

# BUILDING DEVELOPMENT

Guide to plan and deliver successful facilities development projects



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## Introduction

This Guide has been developed by Football NSW to provide information and guidance to assist Associations and Clubs to plan and deliver successful facilities development projects in consultation with facilities owners and Local Councils.

Associations, Clubs and facilities owners are best placed to determine which facilities should be upgraded and developed.

Various guidelines, rules and regulations, determined on a Council-by-Council basis, must be adhered to before any development works can be undertaken in NSW and, in some instances, they can be complex to understand.

It will be important to discuss your development needs early with your Council and/or facilities manager and work with them to develop and provide the appropriate documentation required.

Most developments require two things before construction can commence:

- A **Development Application**, which assesses whether or not a proposal of a basic design is appropriate for a given location; and
- A **Construction Certificate**, which can approve a specific design in accordance with that development approval including the type of construction and the materials to be used.

A local development is the most common type of development in NSW, with projects ranging from home extensions to medium sized commercial, retail and industrial developments. A development is considered to be a local development if a Local Environmental Plan (LEP) or State Environmental Planning Policy (SEPP) states that development consent via a Development Application is required before the development can take place.

Should a Development Application be required for your project then any submission will require verified consent from all of the registered owners, which will need to detail the extent of the proposed works.

Some developments do not require Council approval and can be completed without a Construction Certificate. These types of development generally include the following:

- **Exempt Development:** Many types of home renovations and minor building projects do not require planning approval through exempt development rules. As long as the building project meets specific standards and land requirements, no planning or building approval is needed.
- **Complying Development:** These developments qualify for a simpler approval process providing the application meets the specific standards, then it can be determined by a Council or accredited certifier without the need for a Development Application.

A Development Approval can only be granted by Council, whereas a Construction Certificate can be issued by Council or any other registered certifying authority. As part of the Construction Certificate, mandatory inspections must be carried out at specific times during the project, as specified by the certifying authority.

The certifying process has been established to ensure that works and/or activities comply with the relevant technical standards such as the Building Code of Australia, other Australian Standards and conditions imposed by Council in the Development Approval.

## Determine your Building Approval Needs

When you start your project you will need to review and confirm the appropriate Building Approval requirements associated with your site. The first step to find out whether you need approval is to do a property search to find out the zoning and constraints of the area and the property.

The Department of Planning and Environment provide an [on-line Planning Viewer](#) that provides public access to planning maps that are referenced in environmental planning instruments made under the Environmental Planning and Assessment Act 1979.

This [Planning Viewer](#) allows you to enter your property address and see what planning constraints and zoning rules affect your property.

Alternatively your Council may have information available in relation to your facility that can be accessed. A s149 Planning Certificate is a legal document, issued by Councils, that details the zoning and applicable rules for development of your property. It also identifies whether or not complying development can be carried out.

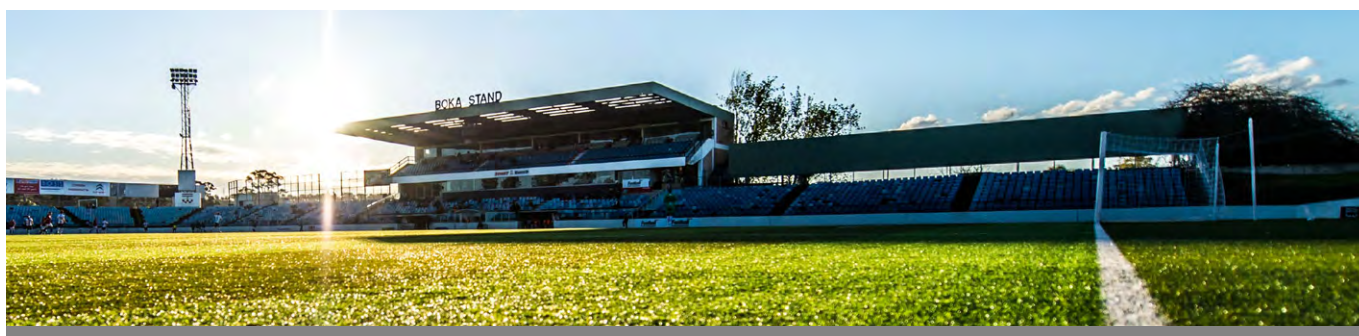
**TIP** A s149 Planning Certificate is easy to obtain from your Council. Simply fill out the form with details of your property – owner, address and lot no - and pay a small fee and the Council will provide you with the details of your property, usually within 14 - 28 days.

