

Meeting Date: Tuesday 24 May 2016
Location: Council Chambers, Level 6, Civic Centre, 1 Devlin Street, Ryde
Time: 7.00pm

*Council Meetings will be recorded on audio tape for minute-taking purposes
as authorised by the Local Government Act 1993. Council Meetings will also be webcast.*

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LATE ITEM

8 NSROC CONSTITUTION DURING THE INTERIM COUNCIL PERIOD

Report prepared by: Governance Support Coordinator
File No.: COR2016/3 - BP16/646

REPORT SUMMARY

This report seeks Council endorsement of changes to the Northern Sydney Regional Organisation of Councils (NSROC) Constitution, as recommended by the NSROC Board on 5 May 2016. It also asks Council to nominate two current City of Ryde Councillors to the NSROC Board, should the recommended changes to the Constitution be supported by the NSROC members.

RECOMMENDATION:

- (a) That Council endorse the proposed amendment to the Constitution of the Northern Sydney Regional Organisation of Councils and direct City of Ryde Council representatives on the NSROC Board to support this decision at the Extraordinary NSROC Board meeting to be held on 2 June 2016; and
- (b) That Council nominate two (2) delegates to be the Councils representatives on the NSROC Board should clause 5 of the NSROC constitution come into effect.

ATTACHMENTS

- 1 Proposed Amendments to the NSROC Constitution - May 2016

Report Prepared By:

Lorie Parkinson
Governance Support Coordinator

Report Approved By:

John Schanz
Manager - Risk, Audit and Governance

Angela Jones-Blayney
Acting Chief Operating Officer

ITEM 8 (continued)

Background

All seven member Councils of NSROC are subject to amalgamation action under the NSW Government's proposals. The NSROC Board currently comprises two representatives of each member Council: the Mayor and one Councillor. NSROC is registered under the *NSW Associations Incorporation Act 2009*.

In April 2016 NSROC General Managers considered the potential governance risk to NSROC if Mayors and Councillors from the member Councils are not available to populate the Board. To minimise this risk a letter was written to Minister Toole on 22 April 2016, requesting that any proclamations to create new Councils take the external representational roles of Councillors into consideration by including transitional provisions for organisations such as NSROC to enable operation during the interim period before new Councils are elected.

The proclamations issued on 12 May 2016 by the NSW Governor with respect to other Council amalgamations did not refer to regional organisations of Councils, so it may be expected that any further proclamations will similarly not include such provisions. However, until the proclamations are made, this cannot be known.

The NSROC Board met and considered various options at its February and May 2016 meetings, including the winding up of the association. The Board formed the view that the preferred course of action was to enable continued operation of the association. This view was based on the potential continuing role for a regional organisation of Councils post-amalgamations, (or, at least, some uncertainty on the matter) as well as the inability to distribute the assets of the association to current members under the *Associations Incorporation Act*.

To achieve this objective the NSROC Board has recommended that each member Council support a change to the NSROC constitution that would allow the Councils in place prior to dissolution, to nominate representatives to populate the Board during a transition period until new Council elections are held.

Discussion

NSROC has obtained legal advice on the future operation of NSROC in the context of Council amalgamations, including how the organisation could operate if member Councils were removed and no member representatives were available to hold Board positions.

The advice from Maddocks Lawyers is summarised below:

- the likely effect of proclamations to amalgamate Councils would be to transfer the membership in NSROC of each of the current Councils to the new Councils;

ITEM 8 (continued)

- until new Council elections are held there would be no delegates to sit on the Board, and therefore no Board could exist, as the NSROC constitution specifically nominates Mayors and a Councillor from each member Council as member representatives who form the NSROC Board;
- it would be possible for the association to continue to operate without Board supervision, provided suitable delegations were in place, using a budget approved by the Board before proclamations, and with the benefit of oversight by the General Managers Advisory Committee. However no decisions requiring Board approval could be made.

Based on these views Maddocks suggests that three actions be considered to address the risk of having no NSROC Board while new Councils are under administration:

1. Amend the NSROC Constitution to nominate members (named individuals) or to provide that an administrator becomes the member's delegate.
2. Write a submission to the Office of Local Government requesting that any proclamations include transitional provisions to enable regional organisations of Councils and similar bodies to continue to operate.
3. Review delegations to enable the association to operate and deliver an approved business plan and budget during the period where there is no Board able to authorise operations.

