

## Item 10.

### Post Exhibition - Planning Proposal - 923-935 Bourke Street Waterloo - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

**File No:** X083066

#### Summary

Planning Proposal - 923-935 Bourke Street, Waterloo (the planning proposal), the subject of this report, addresses an opportunity to meet a shortfall of supermarket floor space in the Waterloo area identified in the Green Square and Southern Areas Retail Review (the Review).

The Review was commissioned in 2021, with the aim of understanding how growth in the Green Square and City South area has affected demand and supply of retail floor space since the original retail planning controls were introduced in 2012. It identified a net shortfall of approximately 9,000 square metres of supermarket floor space in the eastern part of Waterloo, Green Square Town Centre and North Alexandria. This largely driven by of growth in the Green Square urban renewal area, which is forecast to grow to around 32,000 dwellings, housing around 60,000 to 70,000 people by 2036.

The Review and the overall planning response including changes to the LEP and DCP are addressed separately through Planning Proposal - Retail Review and Retail Parking (formerly known as the Green Square and Southern Areas Retail Review). This planning proposal is also being considered by Council and the Central Sydney Planning Committee. While providing space for larger retail premises including supermarkets around Green Square Town Centre (the Town Centre), the Review proposal continues to reinforce the City's hierarchy of centres, established in 2012, maintaining the Town Centre as the primary commercial, retail and civic centre.

This report follows the public exhibition of the planning proposal and Draft Sydney Development Control Plan 2012: 923-935 Bourke Street, Waterloo (draft DCP). The proposed planning controls amend the maximum building heights to facilitate a development of 5 to 7 storeys. It will allow for an additional 0.5:1 of floor space ratio, but only where it is provided as a supermarket below ground level.

Maximum parking rates, setback requirements to retain mature trees, through-site links, active frontages and footpath widening will ensure the development maximises public domain, active transport and tree canopy outcomes.

In addition, the landowner has also made an offer to enter into a planning agreement for the delivery of public benefits in conjunction with the planning proposal, including a commitment to:

- sustainability targets and measures consistent with the City's Net Zero Energy provisions;
- onsite rainwater capture and waste recovery measures in the future operation of the development;

- provision of electric vehicle charging facilities in car parking spaces, including upfront provision of 25 per cent of retail spaces with Level 2 charging and two spaces with Level 3 or 4 charging provisions; and
- provision of an estimated 12 affordable housing dwellings to be built on-site and dedicated to a community housing provider. The final amount of affordable housing to be delivered will be calculated based on the total floor space approved for the development site.

The proposed planning controls were publicly exhibited from 12 April 2023 to 24 May 2023, a period of six weeks. 2,839 notification letters were sent to landowners and occupants of surrounding properties.

A total of 36 submissions in total were received during the public exhibition period. Eight submissions were in support of the proposal, five submissions provided mixed feedback or were in support of specific elements of the proposal and 20 submissions were in opposition of the proposal. In addition, one submission was received on behalf of the landowner. Two submissions were received from the public authorities.

Matters raised in submissions, and the City's response, are summarised at Attachment A, with key issues being discussed in this report, including:

- concerns about height of the development and impacts on the amenity of neighbouring properties;
- concerns about the need for proposed supermarket in this location;
- concerns about increased traffic on the local road network; and
- concerns about overdevelopment and impacts on local neighbourhood character.

A submission was also made by the landowner, raising a number of issues with the publicly exhibited planning controls.

Following consideration of submissions, minor amendments are recommended to the draft DCP to provide further guidance on access arrangements, active frontages, retention of trees and residential development on the north-east corner of the site.

This report recommends Council approve the planning proposal and draft DCP, as amended following public exhibition. If approved by Council, the City will ask Parliamentary Counsel to draft the amendment to Sydney LEP 2012, which will come into effect when it is published on the NSW Legislation website. Amendment to the Sydney Development Control Plan 2012 will come into effect at the same time as the LEP is published.

