

**Submission
No 3**

INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW

Organisation: Tweed Shire Council

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Dear Sir / Madam

Inquiry into Regional Planning Processes in NSW

Thank you for the opportunity to provide comment on this important inquiry. Whilst much can be said of regional planning and the planning framework generally, we have limited our reply to what we perceive to be key problem areas.

Preamble

Fundamental to the delivery of new housing and employment is provision of essential infrastructure. NSW Government is currently promoting and is lauded for fast tracking much needed increased levels of new housing. This has not been so readily achievable in the regions because of the significant cost associated with providing new infrastructure. Prevailing limitations on local councils ability to recover and levy charges to fund critical and essential infrastructure, as well as for recurrent asset maintenance, is also working against implementing this Government policy.

Contributions planning under the EPAA, whether by s.94 plan or s 94A percentage, is ineffective at capturing the cost of infrastructure work necessitated by new development. Compounding the issue is the classification of arterial roads.

Tweed is in a unique position in that we border South East Queensland with the population of half a million people on the Gold Coast also utilising our road network. 10,000 workers travel north or south across the border to go to work each day using our arterial road network and yet the NSW Roads and Maritime Services has a formula that a population of 100,000 is required for State funding of major arterial roads. This ignores the situation where Tweed shares its main CBD with Coolangatta CBD on the NSW/QLD border, and which in effect is one large CBD.

So Tweed finds itself in the position with a population of currently just over 90,000, funding major on-ramps onto an interstate freeway. An example is Kirkwood Road, which came at a cost of \$17M, some of which Council was lucky enough to get a grant for, but the fact of the matter is that Council's Tweed Road Contribution Plan had to fund a large proportion of that off ramp and road. Council has other major arterial networks all feeding onto the Pacific motorway between Brisbane and Sydney, and the demand for new development is further fuelled by the decreasing commuter times made possible by Governments' investment in this nationally important road corridor.

New developments and our rate base are currently funding those roads; and what this means when projecting forward; looking at new developments in the pipeline such as the 4,500 lot subdivision at Kings Forest and 5,500 lot subdivision at Cobaki is that we end up with a road network requiring capital works of \$588M and our current Tweed Road Contribution Plan

being able to raise and fund only about \$284M of those works. This leaves a huge gap for the current rate base to fund.

Investment by NSW Government is typically either targeted at large State-wide transport infrastructure or aimed at specific projects or industry that benefits a defined but limited class of industry or group, but rarely directed to support new housing in the regions. There is a widespread reluctance within the development industry to provide extensive infrastructure works, either in cash or kind, deriving from a narrower perception about their liability for it. It is systemic within that industry and vitalized by Government policy. Councils are often in no position to provide the infrastructure or to lower existing charges on the developer, although Government policy has had a major impact in that arena through capping of s.94 charges, with the effect of actually impeding new development.

There is clearly no shortage of users for infrastructure, but likely owing to the various ways it is viewed by all, it is not matched by a willingness to pay. In reality, the cost of social progress must be borne by all users and apportioned on the benefit derived from it. Government investment must match the benefit to broader society, and includes an apportionment of the cost of new infrastructure needed to service new developments, and from which the region will derive some benefit from the increased activity. Developers too must pay their cost of providing infrastructure arising in direct and localised association with their development, and that does not directly serve a purpose that should have otherwise been provided to serve existing development.

There is no quick and easy fix to the planning process to overcome this stalemate. Government policy has for many years, and reasons, been approached on a sectoral basis, whereas a comprehensive policy approach is needed to address the major barriers facing regional development; such as, new local infrastructure: roads, water and wastewater.

Communities want to thrive and prosper, and councils want developers to do what they do best, but this is simply not presently obtainable with current funding models. Reversing the prevailing trend is neither achievable if reliant only on the NSW Government's current planning initiatives comprising such things as: online application lodgement, exempt and complying development, and enlarging certification roles into the private sector.

These are undoubtedly important initiatives, but comprehensive policies and action plans are needed to address this infrastructure delivery issue, and to ensure that there is an ongoing supply of serviceable land for housing and employment.

