in our neighbourhoods, but also any future residents.

2. Council's failure to provide key information to the community's representative on the Local Planning Panel and the public

The Georges River Local Environmental Plan 2020 proposes a reduction in the extent of the existing Foreshore Scenic Protection Area (FSPA) under the Hurstville LEP 2012, which will result in the removal of a number of properties from the existing FSPA, to enable dual occupancy developments.

However, Council did not provide the actual/estimated number of properties to be removed in the report to the Council meeting in November last year, or to the Local Planning Panel in February this year.

Further, FOO can not find this key number in any documents Council sent to the DPIE for Gateway determination.

Furthermore, Council did not provide this key number to the public until 15 May, co-incidentally the very day of the initial deadline for submissions. It is worth noting that the total number and breakdown by suburb provided to a FOO member via email in April turned out to be incorrect.

On 15 May, which was to be the last day for submissions, Council quietly uploaded a FAQ Sheet for the Foreshore Scenic Protection Area with this key number. This FAQ Sheet also indicated that 50% of those properties to be removed were in Oatley West.

²⁰ LSPS page 8/97

On 26 May FOO members had a Skype meeting with the Mayor, Cr Kevin Greene. In response to a question as to when was he told the actual/estimated number of properties proposed to be removed from the existing FSPA, the Mayor said that he was told at a workshop and that it was in documentation.

This raises so many questions. Here are some of ours:

- *Were the Councillors told at the workshop in July last year that the number of properties to be removed from the existing FSPA was confidential information?*
- *Why wasn't this key information provided in the report to the Council meeting on 25 November 2019?*
- *Why wasn't this key information provided in the report to Local Planning Panel on 6 February 2020?*
- *Why did Council withhold this key information from our community representative on the Local Planning Panel?*
- *Why wasn't this key information provided in documents Council sent to the DPIE for Gateway Determination?*
- *Why did Council's LEP Project Team take days to provide this key information to an Oatley West resident, and when it did, provide the wrong numbers?*
- *Why did it take Council more than six weeks into the public exhibition period to provide this key information to the public?*
- *Why did the Mayor think this key information was in the documentation?*

Accordingly, FOO is requesting a Public Hearing because Council withheld key information – the actual number of properties to be removed from the existing FSPA – from Councillors in its report to Council on 25 November 2019²¹ and from the Local Planning Panel on 6 February 2020²², in particular from our community representative on the Panel. Council also did not include this key information in the Planning proposal for Georges River Local Environmental Plan 2020 and supporting documents sent to the DPIE for Gateway determination. Further, Council also withheld this key information from the public for more than six weeks into the Public Exhibition period, publishing this key information on the very day of the initial deadline date.

3. Council's failure to follow due process/failing to comply with proper procedures or the law

a) Council's failure to prepare the Planning Proposal in accordance with the DPIE Guide

Council claimed that the Planning Proposal (PP) for the LEP was prepared in accordance with "A guide to preparing planning proposals" (December 2018 prepared by the DPIE. However this is not true, because:

- The PP did not contain enough information to identify relevant environmental and other site-specific considerations.
- The PP failed to identify if the land subject to the proposal has the potential to contain critical habitat or threatened species, populations or ecological communities, or their habitats. The PP did not provide mapping to identify known vegetation communities that are located within or near the site, such as a map identifying known native vegetation communities surrounding a site.

²¹ ENV043-19 Planning Proposal - Georges River Local Environmental Plan 2020

²² LPP001-20 Planning Proposal - Georges River Local Environmental Plan 2020 for Gateway Determination - PP2019/0004

- The PP failed to identify what studies are necessary to confirm the presence of these species or habitats and their significance. The PP did not refer to HCC 2014 Biodiversity Study or KCC 2012 Flora & Fauna Study or GRC Vegetation Mapping Report.
- Local traffic and transport, and public transport were not considered. The removal of 2,380 properties from the existing FSPA would allow less stringent development controls such as a decreased lot size for dual occupancy developments and less onerous landscaped area requirements, thereby significantly increasing the development potential of the western and foreshore areas of the LGA. In other words, the PP did not consider the impact of the traffic that would BE generated by the expected increase in the number of dwellings. The PP also ignored the fact that limited public transport in the LGA's western and foreshores is already a challenge.²³

b) Council's failure to comply with Ministerial Directions

Ministerial Direction 2.1 Environment Protection

The objective of this direction is "To protect and conserve environmentally sensitive areas".