## Recommendation

It is resolved that:

- (A) Council note the matters raised in response to the public exhibition of Planning Proposal: 923-935 Bourke Street, Waterloo and Draft Sydney Development Control Plan 2012: 923-935 Bourke Street, Waterloo as shown in Attachment A to the subject report;
- (B) Council note the draft Planning Agreement as shown at Attachment D to the subject report is currently on public exhibition;
- (C) subject to the execution of the draft Planning Agreement as shown at Attachment D to the subject report, Council approve Planning Proposal: 923-935 Bourke Street, Waterloo, shown at Attachment B to the subject report, as amended following public exhibition, to be made as a local environmental plan under Section 3.36 of the Environmental Planning and Assessment Act 1979;
- (D) Council approve Draft Sydney Development Control Plan 2012: 923-935 Bourke Street, Waterloo, shown at Attachment C to the subject report, as amended following public exhibition, noting the development control plan will come into effect on the date of publication of the subject local environmental plan, in accordance with Clause 20 of the Environmental Planning and Assessment Regulation 2021;
- (E) authority be delegated to the Chief Executive Officer to make minor variations to Planning Proposal: 923-935 Bourke Street, Waterloo and Draft Sydney Development Control Plan 2012: 923-935 Bourke Street, Waterloo to correct any minor errors prior to finalisation; and
- (F) Council note that the planning agreement will be executed by the Chief Executive Officer under existing delegations.

## Attachments

- Attachment A.** Summary of Submissions and Responses
- Attachment B.** Planning Proposal: 923-935 Bourke Street, Waterloo (as amended following public exhibition)
- Attachment C.** Draft Sydney Development Control Plan 2012: 923-935 Bourke Street, Waterloo (as amended following public exhibition)
- Attachment D.** Draft Planning Agreement
- Attachment E.** Council and the Central Sydney Planning Committee Resolutions
- Attachment F.** Gateway Determination

## Background

1. This report follows the public exhibition of Planning Proposal: 923-935 Bourke Street, Waterloo (planning proposal) and Draft Sydney Development Control Plan 2012: 923-935 Bourke Street, Waterloo (draft DCP), shown at Attachments B and C respectively. An associated draft planning agreement is currently on publicly exhibited and is shown at Attachment D.



2. Site details, current planning controls, proposed planning controls and a public benefit offer from the landowner to the City are described in detail in the pre-exhibition report to the Transport, Heritage, Environment and Planning Committee and the Central Sydney Planning Committee (CSPC), available at: <https://city.sydney/tzi> (item 6).
3. The publicly exhibited planning proposal is to amend the Sydney Local Environmental Plan 2012 (Sydney LEP), as follows:
  - (a) amend the maximum building height control to 22 metres (five storeys) to Bourke Street, 27 metres (seven storeys) to Young Street, and to 22 metres (five storeys) and 27 metres (seven storeys) in parts along McEvoy Street;
  - (b) allow for an additional 0.5:1 floor space ratio (FSR), but only where the additional floor space is provided as consolidated retail below ground; and
  - (c) allow for a supermarket up to 3,200 square metres to be provided on the site.
4. Together, the planning proposal and the draft DCP (proposed planning controls) facilitate the following development outcomes on the site:
  - (a) a mix of residential dwellings, that includes affordable housing dwellings provided on site that contributes to the City's market and affordable housing targets;



- (b) a full line supermarket provided below ground, that services local demand;
  - (c) other fine grain retail and commercial spaces provided at the ground level, that activate the streets and the internal circulation paths, and provide opportunities for additional employment;
  - (d) a built form up to seven storeys on Young Street and five storeys along Bourke Street, that can achieve compliance with the Apartment Design Guide (ADG) to safeguard the amenity of future residents in the development and existing residents in surrounding residential buildings;
  - (e) a green development, that retains over 80 per cent of existing trees and provides appropriate setbacks to allow for tree growth and increased canopy cover, to improve the natural amenity of the surrounding area;
  - (f) a highly sustainable built form, that minimises its impact on the environment;
  - (g) car parking for any retail capped to one space for each 50 square metre of gross floor area, to minimise impact on the surrounding roads;
  - (h) a through-site link and internal circulation network, to improve pedestrian permeability through large street blocks in Green Square; and
  - (i) dedicated land for footpath widening and landscape setbacks, to improve pedestrian and user amenity.
5. An indicative reference scheme, that shows a possible built form outcome that may result from the proposed planning controls, is shown in Figures 2 to 5 below.