Council, or other building professionals such as a town planner or accredited certifier, can advise you specifically on your project and its needs in relation to:

- The rules for developing the particular site under Council's LEP and the relevant State planning policies
- Any obligations you will have under planning legislation
- What pre-commencement works must take place
- The development assessment process
- Any issues that might affect the development and use of the site.

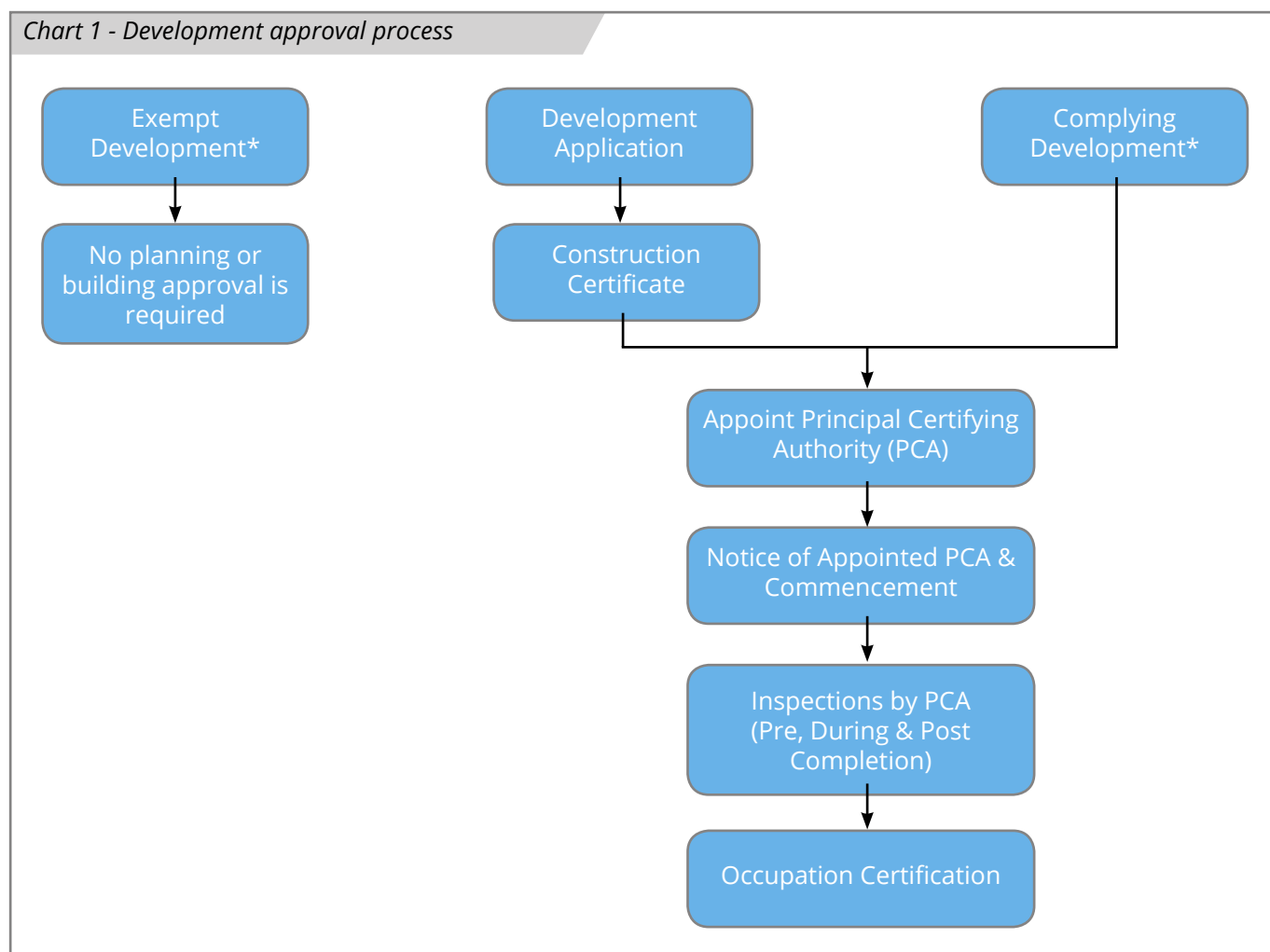
Alternatively, refer to your Councils website for information or discuss the matter directly with your Councils' Town Planner.