Council contention that this Planning Proposal (aka the draft LEP) is consistent with the **Ministerial Direction 2.1 Environment Protection Zones**, with an objective "to protect and conserve environmentally sensitive areas"²⁴, is patently untrue.

Council claims "This Planning Proposal seeks to **extend** the foreshore scenic protection area across the LGA".

However, given the Oxford definition of 'extend' is 'cause to cover a wider area; make larger', the Planning Proposal is not extending the FSPA. In fact, the PP proposes to remove 2,380 properties from the existing FSPA but only add 1,297 properties in the Kogarah LGA. This equates to a net loss of 1,083 properties. In other words, the PP proposes to reduce the FSPA, not extend it.

Council also claims that the PP seeks "to protect environmentally sensitive areas, increase the tree canopy and enhance biodiversity within the LGA."

However, this claim is not backed up or supported by any vegetation or biodiversity studies.

Council also claims that the FSPA provision "will strengthen the environmental controls applicable to new development across the LGA and mitigate or prevent any adverse environmental impacts of development."²⁵

Ministerial Direction 4.4 Planning for Bushfire Protection

The objectives for this direction are "(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas".

²³ LSPS

²⁴ **LPP001-20 Planning Proposal - Georges River Local Environmental Plan 2020 for Gateway Determination - PP2019/0004**

²⁵ **LPP001-20 Planning Proposal - Georges River Local Environmental Plan 2020 for Gateway Determination - PP2019/0004**

Council claims that “The proposed up-zonings that will result in residential intensification under this Planning Proposal are located in existing urban areas and are not located in areas known to be bushfire affected. Accordingly, the Planning Proposal is consistent with this direction.”²⁶

However, the proposal to reduce the existing FSPA under the HLEP 2012 by 55% is up-zoning by any other name.

4. Inconsistency with key Council and state government plans in relation to the Foreshore Scenic Protection Area, bushland, biodiversity, tree canopy and vegetation

Georges River Local Strategic Planning Statement 2040

This document was placed on public exhibition between 26 June 2019 and 7 August 2019.

Key issues identified by the community and public authorities in relation to housing and neighbourhoods were:

- Maintaining the character of the existing suburbs, particularly trees and green open space and walkability is important.
- There were mixed views on additional residential development with some seeking the realisation of development potential and others seeking a halt to development.
- A mix of housing, especially housing that is suitable for older members of the community, such as single-level housing is desirable.

A key issue identified by the community and public authorities in relation to environment and open space was:

- Maintaining and increasing the tree canopy is overwhelmingly important and removed trees need to be replaced with appropriate native species and additional trees on public land.²⁷

Council endorsed the LSPPS in 2019. The community consultation undertaken for the LSPPS informed the draft LEP.²⁸

The LSPPS states “Together with the community, Council identified the following as features of our LGA that we value and wish to retain and enhance:

- Village feel of our neighbourhood centres and low density living
- Green leafy character, green open spaces and bushland
- Georges River and our waterways including foreshore views and vistas.”

Council acknowledged that development is limited on land classified as foreshore, flood prone or bushfire affected.²⁹ Council also acknowledged that protecting the foreshore area and tree canopy on private land and Improving ageing drainage infrastructure as development produces hard surfaces

²⁶ **LPP001-20 Planning Proposal - Georges River Local Environmental Plan 2020 for Gateway Determination - PP2019/0004**

²⁷ PP

²⁸ <https://yoursay.georgesriver.nsw.gov.au/lep2020>

²⁹ LSPPS

and more flooding are challenges. It also acknowledged that urbanisation has impacted the Georges River with development occurring in the foreshore areas and the loss of trees.³⁰

To deliver the 2040 vision a key action of the LSPS was to “**Expand the Foreshore Scenic Protection Area across the LGA through Council’s LEP 2020**”.³¹

However the FSPA has not been expanded across the LGA through this draft LEP. Council instead proposes to remove 2,380 properties from the existing FSPA under the HLEP 2012 but only add 1,297 properties in the former Kogarah LGA, resulting in a net loss of 1,083 properties. This is not an expansion of the FSPA, it is a contraction.