Figure 2: Indicative development concept - view looking south-east from corner Young and McEvoy Streets. Source: Bates Smart Urban Design Report.





Figure 3: Indicative development concept - view looking south from McEvoy Street. Source: Bates Smart Urban Design Report.



Figure 4: Indicative development concept - view looking east from McEvoy Street. Source: Bates Smart Urban Design Report.





Figure 5: Indicative development concept - view looking west from Bourke Street. Source: Bates Smart Urban Design Report.

6. Council and the Central Sydney Planning Committee (CSPC), at their meetings on 21 November 2022 and 17 November 2022 respectively, approved for Gateway Determination and public exhibition the planning proposal and the draft DCP. The Council and CSPC resolutions are shown at Attachment E to this report.
7. In January 2023, NSW Department of Planning and Environment (Department) issued a conditional Gateway Determination for the planning proposal, requesting a minor clarification be made prior to public exhibition and delegating to Council the plan-making authority. The Gateway Determination is shown at Attachment F.
8. The planning proposal was amended in accordance with the Gateway determination, and the proposed planning controls were publicly exhibited from 12 April to 24 May 2023.
9. This report recommends Council approve the planning proposal and draft DCP, as amended following public exhibition, subject to execution of the draft planning agreement at Attachment D. If approved, drafting instructions will be forwarded to the Parliamentary Counsel's Office to draft the amendment to the Sydney LEP. The amendment to the Sydney LEP will come into effect when it is published on the NSW Legislation website. Amendment to the Sydney Development Control Plan 2012 (Sydney DCP) will come into effect at the same time as the Sydney LEP amendment is published.

## Public Exhibition

10. The planning proposal and draft DCP were exhibited for six weeks from 12 April to 24 May 2023. This exceeded the four-week public exhibition requirement of the Gateway determination. Public exhibition was in accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2022.

11. The City sent 2,839 notification letters to landowners and occupants of surrounding properties within 75 metres of the site. The exhibition was also advertised on the City's 'Sydney Your Say' page and included in the May 2023 Sydney Your Say newsletter sent to 6,938 subscribers.
12. In accordance with the Gateway determination, notification of the public exhibition was also made to the following public authorities:
  - (a) Transport for NSW; and
  - (b) Heritage NSW.
13. A total of 33 submissions from the general community were received during the public exhibition period. Eight submissions were in support of the proposal, five submissions provided mixed feedback or were in support of specific elements of the proposal and 20 submissions were in opposition of the proposal. In addition, one submission was received on behalf from the landowner and two submissions from the public authorities.
14. A summary of submissions and the City's response is provided at Attachment A of this report, with key issues discussed below.

*Building height and impacts on amenity of neighbouring properties*

15. Fifteen submissions raised objections to the proposed building height, and eight of the submission about the impacts of the proposed development on the amenity of neighbouring properties.
16. The NSW Government's ADG contains requirements to ensure proposed development achieves acceptable levels of amenity and visual privacy for both residents and neighbours. The indicative reference scheme, submitted with the planning proposal, demonstrates a development under the proposed planning controls can comply with ADG requirements.
17. The proposed planning controls amend the LEP maximum building height controls for the site from 15 metres to:
  - (a) 22 metres fronting Bourke Street; and
  - (b) 27 metres fronting Young Street.
18. Increasing the building height allows the site to reasonably achieve the maximum FSR currently permitted on the site. The height increase is not needed to accommodate the proposed additional FSR for the supermarket development as this is to be provided below ground level.
19. The proposed five and seven storey height in storeys is consistent with the height in storeys controls surrounding the site ranging from four storeys on the western side of Young Street to six and seven storeys on the northern side of McEvoy Street and between six and ten storeys on the eastern side of Bourke Street.



20. The additional height allows for the massing of the built form on the site to minimise impact on adjacent residential buildings. It also allows the built form to create a quality public realm that provides for footpath widening, landscaped setbacks, deep soil, tree retention, and space for an additional pedestrian link to support active ground floor uses within the development. The built form also allows single aspect buildings to Bourke Street to protect future residents from vehicle noise.
21. The development also retains over 80 percent of the trees on and surrounding the site contributing to green amenity, visual privacy, and a quality-built environment for both residents of the development and for neighbouring properties.
22. No changes to the publicly exhibited planning controls are recommended in response to these submissions.