**TIP** We recommend talking to your Councils' Town Planner in the first instance



## Types of Building Development

The following diagram explains the development approvals process and certification requirements for the most common types of development in NSW for Exempt Development, Complying Development and Development Applications:



An explanation of Exempt Development, Complying Development and Development Application processes is provided in the following sections.

### Exempt Development

The majority of development that can be undertaken as exempt or complying development in NSW is identified in the State wide exempt and complying development policy.

Exempt development typically includes minor, very low impact developments to be undertaken with residential, commercial and industrial properties.

The exempt and complying development policy divides exempt development into three groups:

- General Exempt Development (for a broad range of building work),

- Advertising and Signage Exempt Development (for common types of business signs and other signage),
- Temporary Uses and Structures (for temporary uses such as filming, builder's sheds and tents and marquees used for specific events).

Provided your building project meets specific development standards, approval from your Council is not needed.

The standards you must comply with for most complying development works are in the [State policy for exempt and complying development](#).

Certain properties and areas may have different or additional rules that apply to building and renovations, including those:

- In conservation areas
- Listed as a heritage building
- Listed on the State Heritage Register
- In or near a site containing contaminated land
- In or near a bush fire prone area
- Where road widening is planned
- In an area affected by flood.

Different or additional rules may apply to building and renovations in:

- Priority Precincts
- Urban Transformation Programs
- Wholesale Projects
- Growth Centres.

**TIP** A s149 certificate issued by a council will identify if an Exempt Development is permitted.

## Complying Development

A Complying Development Certificate (CDC) is an alternative to a Development Application and is only available for routine work classed as Complying Development work under the Council's planning controls or the State Planning Policy.

A CDC is issued if a proposed development complies with relevant planning controls and building controls under the Building Code of Australia (BCA).

Accredited Certifiers and Councils can issue CDCs.

The certificate must be obtained before any building work commences, including site works such as demolition and excavation.

You should enter into a contract with the builder and obtain warranty insurance before work commences.

Lodging a Complying Development application is relatively straight forward and you will generally need to provide:

- A site plan
- A complete owner's consent form, if you are lodging the application on behalf of someone else
- Other information in electronic format such as floor plans, specifications and relevant compliance certificates.

## Other Types of Development

Overall, there are eight development assessment systems for construction related projects in NSW that enable the State Government, Local Councils and Private Certifiers to assess and determine developments. These include the most common types of developed as previously outlined including:

- Exempt Development
- Complying Development
- Local Development (Development Application)



As projects become more complex (where they involve sites with sensitive heritage, environmental or cultural significance, or if they require significant funds to complete), they may be classed as:

- **Regional Development:** A regional development needs to be notified and assessed by a council and then determined by a relevant Joint Regional Planning Panel (Regional Panel). Regional development is defined in Schedule 4A of the NSW Environmental Protection and Assessment (EP&A) Act and includes:
  - Development with a capital investment value (CIV) over \$20 million
  - Development with a CIV over \$5 million that is council related, lodged by or on behalf of the Crown (State of NSW), private infrastructure and community facilities, or eco-tourist facilities.
  - Extractive industries, waste facilities and marinas that are designated development
  - Certain coastal subdivisions
  - Development with a CIV between \$10 million and \$20 million that is referred to the Regional Panel by the applicant after 120 days
  - Crown development applications (with a CIV under \$5 million) referred to the Regional Panel by the applicant or Council after 70 days from lodgement as undetermined. This includes development applications where recommended conditions are in dispute.
- **State Significant Development (SSD):** Some types of development are deemed to have State significance due to their size, economic value, the level of investment required or potential impacts that a development may have. Types of development that are SSD include for example:
  - New educational establishments, hospitals and correctional centres
  - Chemical and other manufacturing
  - Mining and extraction operations
  - Tourist and recreation facilities
  - Some port facilities
  - Waste management facilities
  - Energy generating facilities.
  - In addition, some development on identified sites can also be SSD. Identified sites include Sydney Olympic Park, Darling Harbour, the Bays Precinct and Barangaroo.
- **State Significant Infrastructure (SSI):** Some types of infrastructure are deemed to have State significance due to their size, economic value, the level of investment required or potential impacts that a development may have. Types of development that are SSI include for example:
  - Rail infrastructure
  - Road infrastructure
  - Water storage and treatment plants
  - Wharf and boating facilities
  - Pipelines
  - Certain development in National Parks.



- **Part 3A Development:** In 2011, the NSW Government repealed Part 3A of the 1979 EP&A Act 1979 and announced that it will no longer accept any new projects in the Part 3A assessment system. This system has been replaced by the State significant development and State Significant Infrastructure assessment systems (although some applications prior to October 2011 are still in assessment).
- **Development without Consent:** The LEP and/or SEPP that apply to the area or activity will list all developments that are “permitted without consent”. However, some of these developments (or activities) may still need a licence, permit or other approval from a public authority and may need to undergo an environmental assessment before approval can be given.

## Development Application

Most building and demolition work requires a Development Application (DA) to be lodged unless it is an Exempt or Complying Development.

Examples of types of developments requiring development consent include those which involve:

- Constructing a new building or structure, outbuildings, swimming pools, retaining walls etc.
- Adding to or altering an existing building
- Demolishing a building
- Any works proposed on a heritage item or within a heritage conservation area



- Changing the use of an existing building or premises to another use
- Subdividing land (including strata)
- Erecting advertising or other signage
- Carrying out excavation, earthworks or filling
- Any other uses that fall under the definition of “Development” in the NSW EP&A Act.

If you need to lodge a DA, in almost all cases it is your Local Council that issues the development consent, although a State Agency may also do so occasionally. Accredited certifiers cannot assess a DA.

A DA is a formal request for consent to carry out a development and consists of a collection of documents (including application forms, site plans, consultants’ reports, drawings and the like) that is submitted to your Council for approval.

For some forms of development, the DA process can be swift and simple. However, for more complex applications, it can be a lengthy, time consuming and sometimes a frustrating process.

**TIP** Facility development projects should incorporate Environmentally Sustainable Design (ESD) principles where practical. Being environmentally sustainable refers mostly to water, energy use and waste management. ESD principles will be particularly relevant for artificial playing field construction and clubhouse projects, where drainage, water capture and reuse opportunities may be provided.



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## How to Lodge a DA

The process for obtaining a DA is relatively similar across Australia. However, the way it is managed and the requirements that apply will differ from Council to Council.

The following items generally need to be prepared and submitted for all DAs:

- Completed DA form
- Electronic copies of information
- Statement of environmental effects
- Required fees
- Drawings and development plans

It is also highly recommended that you attend a pre-lodgement meeting with your Council's Planner.

You may also need to provide specific information and reports to support your application, such as:

- Scaled architectural plans and elevations
- Reduced A4 plans
- Architectural models
- Site analysis plans
- Survey plans
- Landscape plans, shadow diagrams & calculations
- Drainage plans, erosion and sediment plans
- Environmental impact report
- Geotechnical reports (i.e. soil analysis)
- Waste management plans
- Statement of heritage impact (if property or area is heritage listed)
- Acoustical report
- Engineers certificate for electrical and structural design
- Development budgets (Estimated Cost of Works).

You may wish to procure consultants to assist you in preparing the appropriate information and reports and these services will incur costs that should be budgeted.

