

**QLDC Council**  
**28 September 2017**

**Report for Agenda Item: 13**

**Department: Property & Infrastructure**

**Easement to Skyline Enterprises Limited – Bobs Peak**

**Purpose**

The purpose of this report is to consider granting a pedestrian right of way easement over recreation reserve land identified as Pt Section 110 Blk XX Shotover SD, for the purpose of enabling Skyline Enterprises Limited (SEL) to form and utilise a pedestrian pathway. The proposed easement will be over land which is not within the SEL lease area, and is instead part of the lease area occupied by Queenstown Commercial Parapenters Ltd.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. **Approve** a pedestrian right of way easement over Recreation Reserve, Pt Section 110 Blk XX Shotover SD, in favour of SEL, subject to section 48(1)(d) of the Reserves Act 1977, and the following conditions;
  - a. Queenstown Parapenters Limited first provide information necessary to formally endorse the easement, and all matters necessary to enable the easement over the land are resolved.
  - b. Commencement: To be determined.
  - c. Extent of Easement: To be confirmed prior to commencement, and having regard to the endorsement of Queenstown Parapenters Limited.
  - d. Fees: As per QLDC's Easement Policy 2008, and subject to the extent of the easement being confirmed. This shall also include any outstanding application fees.
  - e. A bond of \$5,000.00 be payable to QLDC prior to any works commencing;
  - f. The work site to be evidenced by before and after photographs, video or similar to be provided to QLDC by Skyline Enterprises Ltd;
  - g. A comprehensive safety plan must be prepared and implemented, at Skyline Enterprises Ltd's cost, to ensure a safe environment is maintained around the subject site;
  - h. Certificate of adequate public liability cover to be received;

- i. Reinstatement and landscaping of the area to be completed within two months following construction and to the satisfaction and timeframes communicated by the QLDC's Property & Infrastructure Department. Reinstatement to include any landscaping, fencing or other structures.
  - j. Within 3 months of completion of the work, Skyline Enterprises Ltd to provide QLDC with a surveyed easement and signed Deed of Easement.
3. **Agree** that notification of the intention to grant the easement is not required, as the statutory test in section 48(3) of Reserves Act 1977 is met for the reasons set out in this report;
4. **Delegate** authority to approve final terms and conditions of the pedestrian right of way easement, including location, and execution authority to the General Manager – Property & Infrastructure; provided all relevant requirements of the Easement Policy 2008 are addressed; and;
5. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of an easement to Skyline Enterprises Ltd over Pt Section 110 Blk XX Shotover SD.

Prepared by:



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11/09/2017

Reviewed and Authorised by:



Stephen Quin  
Parks Planning Manager  
11/09/2017

## Background

- 1 Council administers the reserve legally described as Pt Section 110 Blk XX Shotover SD, and classified as Recreation Reserve. Queenstown Commercial Parapenters Ltd has a lease over that reserve.
- 2 SEL has a lease over adjacent Recreation Reserve identified as Section 1 SO 24832. This area upon Bobs Peak contains the Skyline building, luge tracks, etc.
- 3 SEL seeks to establish a pedestrian footpath over Pt Section 110 Blk XX Shotover SD. This will involve earthworks, landscaping and the formation of the footpath. As it is necessary to assure access over the footpath, a right of way easement is sought. The applicant has provided a plan to illustrate the extent of the easement, and this appears to require an area of 864m<sup>2</sup>. That plan is included as ATTACHMENT A of this report.
- 4 Resource Consent RM170147 (granted 26 July 2017) requires that such an easement is created, given that the pedestrian footpath is an aspect of the luge

chairlift upgrade and associated developments approved by that consent. Please note that this luge chairlift upgrade is the subject of the separate report to Council for Lessor's and Minister's approval, which is also on this agenda for the 28 September 2017 Council meeting. Please refer to Attachment A of that report, as it also discusses the easement now sought.