#### *Supermarket need*

23. Ten submissions raised objections to the proposed supermarket, asserting the area already has enough supermarkets in proximity to the site to service the surrounding population, and that the proposal will negatively impact the nearby independent supermarket.
24. This planning proposal is to allow an additional 0.5:1 FSR (about 3,200 square metres of GFA) to be achieved on the site for consolidated retail space, despite the requirements of clause 7.23 that currently limits the size of a 'shop' to 1,000 square metres on the site. The effect of the change is to facilitate a large format supermarket as part of the proposed mixed-use development.
25. In late 2021, the City commissioned SGS Economics and Planning to undertake the Green Square and Southern Areas Retail Review (the Review). The objective of the review was to understand the changes to demand and supply of retail area since the planning requirements were introduced in 2012, and to recommend any required changes to planning controls to ensure the retail needs of the community were being met.
26. The Review identified a net shortfall in retail floor space across the City South area and found that to 2041 an additional 9,000 square metres of supermarket floor space is needed to meet demand, with some of that shortfall in the Waterloo area.
27. This planning proposal will facilitate a supermarket in an area with a shortfall and close to a dense residential community. A supermarket in this location ensures the community has access to adequate retail and will encourage residents and workers close by to walk or cycle for their day-to-day retail needs.
28. It is generally accepted that an impact is acceptable if turnover reduction for the centre as a whole is below 10 per cent. From a retail market perspective, this is deemed acceptable. The estimated impact of only -4.7 per cent on turnover suggests that the impacts of the proposed supermarket are dispersed through the system and that there is sufficient demand within the retail network to absorb the new supermarket without significantly impacting on existing retail centres.
29. No changes to the publicly exhibited planning controls are recommended in response to these submissions.

*Traffic, transport and parking*

30. Thirteen submissions raised general concerns about the traffic impacts of the proposed development, with three related to the impacts of car parking, and two about the lack of public transport.
31. Detailed traffic and transport assessment was undertaken to support the changes to the planning controls. The assessment methodology and data sets were endorsed by Transport for NSW (TfNSW). The assessment demonstrates the proposed development will have acceptable level of impact on local roads. In addition, the access arrangements for the site and limits on the number of parking spaces for supermarket and other retail uses will manage traffic impacts.
32. The site is within a walkable catchment close to existing residential populations. The pedestrian environment includes footpaths on both sides of all surrounding streets, and controlled pedestrian crossings at the intersections of Bourke Street with Danks Street, Potter Street, Lachlan Street and McEvoy Street. TfNSW noted the proposed development is in a highly accessible area to serve local needs and reduce private vehicle dependence. The authority noted the proposal objective to support “thriving and healthy 15-minute neighbourhoods and encourage sustainable travel behaviour”.
33. The proposed supermarket and retail development is intended to service the local area residential catchment. Retail car parking provision is consistent with the City’s Retail Review which is being reported concurrently with this Planning Proposal. The car parking rates do not encourage convenience parking, and instead are intended to encourage other travel modes such as active and public transport to the site. Any potential on street parking impacts from the future development of the site can be satisfactorily addressed at the detailed development application stage.
34. Concerns regarding the lack of available on-street parking due to unrestricted parking have been forwarded to Council’s Transport Planning team for consideration as part of the City’s on street parking policy review.
35. This detailed assessment of the proposal also included consideration of transport infrastructure. The assessment found the site is highly accessible by public transport, located close to bus services (M20, 301, 302, 303, 304, 343, and 355) and within walking distance of Green Square railway station (900 metres), and the new Waterloo Metro station (1.2 kilometres).
36. No changes to the publicly exhibited planning controls are needed in response to these submissions.

*Overdevelopment and impact on local neighbourhood character*

37. Seven submissions raised concerns about overdevelopment generally and impacts on the neighbourhood character of the local area.
38. The site is in the Green Square Urban Renewal Area, Australia’s largest urban renewal area with the Green Square Town Centre (Town Centre) at its heart. The urban renewal area is forecast to grow to around 32,000 dwellings, housing around 63,000 people by 2036. This growth is being supported with substantial investment in local infrastructure including investment in transport infrastructure, new roads, parks, community facilities such as Gunyama Park and Aquatic Centre and Green Square library and utilities upgrades.