## Owners' consent

When lodging your DA you must submit a completed application form along with verified consent from all of the registered owners noting the details of the proposed development.

If a company owns the property, the company stamp or seal is required. If the building is subject to a strata scheme, the owners' corporation seal and authorised signatures are required. Proposed development details required generally include:

- The existing use and change of use
- Operating hours
- Staff numbers
- Goods to be produced or stored
- Existing and proposed car spaces
- Loading facilities.

## Development Application Fees

Each Council or Development Authority will charge a DA application fee, this may vary from Council to Council. Each Council will publish its relevant fee structures which are generally available via your Council website. In addition to the application fee, many applications also require payment of an advertising notification fee (for example, integrated developments attract additional fees as most need to be advertised and notified).

## Estimated cost of works

In the case of construction or building work, the DA fee is based on the estimated cost of development and the cost incurred if a contractor carries out the works. The cost incurred does not apply to an owner-builder carrying out the works.



The following are examples of items to include in the development cost:

- Preliminaries: scaffolding, hoarding, fencing, site sheds, delivery of materials, waste management.
- Internal fit out: flooring, wall finishings, fittings, fixtures and bathrooms.
- Demolition works: including cost of removal from the site and disposal.
- Professional fees as part of the design: architect's and consultant's fees.
- Site preparation: clearing vegetation, decontamination or remediation.
- Excavation or dredging: including shoring, tanking, filling and waterproofing.
- Internal services: plumbing, electrics, air conditioning, mechanical, fire protection, plant and lifts.
- External services: gas, telecommunications, water, sewage, drains and electricity to mains.
- Building construction and engineering: concrete, brickwork, plastering, steelwork/metal works, carpentry/joinery, windows, doors and roofing.
- Other structures: landscaping, retaining walls, driveways, parking, boating facilities, loading area and pools.
- Other related work.
- Charges and fees (for section 61 only): GST, Long Service Levy, Development Application fee, construction.

If the estimated cost of works is:

- **\$0 to \$150,000:** a cost summary report must be submitted on lodgement of the DA which must be prepared by the applicant or a suitably qualified person\*;
- **\$150,000 to \$3 million:** a cost summary report prepared by a suitably qualified person\* must be submitted on lodgement of the DA; or
- **Over \$3 million:** a registered quantity surveyor's detailed cost report verifying the cost must be submitted on lodgement of the DA.

It is imperative that an accurate estimate is determined at the DA stage as this will determine the correct consent authority.

**Note: A suitably qualified person\*** - The following people are recognised as suitably qualified persons:

- A builder who is licensed to undertake the proposed building works
- A registered quantity surveyor
- A registered architect
- A practising qualified building estimator
- A qualified and accredited building designer
- A person who is licensed and has the relevant qualifications and proven experience in costing of development works at least to a similar scale and type as is proposed.

Misrepresenting the value of the development will result in delays in the assessment of the DA and will necessitate reassessment/redetermination of the matter.

## Public Notification

There may be a period of public notification for members of the community. They'll be offered access to your application and be able to lodge an objection. If you can, you should seek prior approval from your neighbours and key community members to avoid unexpected delays and or objections that will need to be resolved.

## Application Assessment

The assessment of your application will generally be determined by the criteria you meet. Councils can assess an application in the following ways:

- Assessment by Council planning staff under delegated authority.
- Assessment by your Council conducting a development assessment meeting – this can occur due to objections to the proposal or because it does not comply with the Council's standard regulations and policies.
- Assessment at a Council meeting – this is when the application is controversial, has attracted a large number of objections or has been referred from a development assessment meeting.
- Approval notification.

The assessment process can take as little as 6 weeks or could be an extended process taking months to resolve.

**TIP** A pre-lodgement meeting is a way to uncover any potential issues with your application prior to formal lodgement so that the application process can move along smoothly toward approval once in the hands of Council. The question of whether to have a pre-lodgement meeting with Council depends on a variety of factors. When used correctly, a pre-lodgement meeting can help you to get the Council Approval.