Many councils' are finding that the cap on developer contributions and road infrastructure are working against their aspirations to plan strategically for long-term growth and economic investment, and further hampers implementation of Government policy. In essence, fundamental reform of the way all three tiers of Government raise capital and subsequently fund road, and other, infrastructure is essential to the review.

Taking this most considerable and relevant issue in to account, and assuming for present purposes the reference to "planning processes" is not one limited to the *Environmental Planning and Assessment Act 1979* and its subordinate instruments, we provide the following in reply.

- (a) opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance, and
 - (b) constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues,
1. Elimination of rate pegging to be substituted with clear guidelines and support for evaluating rate levels that match the regions demand. This should allow for those items currently falling within s 94 contributions that are more genuinely beneficial to the broader region's community.
 2. Comprehensive overhaul of contributions planning to reflect the actual cost of development, excluding those items referred to in Point 1 above.
 3. A genuine commitment to fund essential infrastructure backed-up by a clear suite of guidelines detailing the critical milestones for the provision of new infrastructure within defined growth regions, e.g., schools, roads, medical. This means going beyond undertaking to 'aim' to review related regulatory frameworks and mechanisms with a genuine, funded, commitment and a plan that clearly distils the roles and functions of the State, developers and councils.
 4. Define what region(s) are being targeted for growth and those where the future reality is population sustainability in stagnation or decline. That is, there is both insufficient population projected and revenue available to grow all regions simultaneously.
 5. Establish sound criteria for determining what constitutes a region, and how greater efficiency is achieved. NSW Government has realigned regional boundaries in recent times without sound reason for doing so and without demonstrating how those new regions are more attractive to investment, or how they provide greater efficient use of resources and infrastructure, or improve certainty and efficiency in their governance.
 6. NSW Government should consider regions based planning boards attended by qualified professionals for providing oversight on and direction for the development of regional strategies and determination of regionally significant development proposals.
 7. Implement strategies for reducing land-banking / speculation and financial risk. Consider an intermediate step in the process between land rezoning and development application stage. This might involve an alternative choice for developers whereby the land is assessed only on its intended use (strategic positioning) not on the impact of that use.

This could have the effect of a fixed-term substitute zoning (or a holding zone with a nominated use) sufficient to enable a development application to be determined for that purpose. If a DA is granted the development can proceed; the council would have a specified time in which to rezone the land to reflect the approval. Physical commencement provisions of the Act should not apply to this form of DA, and would ensure that development occurs within a reasonable timeframe or is lost. If a DA is not granted the fixed-term zoning expires in any event and the LEP reverts back to its initial zoning.

As an addition or alternative there needs to be something attaching to new land zoning that motivates their development/delivery within reasonable or anticipated timeframes. This could be a uniform, say 10 years, following which development rights are suspended subject to a strategic review of the zoning (which would take into account broader changes in demand at that later time) or their reverting to the prior zoning, or alternately land is rated and taxed either at the end of the 10 year period, of preferably from the commencement of the new zoning.

The intention is to reduce the upfront uncertainty and cost associated with rezoning, but also to ensure that areas are not just planned but actually developed, and within reasonable timeframes. The uncertainty of when development will actually occur is a significant risk for infrastructure investment and service planning. This option may also reduce the attraction of

rezoning and on selling, which can be a significant contributor to the overall cost of development; i.e. higher land acquisition.

8. NSW Government should consider introducing 'open' zones that permit a very broad array of mixed uses, and assist local government with developing high order strategic plans for those areas. It must avoid over regulating zoning and the consequential stifling of diversity. This in turn not only provides greater flexibility but avoids the need for further rezoning to permit uses not previously contemplated. Project control spot-rezoning is inefficient, costly and adds significant commercial risk.
9. The scope of and the administrative guidelines for the application of s73A of the EPAA (minor LEP amendments) needs urgent review. It should be broadened and incorporated into the general practice of amending LEPs, particularly as there is no substantive tailoring of LEP processes under the Gateway practice.
10. Consider ways to curb land speculation and land price inflation. In the alternative measures to harness a percentage of the price gap (betterment or improvement tax) should be considered.
11. Provide greater regulation around the marketing and speculation of land by the real-estate industry. Consider offences for misleading information, and standard rates for services rendered. Current fee mechanisms and practices are geared to maximising property sale values, and likely lead to broader overvaluation.
12. NSW Government should reconsider allowing local councils to introduce their own exempt and complying codes, as many councils' had less onerous provisions and exemptions. This should be expanded to permit local councils to include all forms and scales of development. This is consistent with NSW Government's move toward tighter control over building certification.