South District Plan

On 7 September 2018, Council received funding from the NSW Government for an accelerated review of Council’s existing Local Environmental Plans and preparation of a new LEP that aligns with the priorities outlined in the *South District Plan*.

However, the draft LEP does not align with the following planning priorities outlined in this plan.

S14. Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes and better managing rural areas. Objectives of this priority are:

- Protect and enhance biodiversity by:
 - Supporting landscape-scale biodiversity conservation and the restoration of bushland corridors
 - Bushland and remnant vegetation as green infrastructure
 - Managing urban development and urban bushland to reduce edge-effect impacts.
- Identify and protect scenic and cultural landscapes
- Enhance and protect views of scenic and cultural landscapes from the public realm
- Limit urban development to within the Urban Area.
- Increasing urban tree canopy cover and delivering Green Grid connections
- Expand urban tree canopy in the public realm

However, the draft LEP’s proposed removal of 2,380 properties from the existing FSPA under the HLEP 2012 represents a 55% reduction of the FSPA and will thereby adversely impact biodiversity and the tree canopy, with less vegetation because of less stringent planning controls such as smaller lot sizes for dual occupancy developments and weaker landscaped area requirements. Also, this radical reduction of the FSPA will not enhance scenic views from the Georges River. Further, given Council did not use its own 2018 Vegetation Mapping Report or the former Hurstville Council’s 2014 Biodiversity Study or the former Kogarah Council’s 2012 Flora & Fauna Study when preparing the draft LEP, Council’s claim that this draft LEP is aligned with the South District Plan is patently untrue.

Furthermore, given Council hasn’t developed an LGA-biodiversity study, let alone a strategy how can Council know that biodiversity will be protected, enhance and promoted with its significant proposed change to the FSPA?

Given Council did not provide its Vegetation Mapping report during public exhibition and is refusing to provide it to residents, how can members of the public know that the tree canopy will be enhanced with the proposed changes?

5. Council’s failure to use own key environmental documents to inform the draft LEP

³⁰ LSPS

³¹ LSPS

Council failed to use its own 2018 Vegetation Mapping Report, the former Hurstville Council's 2014 Biodiversity Study and the former Kogarah Council's 2012 Flora & Fauna Study when preparing the draft LEP to support its many claims that biodiversity will be protected and maintained biodiversity, the tree canopy will be enhanced and the dominance of vegetation will be reinforced:

- “[Clause 6.7 Foreshore scenic protection area] seeks to control development within the foreshore area to protect, maintain and improve the scenic amenity, significant views, diversity and condition of native vegetation and habitats, and environmental, social and character values of the Georges River foreshore in line with the overarching principles of this LEP.”³²
- “Whilst [Clause 6.7 Foreshore scenic protection area] is an existing clause under the *HLEP 2012*, additional considerations regarding the protection and maintenance of the biodiversity within the foreshore scenic protection area (“FSPA”) are proposed to be included in the *GRLEP 2020*.”³³
- “This Planning Proposal also seeks to extend the existing FSPA under the *HLEP 2012* to the whole LGA in accordance with the principle of achieving equity across the LGA to consistently regulate built form outcomes, reduce impacts of development on biodiversity and reinforce the dominance of vegetation and landscape over hard surfaces in the foreshore localities.”³⁴
- “[Clause 6.13 Landscaped areas in certain residential and environmental protection zones] seeks to ensure landscaping is a significant part of the local character by requiring the retention and provision of vegetation that contributes to biodiversity and enhances the tree canopy of the LGA, whilst minimising urban run-off, the visual impact of development and the urban heat island effect.”³⁵
- “In addition, this Planning Proposal seeks to strengthen landscaping requirements within residential and environmental zones for the purpose of promoting enhanced biodiversity across the LGA.”³⁶
- “This Planning Proposal seeks to extend the foreshore scenic protection area across the LGA, to protect environmentally sensitive areas, increase the tree canopy and enhance biodiversity within the LGA.”³⁷
- “This Planning Proposal seeks to ensure that the landscape character within residential suburbs is preserved which will ensure that vegetation contributes to biodiversity and tree canopy.”³⁸
- “In addition to the above, it is also proposed to introduce Clause 6.7: “Foreshore scenic protection area”, the objective of which is to protect the natural environment, minimise