## **Comment**

- 5 Whilst Council has been informed by SEL that Queenstown Commercial Parapenters Ltd (QCPL) support the easement, it is appropriate that this is formally confirmed by QCPL. Any process to create the easement as requested will include QCPL, and any implications on their lease must be agreed by QCPL. It is a recommendation of this report that QCPL must provide their formal approval for any easement over their lease area.
- 6 As per the Easement Policy 2008, both an application fee along with an easement fee are applicable. Because any ultimate easement fee will be dependent upon a defined area and valuation (and at this stage neither are absolutely confirmed), it is recommended that final terms and conditions, including commencement, location, extent, fees and execution authority be delegated to the General Manager Property & Infrastructure.
- 7 The Easement Policy 2008 allows for a bond of between \$1,000 and \$5,000 to be held by Council subject to the reinstatement of the property to Council's standards and satisfaction. Given the potential damage to the reserve (being excavation with no guarantee that this will be completed, and constrained access) this report recommends a bond of \$5,000 be held.
- 8 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a reserve. This consent is now delegated to Council and must be granted prior to the Easement being lodged with LINZ.
- 9 Granting an easement is permitted by the Reserves Act 1977, however, such easement must be publicly notified in accordance with Section 48(2) unless it can be shown that there is no long-term effect on the land and that people's ability to enjoy the reserve is not affected in accordance with section 48(3) below. These matters are considered below:

The reserve is vested in an administering body and is not likely to be materially altered or permanently damaged

- 10 The Council is the administering body. Aside from during the earthworks and partway construction process, this easement will not affect the ability of the reserve to provide for its current recreational purpose. As the pathway is intended to facilitate access, including to QCPL, it is considered that the creation of the easement will not have any long-term effect on the reserve.

The rights of the public in respect of the reserve are not likely to be permanently affected

- 11 While there would be some temporary minor disruption during the earthworks and pathway construction, long term there would be no detrimental effect on the

ability of the public to use and enjoy the reserve. Once the pathway is formed, the public will have improved access over Section 1 SO 24832 and Pt Section 110 Blk XX Shotover SD. The public as users of the reserve would be unaware that they are crossing over two different lease areas, and the easement would instead serve to allow SEL to manage and maintain the greater footpath area.

12 Taking into account the above factors, it is not considered that the easement will permanently affect the reserve or affect the ability of people to use and enjoy the reserve and therefore public notification is not deemed necessary.

13 This report recommends that any approval granted for an easement be subject to the following conditions;

- a. Queenstown Parapenters Limited first provide information necessary to formally endorse the easement, and all matters necessary to enable the easement over the land are resolved.
- b. Commencement: To be determined.
- c. Extent of Easement: To be confirmed prior to commencement, and having regard to the endorsement of Queenstown Parapenters Limited.
- d. Fees: As per QLDC's Easement Policy 2008, and subject to the extent of the easement being confirmed. This shall also include any outstanding application fees.
- e. Skyline Enterprises Ltd to notify and liaise with QLDC Infrastructure Department in advance of any onsite works, so that they can oversee and provide input relating to any existing in ground infrastructure;
- f. A bond of \$5,000.00 be payable to QLDC prior to any works commencing;
- g. The work site to be evidenced by before and after photographs, video or similar to be provided to QLDC by Skyline Enterprises Ltd;
- h. A comprehensive safety plan must be prepared and implemented, at Skyline Enterprises Ltd's cost, to ensure a safe environment is maintained around the subject site;
- i. Certificate of adequate public liability cover to be received;
- j. Reinstatement and landscaping of the area to be completed within two months following construction and to the satisfaction and timeframes communicated by the QLDC's Property & Infrastructure Department. Reinstatement to include any landscaping, fencing or other structures.
- k. Within 3 months of completion of the work, Skyline Enterprises Ltd to provide QLDC with a surveyed easement and signed Deed of Easement.

14 As the land is recreation reserve, the consent of the Minister of Conservation is required, with such consent having been delegated to Council.

## **Options**

15 Option 1 Council can grant the easement in favour of SEL over Recreation Reserve Pt Section 110 Blk XX Shotover SD, subject to the conditions recommended above.

*Advantages:*

- 16 Pedestrian access can be improved, and this will support SEL's activities
- 17 Council will receive an Easement Fee of.

*Disadvantages:*

- 18 The reserve will be encumbered.
- 19 Access to the reserve will be temporarily limited during construction.
- 20 Option 2 Council can grant the easement in favour of SEL over Recreation Reserve Pt Section 110 Blk XX Shotover SD, subject to alternative conditions.