For larger scale development a certificate of site design suitability as opposed to a development application could be substituted in support of it remaining complying development. This would look only to the overall design of the building / site, with stormwater, roads, and the like still subject to separate approval.

A fundamental issue for NSW with the Government's current initiatives and practice is that the identity and character of regions and localities is being eroded very quickly. Current planning policies are heavily construed to achieve quantum of development not quality; they emulsify the competing elements of local character with an 'apparent' need for mass production project homes to produce systematic homogenisation or 'sameness'. This has led to very efficient business models, but with insufficient regard for long-term operating sustainability.

13. This raises the further issue with the Government's BASIX regime, which although having significant benefit regarding water consumption, is open to being exploited and consequently operates discourages climate responsive passive design solutions. It enables less regard for designing to site, as compliance can be achieved by changing window aperture, increasing insulation material, utilising slab on ground (for thermal mass), adding a shading device or extending a roof eave. There is no innovation and no need to consider alternative building or energy practices. It doesn't encourage innovation and may lead to greater long-term energy cost through less effective building performance.
14. Government should evaluate NSW benchmarks for the provision of active and passive open space. It should likewise review the road hierarchy and corresponding engineering road construction standards for urban towns and villages. The land take-up of both uses is significant and might currently be over serviced.

This is problematic for planning at a local level as there is widespread reliance on Aust-road standards and generic formulation of open space requirements on a ha/1000 persons ratio. Whether these current standards meet the present and future needs of modern urban areas and cities is in need of review.

We know that intensifying the CBD areas of cities and towns is essential, but what is not clear is what ratio of community open space is needed, and how that may vary depending on what other facilities, places or services are available.

We also know that maintaining the ability to park a car on opposite sides of a road while maintaining the ability of two cars to pass between them requires a significant area of land, and that in a practical sense it is not so much driven by necessity as it is by preference. It is unlikely to be driven by safety in as much that it is about 'efficiency' of movement.

Given the rising cost of construction and maintenance of this infrastructure, the rising cost of land and its decreasing supply, there must surely be an overarching need to review these standards. A case for review becomes even more apparent when the requirements on the standard house block and dwelling-house are factored in also. In many cases the standard house block is in excess of 400m², plot ratios are 0.5:1 and building line setbacks are in the order of 6m. The effect is that dwelling-houses predominantly each have their own open space in addition to that provided by pocket-parks and the like, and the extent of undevelopable land on each lot is significant.

In summary, many new housing estates represent a gross underutilisation of scarce and expensive land. In addition to requiring each new development to provide substantial areas of developable land for recreation, opportunity to better utilise existing nature reserves, national parks, crown land and the like should be evaluated. This is particularly important as a large part of the ageing community is looking for active recreational opportunity and would benefit enormously from new nature based walking trails and the like.

15. The project home industry is important to the NSW economy and is a key provider of more affordable homes. However, there are practices that appear to operate at the home purchaser's detriment and may need to be reviewed. There are many occasions when a new home purchaser has visited their local home display, picked a design off the shelf, and entered into a construction contract having received little if any genuine town planning advice about the suitability of that design relative to their block of land and the Council's guidelines. Not a problem if it is complying development, but so many are not for a variety of reasons. If the design does not comply and is rejected, which frequently arises, amendments to the home design are typically required. This is often a difficult time for the purchaser and the council. Variations to the contracted design are costly. The design is often selected without any appreciation of the potential need for change and consequently there is typically no allowance made within their budget to accommodate additional works; they've been locked in to a contract for a design that wasn't acceptable from the beginning.

NSW Government needs to review the project home industry practices and implement safeguards for consumers, such as fixed price variations, cooling off periods, contract formation being subject to council approval or similar. The alternative is the current practice whereby councils (their community) end-up accepting lower standards of development, or the purchaser is at risk of incurring higher debt levels, while the project home supplier remains free of any liability or responsibility.