³² Page 55/75 of the PP

³³ Page 55/75 of the PP

³⁴ Page 55/75 of the PP

³⁵ Page 57/75 of the PP

³⁶ Page 67/75 of the PP

³⁷ Page 68/75 of the PP

³⁸ Page 68/75 of the PP

disturbance to native vegetation and consider the impact on views to/from the Georges River.
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6. Problems with the public exhibition of the draft LEP

Council's webpage for the public exhibition of the Draft Georges River Local Environmental Plan (LEP) 2020 <https://yoursay.georgesriver.nsw.gov.au/lep2020> was not user-friendly. The public was drip-fed information without notice. Key information was not provided in a timely manner, thereby denying early submitters access to this information.

Council's FB page <https://www.facebook.com/GeorgesRiverCouncil/> was also problematic.

Restrictions due to COVID-19 also meant there were no public seminars, libraries and customer service centres were closed and there was no access to documents for those without internet.

Council's webpage

This webpage is headed "Draft Georges River Local Environmental Plan (LEP) 2020". Council consistently refers to this draft document as "the Draft LEP". However, the draft document itself is labelled [Planning Proposal Report - Georges River Local Environmental Plan 2020.pdf \(2.01 MB\) \(pdf\)](#). This is very misleading.

Further, the heading of this webpage "Draft Georges River Local Environmental Plan (LEP) 2020" is very misleading as it does not indicate that two other draft documents are also on public exhibition.

Council did not publish its Fact Sheets online until two weeks into the Public Exhibition period and only after residents asked council to do so. It should be noted these Fact Sheets are misleading because they don't include existing development standards.

Council did not provide key information - the actual number of properties to be removed from the existing FSPA under the HLEP 2012 – until more than six weeks into the Public Exhibition period.

Council placed three draft documents, namely the draft LEP, the draft Local Housing Strategy and draft Inclusive Housing Strategy on Public exhibition at the same time.

These three draft documents were supported by many other documents, described by Adam Seton, the chair of the Local Planning Panel on 6 February 2020 as "voluminous".

There are about 500 pages in the three draft documents and at least 2350 pages in the supporting documents, all up nearly 3,000 pages.

And to make it even harder for the public, the draft LEP was informed by two documents that were yet to be endorsed by Council, namely the draft Local Housing Strategy and draft Inclusive Housing Strategy.

That residents were expected to read, digest, understand then provide feedback these documents without any face-to-face meetings or public information sessions with Council's planning and environmental staff was a big ask by the Council.

Council quietly published FAQ sheets more than six weeks into the public exhibition period. One of these FAQ sheets contained key information, namely the number of properties to be removed from the existing FSAP under the HLEP 2012, and a breakdown by suburb. Given that this was the first

time these key numbers were provided to the public, many early submitters would have been unaware of the actual extent of the removal.

Council 'webinar' held on 19 May was counterproductive, as staff were unable to answer many of the questions posed by participants.

Council's FaceBook Page

Council put up its first post on the draft LEP on 1 April 2020. This post was simply a link to a story in the St George Leader. Given the story had no by-line, it appears Council wrote it.

Council did not put up second post about the draft LEP for nearly two weeks. In the meantime Council posted five times about its Digital Strategy.

Council's April 13 post included a photo of the foreshore Sutherland LGA, not that of the Georges River LGA.