Action 2 and 3 have recently been implemented, including the NSROC budget and business plan for 2016-17 being approved on 5 May 2016.

Assuming that no special carry-over clause for ROCs appears in any further proclamations to remove its member Councils, and no action is taken to wind-up the association, the operation of NSROC up until the time elections for the new Councils are held, may (subject to appropriate changes to the associations constitution) rely on the implementation of one of three options below. Under each option the Association is still able to operate to varying degrees, until new Council elections without breaching the *Associations Incorporation Act 2009*.

1. **The NSROC constitution is amended and current member Councils' Councillors populate the Board in 2016-17.** The proposed constitutional amendments have the effect of allowing current member Councils to nominate two current Councillors to be ongoing delegates during the time the new Council is in administration.
2. **NSROC operates without a Board** under a program and budget approved by the current NSROC Board, through delegations to staff and General Managers, and oversight by the General Managers Advisory Committee. For new Councils this role would pass to Interim General Managers.

ITEM 8 (continued)

3. **Council Administrators form the Board**, as they have the functions of the Council and the Mayor of the Council during the initial period of the new Councils (as per wording of proclamations made on 12 May 2016). The Administrators may also choose to delegate their authority and nominate interim representatives to sit on the board.

On 5 May 2016, the NSROC Board resolved to take steps to implement option (1) as it would best allow for continuity in the management of collaboration amongst Councils and a platform for delivery of the approved business plan.

The proposed constitutional amendments, as shown in red within **ATTACHMENT 1 – Proposed Amendments to the NSROC Constitution**, have the effect of allowing current member Councils to nominate two current Councillors to be ongoing delegates during the time the new Council is in administration.

Clause 18 of the 12 May 2016 proclamations, if replicated in further proclamations, would allow such a delegation by the former Council to continue to have effect unless revoked or amended.

Following the election of new Councillors, representation will be resolved by the new member Councils.

The following actions are also required if option (1) is to be implemented as recommended by NSROC:

- Member Councils form a view on the recommended amendments and give authority to their delegates to take that view to a meeting of the association;
- A meeting of the association is called with at least 21 days notice to consider the amendments as a special resolution;
- In accordance with the *Associations Incorporation Act 2009* the special resolution must be supported by at least three-quarters of the votes cast by members of the association who are entitled to vote on the resolution in accordance with the association's constitution. The NSROC constitution states that each delegate, or bona fide alternative delegate, is entitled to vote in person only. A further clause of the constitution states that in these circumstances the majority of member Councils must be represented by at least one delegate.

The effect of these provisions is that for the special resolution to pass at least four of the seven member Councils would need to have duly authorised delegates at the meeting, and that three quarters of those present and entitled to vote, support the resolution. For example, if all 14 delegates were present, this would mean that 11 supporting votes would be required.

ITEM 8 (continued)

- Once passed, the amended constitution would have to be approved by the regulator of incorporated associations (the Commissioner for Fair Trading) before coming into effect. No impediment to this approval is anticipated.

Conclusion

It is recommended that Council support the insertion of these transitional provisions into the NSROC constitution, enabling two representatives from each of the (current) member Councils to sit on the Board until the next local government elections. While continued operation of NSROC is not precluded if these amendments to the constitution are not made, the recommended option by the NSROC Board would allow for continuity of current Council representatives during the interim period while Councils are operating under administration.

ITEM 8 (continued)

ATTACHMENT 1



NORTHERN SYDNEY REGIONAL ORGANISATION OF COUNCILS

CONSTITUTION

1. Name

The name of the Organisation is the **NORTHERN SYDNEY REGIONAL ORGANISATION OF COUNCILS** hereunder referred to as "**The Organisation**".

2. Mission

To provide strong local government leadership, to work co-operatively for the benefit of the Northern Sydney region, and effectively advocate on agreed regional positions and priorities.

3. Objectives

- i) To strengthen the role of Local Government in regional affairs, particularly where the region may be affected by Commonwealth or New South Wales Government policies.
- ii) To ensure that as a region we are providing leadership and participating in the development of; sound urban infrastructure; economic infrastructure and employment opportunities.
- iii) To facilitate the integration of transport, human and environmental infrastructure projects that support opportunities that meet community and business needs.
- iv) To improve the quality and access to human services infrastructure.
- v) To improve the quality and efficiency of Local Government service delivery throughout the Northern Sydney Region.
- vi) To ensure the Organisation develops as a highly credible and cost-effective organisation.