16. NSW Government should initiate a program for preparing or overseeing the development of rural land-use strategies for each region. Presently NSW has myriad strategies prepared by local councils without consistency and with many premised on a presumption of a long-term prosperous agricultural sector over preference for other potential industries. It must work with the agricultural industry to determine the shape and extent of its future, where it will likely occur, and what associated industry / housing sector will be required to support it.

Climatic change is also major consideration and is to be better addressed on a regional basis, within a regions wide response.

Our observation from undertaking such a strategy is that NSW is not meeting the leadership role of its Victorian and Western Australian cousins. These States seemingly drive and deliver regions-wide strategies and up-to-date environmental resource data to a much higher and meaningful standard, and are leading local government in the delivery of outcomes.

Their role in delivering environmental management, housing and business opportunity, through State-wide strategising has removed much of the localised politics on big picture decision making / future development for the benefit of those States. NSW has the capacity to produce comparable resources and to lead major regional project initiatives for the State.

17. Underutilisation of land is a key contributor to shortages of public facilities and quality urban domain. Planning needs to replace maximum standards, for example; building height, plot ratio, and density, which are frequently not taken up, with minimum standards to ensure that strategic planning assumptions / predictions are realised.
18. Availability of quality urban areas to attract new business investment and a highly skilled and educated workforce are scarce. Whilst investment in essential infrastructure is a prerequisite to development occurring, fulfilling long-term sustainable goals also requires significant investment in the public domain. This is apparent more so today than at any other time in Australian capital cities where their global attractiveness and positioning is as much to do with the vibrancy of the city as it is the services / businesses it provides. It is equally true of all urban areas, and has for example become an integrated and essential element of new business parks. There are currently no funding mechanisms at the local level to capture urban domain works. Consideration should be had of the Queensland planning processes, which are seemingly capable of securing public domain works.
19. Genuine industry and community consultation in the policy development field still eludes NSW Government. A fundamental element of stimulating regional development is transparency and openness in the governance of the planning framework. Presently there is much conflict between policy and legislation in the urban development space. Sectoral policy is useful for segregating competing issues, such as environmental conservation and logging, but is ruinous to certainty and confidence; the two essential ingredients for economic investment. Policy must be established that clearly establishes the priority of land-use, and how competing uses are to be approached / reconciled when they come into conflict.
20. The current planning framework is sectoral not comprehensive, the consequence being lack of; clarity, confidence and certainty, compounded by elevated risk and community dissatisfaction.
21. Many of the larger projects are genuinely beyond the smaller developers to deliver in an efficient and timely manner, yet there a few larger developers and too many small ones. NSW Government should have strategies in place to address this issue with the development industry.
22. The LEP Gateway process introduced in 2009 is an improvement on previous practice. It may benefit from clearer administrative guidelines however, to assist with consistency and determining how to tailor the process to the specific proposals.
23. The Pre-Gateway determination (administrative review) process may need reconsideration, as it is seen by some as a means for bypassing the local council. Whilst it may serve a useful and legitimate purpose it is nonetheless inefficient.

As an alternative, a new process that eliminates the need for a review process could be considered. This may entail all new LEPs being referred to the State planning authority at first instance, with a referral process to councils. This would operate in much the same way it has with other State development processes requiring council input. It would provide opportunity for key issues to be raised and additional studies to be identified that can then be incorporated into the determination notice.

Council could also nominate within its reply whether or not it wanted the 'delegation' as the planning authority or whether the State should proceed to appoint an alternative planning authority. It is a one stop process that should improve certainty and efficiency in the early part of the process.

24. NSW Government places too much emphasis on speed of approvals rather than quality. But, it doesn't apply the same benchmarks to itself. A standardised approach between all planning / consent authorities should be considered.

25. The fees and charges prescribed by the planning act are substantially different between the Government and councils. The latter grossly undervalue the cost of undertaking assessment.

There should be standard fees and charges between all planning / consent authorities. This should be expanded to include fees for councils when undertaking assessment for and on behalf of the Government. Inadequate charges impact on the service level; no business reasonably expects to provide a high level of service at well below cost of even a basic level of service. It highlights the lack of information available to government on the actual cost of delivering services; it is unsustainable and adds to the culmination of issues which collectively operate negatively on the performance of the planning processes in NSW. Put another way, Government's setting of inadequate fees, charges and levies is actually hindering the achievement of its own State-wide policies for improving the NSW economy and delivering more affordable housing.