## What to do when the DA is approved

If your DA is approved there are some more steps you must take before you can start to build. You will generally need to:

- Appoint a Principal Certifying Authority
- Obtain a Construction Certificate
- Appoint a builder.

## Principal Certifying Authority

A Principal Certifying Authority (PCA) is the only person or body who can issue interim or final occupation certificates.

You must appoint your PCA before work commences.

Only the person with the benefit of development consent (usually the property owner) can engage a PCA and must sign a written contract with them before any work starts.

Your builder is not allowed to do this on your behalf, and you are not obliged to engage a certifier suggested by your builder.

Note: if you are not the property owner then you must obtain 'Owners Consent' for each DA and or Construction Certificate application.

Your PCA may be your Council or a certifier— the choice is yours.

As the person having the benefit of development consent, you must give Council at least two days' notice in writing of your intention to commence work on the site, and must notify Council in writing at least two days before building work commences of your appointed PCA. These notifications can be done at the same time.

The PCA inspects work during construction to ensure that it is consistent with the approved plans and is fit to occupy upon completion having regard to the relevant building standards.

Although a PCA is appointed, ultimately it is the responsibility of the applicant to ensure the conditions of development consent are met. The PCA should, however, check the builder is licensed and that warranty insurance has been obtained.

You should read the conditions of consent carefully, note which conditions must be met at different stages, and liaise regularly with your builder and PCA to ensure conditions are satisfied.

This will help you avoid delays, or worse, a fine from Council, costly remedial work or an order to demolish unauthorised works.



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## Reference Documents

### DAs and Approval Systems

- The majority of Council websites have detailed information sheets that explain their specific DA processes.
- There are eight building development assessment systems in NSW that enable the State Government, councils and private certifiers to assess and determine developments. These range from major State significant development and infrastructure projects to home renovations and garages.

For more information visit: <http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems>

## Legislation and Regulation

The consent authority that assesses and determines a development application is guided by the Environmental Planning and Assessment Act 1979 (EP&A Act), the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), and a number of State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

**EP&A Act:** The EP&A Act sets out the laws under which planning in NSW takes place. The main parts of the EP&A Act that relate to development assessment and approval are Part 4 (Development Assessment) and Part 5 (Environmental assessment).

The Minister responsible for the Act is the Minister for Planning.

**EP&A Regulation:** The EP&A Regulation sets out how certain functions under the EP&A Act should be carried out, fees associated with development assessment and other procedures.

**Schedule 3 of the EP&A Regulation:** defines the types of designated development that will have a high impact (e.g. likely to generate pollution), or are located in or near an environmentally sensitive area (e.g. a wetland), and warrant a detailed environmental impact statement.

**Environmental Planning Instruments (SEPPs and LEPs).** Environmental planning instruments are statutory plans made under Part 3 of the EP&A Act that guide development and land use. These plans include State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

**State Environmental Planning Policies (SEPPs)** can specify planning controls for certain areas and/or types of development. SEPPs can also identify:

- The development assessment system that applies to developments (e.g. whether a development is State significant)
- The type of environmental assessment that is required (e.g. whether an environmental impact statement is required).

**Local Environmental Plans (LEPs)** list the types of development that are allowed in each zone of a local government area, and those that do not need development consent.

The Standard Instrument Local Environmental Plan sets out the format and structure that councils should follow when making a LEP.

All SEPPs and LEPs are available from the [Legislation NSW website](#).



## The Building Code of Australia

The Building Code of Australia (BCA) is produced and maintained by the Australian Building Codes Board (ABCB) on behalf of the Australian Government and State and Territory Governments. The BCA has been given the status of building regulations by all States and Territories.

The goals of the BCA are to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety (including safety from fire), health and amenity for the benefit of the community now and in the future.

These goals are applied so that the BCA extends no further than is necessary in the public interest, are cost effective, easily understood, and are not needlessly onerous in its application.

The BCA contains technical provisions for the design and construction of buildings and other structures, covering such matters as structure, fire resistance, access and egress, services and equipment, and certain aspects of health and amenity.

For more information visit:

<http://www.aib.org.au/buildingcodes/bca.htm>



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