*Advantages:*

- 21 Similar to Option 1 however Council may wish to amend the conditions proposed.

*Disadvantages:*

- 22 Similar to Option 1
- 23 Option 3 Council can decline the easement in favour of SEL over Recreation Reserve Pt Section 110 Blk XX Shotover SD.

*Advantages:*

- 24 The easement area would be unencumbered and undeveloped.

*Disadvantages:*

- 25 The applicants will need to consider alternative means to provide pedestrian access.
- 26 Council would not receive an Easement Fee.
- 27 This report recommends **Option 1** for addressing the matter as it will enable the development to proceed as planned without significant disturbance to Council land.

## **Significance and Engagement**

- 28 This matter is considered of low significance, as determined by reference to the Council's Significance and Engagement policy as it does not involve a Council strategic asset, is of low importance to the Queenstown Lakes District, is of moderate interest to the general community, is not inconsistent with policy and strategy and does not impact on Council's capability and capacity.

## **Risk**

- 29 This matter relates to operation risk OR011A Decision making. The risk is classed as moderate. A perpetual property right contained in the recreational

reserve does carry risk to Council for any future development, and this risk needs to be highlighted when considering approving the easement.

### **Financial Implications**

30 Council will receive an easement fee in accordance with the Easement Policy 2008, although this is subject to a percentage of market valuation and no valuation has been provided at this time. Because it will first be a requirement that RM160647 is granted, and the date of such an approval is not possible to determine, it will be necessary to undertake a valuation and establish the appropriate easement fee at that time.

31 All costs associated with the survey and registration of the easement on Councils title will be paid for by the applicant.

32 All costs associated with the survey and registration of the easement on Councils title will be paid for by Skyline Enterprises Limited.

### **Council Policies, Strategies and Bylaws**

33 The following Council policies, strategies and bylaws were considered:

- Identify Significance & Engagement Policy 2014 – the proposal is a matter with low significance in terms of this policy as it does not impact Council's strategic assets, affect a large number of residents, ratepayers and the environment and is not expected to create a community interest in the matter.
- Easement Policy 2008 – the application is consistent with the policy.
- Ben Lomond and Queenstown Hill Management Plan

34 The recommended option is consistent with the principles set out in the named policy/policies.

35 This matter is not included in the 10-Year Plan/Annual Plan, however can be met from existing property operating budgets.

### **Local Government Act 2002 Purpose Provisions**

36 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by allowing improved electrical supply to a member of the public at no cost to Council;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

## **Consultation: Community Views and Preferences**

- 37 No consultation is envisaged or required by Council as it has low significance with regard to the Significance & Engagement Policy 2014, is consistent with s10 of the Local Government Act and is not included in the 10-Year Plan/Annual Plan. Further, it is not considered that the easement will permanently affect the reserve or affect the ability of people to use and enjoy the reserve and, therefore, public notification is not deemed necessary in accordance with sections 48(2) and 48(3) of the Reserve Act 1977.
- 38 As part of the resource consent, effects associated with this development have been assessed. It is not considered necessary to conduct further consultation relating to the easement request.