26. In more recent history NSW Government has committed to acquiring land for public facilities that are zoned residential or similar. The rationale is that disposition of government property has been historically problematic. This is well understood. More appropriate legislation that specifically deals with this topic is needed and if put in place would better enable the identification and acquisition of land well in advance, of any zoning, and at a significantly lower cost. The cost savings would likely be significant and could be reallocated to those other critical matters already discussed. Drafted in broad and innovative terms disposition need not be statutorily problematic.

27. In summary of those points above, it is NSW Government's role to provide a meaningful policy framework. It must be done holistically and transparently. It must be guided by the interests of NSW as a whole not on the likely repercussions of vocal minority stakeholders and interest groups. It must clearly establish the government's position on agriculture, native vegetation and urban development, so that there are clear indicators guiding resolution of disputes where issues of competing land use arise.

(c) the suitability of a stand-alone regional planning Act,

28. There has been much said about the age of the current planning act, but age alone is no qualification for its relevance and performance in today's planning arena. It arguably continues to work effectively, despite repeated amendment of it.

29. If there is a need for region specific planning provisions they could be readily incorporated into the current act. There has been much sustained criticism about metropolitan policy creep into the regions where it has limited relevance, yet this is readily manageable within a single act. After all, most of the significant provisions / policies that actually guide or regulate development are not to be found within the Act in any case.

What is clearly needed within the Government's planning and environment cluster is demarcation between those staff with expertise in urban metropolitan planning and those who better understand regions. From a regions perspective the quintessential root of planning policy disconnect from regional / rural issues arises because those providing regional policy advice clearly do not possess the depth of regional awareness and understanding.

(d) the effectiveness of environmental planning instruments including State Environmental Planning Policies and Local Environmental Plans (including zoning) to stimulate regional development, and opportunities to improve their effectiveness,

30. LEPs should be region based. Within that structure there must be local area plans so that the unique identities, attributes or values are properly captured, this is especially important for larger regions and those that presently span multiple LGAs.

31. SEPPs are an important element of the planning framework and have a role to play with implementing regions based policy, but are not a suitable vehicle themselves for delivering broad regional development policy.
32. Arguably if there is an appetite for genuine regions based policy there is a corollary role for regional EPIs. Those that existed previously arguably had more relevance and usefulness as a regional policy tool than their SEPP counterpart, which now appear less relevant as a "State" policy than at any previous time.
- (e) opportunities to increase delegations for regional councils in regard to the planning making processes,**
33. Devolution of statutory power would be more effective than ministerial delegation and deliver a more autonomous and accountable decision making regime. It would be less susceptible to the short-term political aspirations of State politics. Combined with greater ability to set region-wide property rates and competitive service pricing that reflects the cost of living and developing within the region it would also reduce reliance on State government intervention.
34. It is historically and presently evident that many local councils find it more difficult to achieve efficiency in the determination of larger scale development proposals, and those that seek to intensify (densify) existing areas through new strategic policy. This manifests not only when there is a significant project on foot, but more often in the absence of any project of that kind. No matter what the eventual governance model is, determination of regionally significant strategic planning / policy or development must be allocated to those best placed to impartially and objectively reach conclusion on the issues presenting, for the benefit of the region and NSW as a whole.
- (f) opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans,**
35. An excellent example of good planning practice was highlighted in the Government's White/Green paper for reforming the NSW planning system, which was tailored to upfront comprehensive community-based strategic planning.
- Comprehensive strategic planning has an important role to play in addressing many of the current issues; whether due to lack of infrastructure, short supply of retail zoning, or community tension over new development. However, the effectiveness of regional policy is contingent on integrated approaches to land-use and allocation.
- (g) opportunities for government-led incentives that promote regional development,**
- (h) pathways to improve decision making processes for regional development proposals, including increasing the use of complying development, improving negotiation processes for voluntary planning agreements, and reducing costs associated with assessment, and**
- (i) any other related matter**
36. Planning agreements are an extremely useful device and have enabled developers to pursue projects with councils that would not have otherwise been possible. They have been widely used and are fast becoming a standard practice, and there is a greater need for Government to show initiative and take the lead in preparing standardised templates and examples. The cost of bespoke agreements from scratch is very expensive for all parties concerned.
37. Consideration should be given to broadening their scope given their general acceptance. This also needs to be backed up by mandatory operating guidelines for councils. Presently very few councils have an adopted operating guideline. It adds to the community confidence and provides greater certainty to the development industry and elected council on how they may be able to leverage development through community net benefit trade-offs. They have

the ability to yield benefits that the remainder of the planning legislation simply cannot deliver, and the commitments by the developer to achieve that benefit are determined by their individual business needs as to whether it is commercially acceptable. They represent a fair system.