39. The changes to the planning controls for the site facilitate additional FSR for the supermarket below ground level which ensures services for the growing population. The proposal does not change the planned residential density of the site, which will contribute to the City's housing targets.
40. Renewal of the site will create a quality public realm that provides for footpath widening, landscaped setbacks, deep soil, tree retention, and space for an additional pedestrian link to support active ground floor uses within the development. The new built environment will improve the amenity for the surrounding area and is consistent with the planning objectives for the Green Square Urban Renewal Area.
41. The planning proposal is supported by detailed built form and urban design analysis. The analysis demonstrated the future development will be consistent with the character of the surrounding urban renewal area.
42. No changes to the publicly exhibited planning controls are needed in response to these submissions.

*Landowner submission*

43. The landowner, Woolworths Property Group, made a submission seeking changes or clarification of provisions in the publicly exhibited draft DCP. The submission raised concerns about:
  - (a) the extent of mapped active frontages along Bourke Street;
  - (b) the limitation on building services permitted along Bourke Street;
  - (c) the uncertainty created by the wording in the draft DCP about the potential for residential uses on the north-east corner of the site;
  - (d) the requirement for the retention of some trees on the site;
  - (e) the requirement for public art, requesting any requirement be fixed at 0.5 per cent of construction cost;
  - (f) the uncertainty created by not identifying in the draft DCP vehicular access points along Bourke Street; and
  - (g) access to vehicle chargers, requesting the DCP limit public access to electric to retail trading hours only.
44. Following consideration of the landowner submission, the following minor changes to the publicly exhibited planning controls draft DCP are recommended:
  - (a) clarify that driveways and service entries may be located on active frontages where other options are not available, and that driveways and service entries are to be minimised in width;
  - (b) clarify that building services may be considered on Bourke Street with appropriate mitigation such as providing screening and facade relief, including varying detail and material in the development design;
  - (c) clarify residential uses on the northeast portion of the site are permitted, noting there is no restriction on use in the planning proposal;



- (d) include a requirement that any future works for the undergrounding of powerlines, communications cables and utility services will be required to provide expert technical assessment of the proposed work, including potential impacts on trees that are identified to be retained;
- (e) allow for an additional medium value tree located along Bourke Street (near the proposed driveway in the reference scheme) to be removed, noting a high probability that this tree could interrupt reasonable access from Bourke Street; and
- (f) clarify electric vehicle chargers must be provided that are publicly accessible during supermarket or retail and commercial operating hours, noting this is consistent with the approach in the draft planning agreement.

#### *Transport for NSW submission*

- 45. The submission from Transport for NSW did not raise any objection to the planning proposal. It did recommend greater flexibility be provided to enable loading dock provisions from Young Street, in addition to Bourke Street, subject to detailed design. It also recommended the draft DCP consider the future design of driveway crossovers to further manage conflict between vehicle and footpath users, to ensure safe pedestrian and cyclist crossing along Bourke Street.
- 46. The draft DCP does not expressly restrict the future development from providing access for service and loading from Young Street. Any access for service vehicles, whether from Bourke Street, or alternatively from Young Street will be subject to detailed assessment of the traffic and safety measures required at the development application stage.
- 47. In response this submission, an amendment to the draft DCP is recommended so that continuous footpaths are provided at the same level as the driveway and that footpaths are not ramped between the kerb line and the property.

#### *Heritage NSW submission*

- 48. The Heritage NSW submission did not raise any objection to the planning proposal. The submission noted the site is not understood to have aboriginal objects and is not identified as a place protected under the *National Parks and Wildlife Act 1974*. It also noted the site is not listed for protection as a heritage item on the State Heritage Register under the Heritage Act 1977.
- 49. Any consideration given to local heritage impacts arising from the future development of the site will be addressed at the detailed development application stage.
- 50. No changes to the publicly exhibited planning controls are needed in response to this submission.

## **Key Implications**

### **Post exhibition amendments**

- 51. Following consideration of submissions received, changes are recommended to the publicly exhibited draft DCP, as shown at Attachment C, and explained above.