7. Concern about developer speculation and weight to be given to developer submissions

To paraphrase the words of Brett Daintry in his submission on behalf of United Kogarah Residents Association in relation to Kogarah's New City Plan, in formulating the final LEP to be recommended for adoption by the LPP for gazettal by the Minister, Council and the LPP needs to sit back from the vested interests of developers and focus on creating high quality places for people to live, work and socialise.

It would be appropriate for the post exhibition report to make a clear statement that Council must be careful to acknowledge whether there has been an unhealthy amount of speculative buying by developers whilst the draft LEP remains both uncertain and not imminent.

8. Councillors with pecuniary interests allowed to attend workshops to shape the LEP

That councillors with pecuniary interests are not only allowed to attend workshops to shape the LEP but are also not required by the Code of Conduct to disclose such an interest is ludicrous.

9. Council unable to get a quorum because too many councillors have pecuniary interests

That too many of our councillors have pecuniary interests so were unable to vote on the draft LEP in November last year is bad enough. But that they were still allowed to shape the LEP itself before it went to Council or the LPP is even more problematic.

10. Council's LEP project team's apparent lack of knowledge about Oatley West

It appears some of Council's LEP Project team had not even visited Oatley West, or even Oatley proper. It also appears that some were not aware that our side of the railway line, is called Oatley West by the local residents. .

Section C – Recommendations

Accordingly, FOO requests that:

1. The extent of the existing FSPA under the HLEP is not reduced, that the character area of “Garden Suburban (Large Lots)” in Oatley West identified as having higher sensitivity to change by the Foreshore Strategic Directions Paper be included in a new FSPA map and that the area in the former Kogarah LGA previously zoned ‘E4 – Environmental Living’ (before the former Kogarah Council up-zoned it to R2 and R3 in April 2016) be also included in any new FSPA map.
2. Council adopts the following recommendations made by Oatley resident and professional ecologist (D. Andrew) for the re-design of the LEP 2020:
 - That Council review the draft LEP in respect to the presence of remnant native vegetation cover mapped in the OEH (2013) report and revised vegetation data layers (2016) to develop mechanisms to identify, protect and enhance native vegetation cover throughout the LGA in the new LEP, especially rare and threatened communities.
 - That Council review the draft LEP in respect to the presence of native wildlife and its habitat, especially rare and threatened fauna, to address the need to identify and protect wildlife habitat throughout the LGA and identify mechanisms in the LEP to protect important wildlife habitat and encourage the community to appreciate and help conserve wildlife.
 - That Council undertake a full biodiversity assessment of the LGA to inform the development of the new LEP.
 - That Council not remove existing areas from the Foreshore Scenic Protection Area (FSPA) and consider adding additional areas which support significant remnant native vegetation and important view sheds from the Georges River and Sutherland Shire, further to what has been proposed.
 - That Council review the recommended minimum lot sizes in R2 Low Density Residential so that lots outside the FSPA remain at 550 sq m and not reduced to 450 sq m or 300 sq m and that the proportion of landscaped areas for lots on R2 are at least 40% for areas outside the FSPA and at least 50% within the FSPA in order to maintain large garden areas currently characteristic of the area which makes a significant contribution to conserving remnant native vegetation and wildlife habitat in the LGA.
 - Minimum landscaped areas of 50% should also apply to lots in areas identified as Bush Suburban, Garden Suburban, Garden Suburban-larger lots, Naturalist Edge, Semi-naturalist edge, Naturalist Headland identified in Council’s “*Georges River Strategic Directions Paper*”.
 - The Character Typology assessment applied to the foreshore areas of the LGA in the “*Georges River Strategic Directions Paper*” should be applied to the entire LGA so that a comprehensive assessment of the LGA can be made in order to apply appropriate zonings and provisions to protect gardens, remnant bushland and street trees in the new LEP.
3. **A Public Hearing** under section 57(5) of the Environmental Planning & Assessment Act be held to address the fact that key information - the number of properties to be removed from the existing FSPA under the HLEP 2012 – was withheld from the public and Local Planning Panel members, including our community representative, Erin Sellers.