38. Reducing cost in the assessment of development is important, but is generally not to be found occurring at the councils end as commonly reported. More often than not assessment becomes costly and inefficient because applications are inadequate or incomplete. If Government initiated programs to better ensure required information was submitted at first instance, that variations were properly identified and addressed at first instance, and the rules, codes and standards applicable to the area the development is being sought in were applied in the first instance, cost and time at the assessment stage would be drastically reduced.
39. Government should consider reviewing the planning Act's regulation provisions to ensure that applicants are better aware of the requirements for making a valid application. It might also consider analysing the data on the time it takes from the grant of approval to the commencement of works the reasons for delay, and whether in fact the perception that assessment timeframes are actually having a significant effect on building commencement are real.
40. NSW Land and Environment Court has a significant role in the determination of many application determination matters, as well as compliance and others. For present purposes our concern is with the uncertain and escalation of costs to local communities arising from the Court's current practice of allowing an applicant to continually resubmit amended designs during litigation. Litigation substantially increases the cost of determining the suitability of development. Frequently, development that is approved is substantively different to what the case commenced on.

This practice encourages litigation and undermines the weight of determination by local councils. There needs to be a review of current practice; the courts should be confined to evaluating the suitability of the development as appealed. If there is to be a process of allowing variations it should be conducted and amendments reviewed by a separate panel of experts. For example, after hearing the concerns and taking into account any directions of the court there should be one opportunity for a substantive amendment. This should be referred to a JRPP, PAC, or similar court annexed panel for assessment, without the need for legal practitioner involvement, that is, a process more akin to the ordinary Pt4 assessment under the Act. If the Panel is satisfied with the amendment it is referred to the court for final determination, and if not the court hears the appeal on the development first filed. This may limit the impact on the court, minimise cost to all parties, as well as operate to deter applications that are clearly inappropriate or speculative from the beginning.

Summary of key Issues:

- Strategic planning should be a focal point of NSW planning and other processes premised and tailored on implementing it. This must be based on genuine community engagement.
- Define the regions, their points of difference and advantages.
- NSW Government is lauded for their commitment to lowering assessment times for new development and broadening the scope of complying development.
- Government should be putting more into defining the importance of quality development applications and holding applicants accountable for delay incurred through poor practice, e.g. additional fees.
- A fundamental long-term issue facing the regions of NSW is maintaining an appropriate level of serviceable zoned land for new development. Without which

development will not occur, and will be unaided by fast approval times and the need only for compliance with set standards.

- Government is very focused on the quantum of development and is arguably overlooking the quality of development.
- Government could standardise controls / guidelines for many forms of development across the State. This would avoid the need for legislation or policy to stop councils preparing more onerous (localised) plans. It would minimise conflict between these two tiers of government and would place accountability with the policy initiator. Ultimately it would reduce resource costs.
- Devolution of power to regional planning boards would provide greater certainty and accountability than would occur under a model of delegation.
- Funding models in NSW are antiquated and in need of urgent review. They must embody the basic principle of user-pays. They include but are not limited to: s.94 contributions, voluntary planning agreements, arterial road classification, taxing uplift from development zoning, government funding, and government loans.
- Land rezoning processes need to be tailorable, strategic and with a choice of processes.
- Land and Environment Court should be seen as the place of last resort not as a forum for inordinate amendment and negotiation for those who can afford to pay.

Thank you again for this opportunity.

Should you have any queries in relation to our reply please contact Council's Strategic Planning and Urban Design Coordinator, Mr Iain Lonsdale, ilonsdale@twweedshire.nsw.gov.au.

Yours faithfully

Troy Green
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