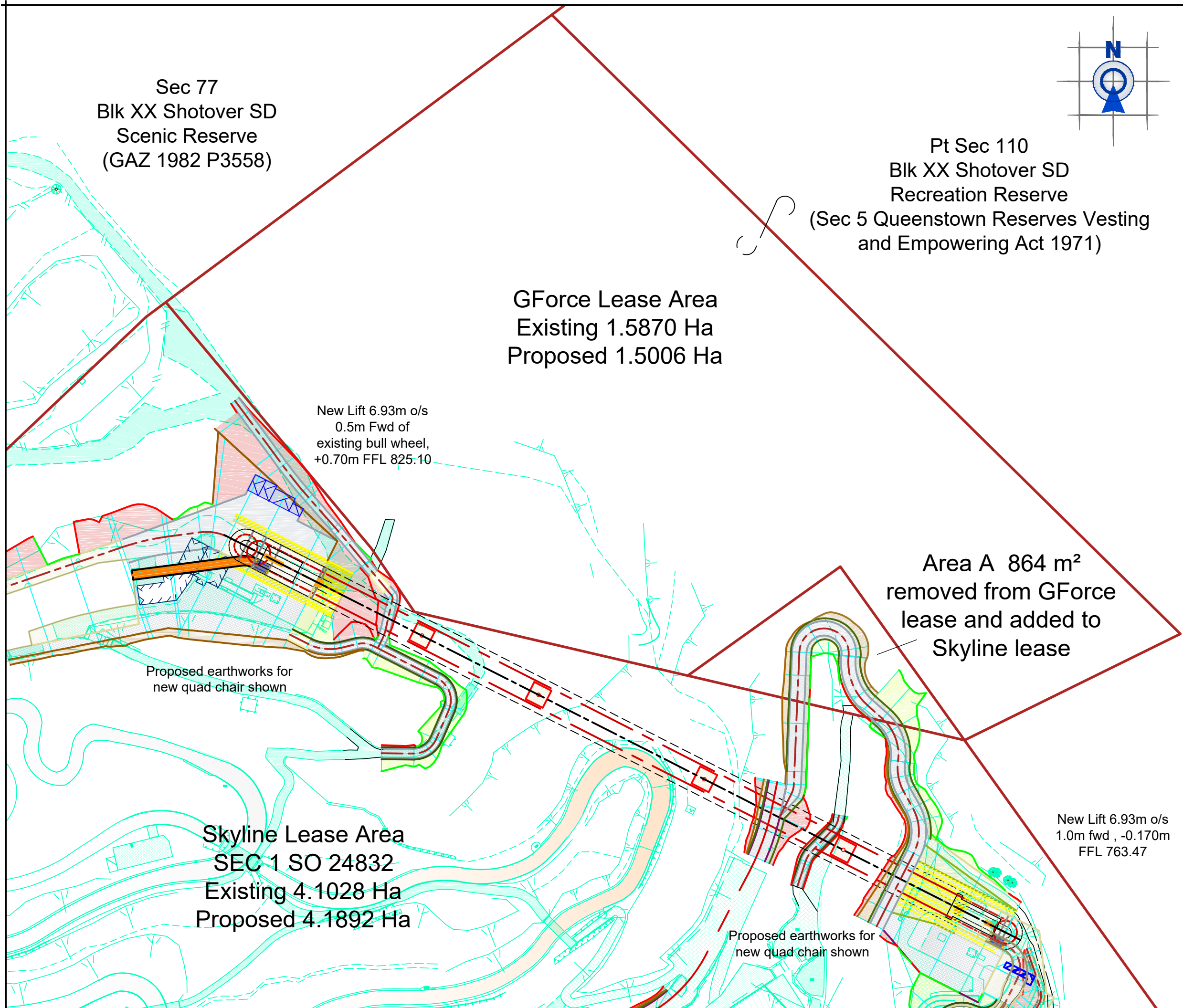
## **Legal Considerations and Statutory Responsibilities**

- 45 This matter is subject to section 48 of the Reserves Act 1977, which prescribes the requirements for the granting of an easement over a reserve. It is considered that option 1 is consistent with these requirements.

## **Attachments**

- A Easement Plan





**LEGEND**

- Rock Cut Batters
- Cut Batters
- Fill Batters
- Concrete
- Grass berms
- Gravel paths
- Retaining wall
- Paved areas
- Site boundary

- Notes:**
- Proposal shown as a boundary adjustment for discussion purposes with GForce and QLDC
  - Second option is that GForce retains their lease over Area A and Skyline is given a right of way over Area A
  - Third option boundary adjustment occurs and GForce is given a right of way over Area A



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Client/Location:  
**SKYLINE ENTERPRISES LIMITED**  
 SEC 1 SO 24832, 53 BRECON STREET  
 LUGE CHAIRLIFT  
 REDEVELOPMENT 2017-2018

Purpose/Drawing Title:  
**POSSIBLE BOUNDARY  
 ADJUSTMENT OR ROW  
 SKYLINE/GFORCE LEASES  
 - ISSUED FOR DISCUSSION -**

Surveyed by:		Original Size:	Scale:
Designed by:		A3	1:750 Hz
Drawn by:	SAM Aug 2017		
Checked by:			
Approved by:			DO NOT SCALE
Job Ref:	Q4115i - 64	Sheet No:	Revision No:
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