52. In addition, changes are recommended to the draft DCP and the planning proposal to reflect the introduction of the Sustainable Buildings SEPP. References to "energy" have been replaced with "electricity" to ensure that the net zero energy requirements do not overlap with the offset requirements under the new SEPP.
53. Changes to the site-specific provisions in the Planning Proposal are recommended to remove reference to BASIX standards. This removes duplication and potential conflict with the commitments made by the landowner in the voluntary planning agreement.
54. Additional minor amendments are recommended to the planning proposal to update sections related to the recent public exhibition and the timeline.

#### **Draft Planning agreement**

55. A draft planning agreement is currently being re-exhibited with consultation closing **1 September 2023**. Following consideration of any submissions received, the Chief Executive Officer has delegation to sign the agreement.
56. An earlier version of a draft planning agreement was publicly exhibited with the proposed planning controls for the delivery of public benefits in conjunction with any future development, including:
  - (a) delivering publicly accessible electric vehicle charging facilities, including:
    - (i) all residential car spaces to have infrastructure provision to be electric vehicle ready;
    - (ii) 50 per cent of worker car spaces to have infrastructure provision to be electric vehicle ready; and
    - (iii) 25 per cent of retail customer car spaces are to be fitted from the outset with a three phase Level 2 EV charger at 22 kilowatts or higher) with the addition of two Level 3 or 4 fast chargers accessible within the retail parking provisions;
  - (b) City's Net Zero Energy 2026 provisions for supermarket, other retail and commercial development;
  - (c) BASIX scores (existing BASIX standards) of 40 for energy and 45 for water for the residential development;
  - (d) incorporating onsite rainwater capture and waste recovery measures in the future operation of the development;
  - (e) development of best practice site-wide resource recovery for operational waste / recycling systems; and
  - (f) provision of affordable housing contributions, equating to 12 per cent of the new floor space facilitated by this planning proposal.
57. Following public exhibition, the landowner and City agreed to further amend the affordable housing provisions of the draft planning agreement to recognise that less commercial and more residential floor space may be proposed in the development application. This required re-exhibition of the draft planning agreement.

58. The draft planning agreement, as originally exhibited, included a developer commitment to build 742 square metres GFA for affordable housing to be built on-site and dedicated it to a community housing provider. This quantum was based on the proposed residential and non-residential floor space in the reference scheme. It was calculated in accordance with the affordable housing contribution requirements under the Sydney LEP 2012 (three per cent of residential floor space and one per cent non-residential floor space), plus an additional contribution requirement for 12 per cent of 'new' floor space resulting from the 0.5:1 FSR increase in the planning proposal.
59. The amended draft planning agreement replaces the developer commitment to provide 742 square metres GFA for affordable housing with a formula describing the above calculation, but allowing for the calculation to be made at the development application stage when the actual quantum of residential and non-residential floor space in the development is known.
60. The changes support the proposed amendment to the exhibited draft DCP which clarify the north-east portion of the site can be used for residential purposes, subject to the development achieving the appropriate residential amenity. This amendment is recommended following representations from the landowner that they are considering provision more residential development on this part of the site than was proposed in the reference scheme.
61. In a scenario where the amount of residential floor space increases above what is proposed in the reference scheme, the amount of floor space in the development to be dedicated as affordable housing would increase.

### **Strategic Alignment**

62. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. The proposed planning controls are aligned with the strategic directions and objectives.
63. The proposed planning controls give effect to the infrastructure, liveability, productivity and sustainability priorities in the Greater Sydney Commission's Greater Sydney Region Plan and Eastern City District Plan and the City's Local Strategic Planning Statement.

### **Relevant Legislation**

64. Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021.

### **Critical Dates / Time Frames**

65. The Gateway Determination requires that the amendment to the Sydney LEP 2012 is completed by 6 November 2023.
66. The Gateway Determination authorises Council to exercise its delegation and liaise directly with Parliamentary Counsel to draft and make the new LEP, should the proposed planning controls be approved by Council and the CSPC.



67. The amendment to the Sydney LEP 2012 will come into effect when published on the NSW Legislation website, with the amendment to the Sydney DCP 2012 coming into effect on the same day.
68. The draft planning agreement will be executed and registered on the title of the land prior to the finalisation of the LEP and DCP.

**GRAHAM JAHN**

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