4. Membership

- (i) Membership of the Organisation shall be open to, but not restricted to, the following Councils:
 - a. The Council of the Shire of Hornsby
 - b. The Council of the Municipality of Hunters Hill

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ITEM 8 (continued)**ATTACHMENT 1**

- c. The Council of the Municipality of Ku-ring-gai
 - d. The Council of Lane Cove
 - e. The Council of North Sydney
 - f. The Council of the City of Ryde
 - g. The Council of the City of Willoughby
 - h. Any Council newly constituted by amalgamation or otherwise that includes any area formerly within the area of any of the above Councils.
- ii) If any existing member Council is dissolved, amalgamated or otherwise ceases to exist:
- a. the Council (whether newly formed or otherwise) that becomes the Council for any area within the existing member Council's area automatically becomes a member of the Organisation upon becoming the Council for that area; and
 - b. unless and until the new or continuing member Councils are constituted by elected Councillors, the representation in respect of such member Councils is to be determined in accordance with clause 5.vii) below.

5. Representation

- i) A member Council will be represented on the Organisation as follows:
- The Mayor and one other Councillor.
- ii) A member Council shall, at its first ordinary meeting after **any Council** election, appoint delegates from the Council membership to the Organisation, one of whom shall be the Mayor. Each such delegate shall hold office until the appointment of a successor.
- iii) The office of delegate shall become vacant if the delegate:
- a. ceases to hold the office as a Councillor;
 - b. resigns by letter addressed to the member Council; or
 - c. is absent from three (3) consecutive meetings of the Organisation without having obtained leave of absence from the Organisation;
 - d. is replaced by the member Council at any time.
- iv) Where the office of a delegate becomes vacant, the member Council concerned, at the first convenient ordinary meeting held after such vacancy occurs, should appoint another delegate.

ITEM 8 (continued)**ATTACHMENT 1**

- v) Where the Mayor of a Council is unable to attend a meeting of the Organisation, the Council may only be represented by the Acting Mayor for the purpose of being an alternative delegate.
- vi) Where any delegate, not being the Mayor, of a Council is unable to attend a meeting of the Organisation, the Council may be represented by another member of the Council duly appointed for the purpose of being an alternative delegate.
- vii) Despite clauses 5.i) to 5.vi) above:
 - a. each existing Council member constituted by elected Councillors that has not become a member under clause 4(ii) above, is to nominate 2 alternative delegates to the Organisation (each nominated alternative delegate to be either a currently appointed delegate to the Organisation or another current Councillor of the existing Council) to become delegates if and when a member Council becomes dissolved, amalgamated or otherwise ceases to exist;
 - b. if any such existing Council member does not nominate 2 alternative delegates under sub clause a. above before being dissolved, amalgamated or otherwise ceasing to exist, then that Council's existing delegates at the time of the dissolution, amalgamation or ceasing to exist, will deemed to have been nominated by the Council as its alternate delegates in accordance with sub clause a. above;
 - c. the alternate delegates so nominated by any existing member Council will automatically become delegates of the new or continuing Council (that becomes the Council for any area within the existing member Council's area) in place of the existing Council's delegates upon the existing Council being dissolved, amalgamated or otherwise ceasing to exist and will continue in that position until new delegates are determined in accordance with subclause d. below; and
 - d. upon a new or continuing Council becoming constituted by elected Councillors, the office of any delegates holding office under subclause c. above automatically become vacant and the representation of the new or continuing Council is to be determined in accordance with clauses 5.i) to 5.iv) above.

ITEM 8 (continued)**ATTACHMENT 1****6. Executive Positions**

i) The Organisation shall elect a President and two (2) Vice Presidents from its membership. Elections shall be conducted twelve (12) monthly in accordance with the provisions of the Local Government Act 1993 and regulations for the election of Mayor and Deputy Mayor.

ii) The Executive of the Organisation shall be the President and two (2) Vice Presidents.

iii) Role of the Executive

Between meetings of the Board the role of the Executive shall be to determine matters relevant to the Board's responsibility in circumstances where:

- a. in the opinion of the Executive the matter is such that it must be determined prior to the next ordinary meeting of the Board, and
- b. it would be impractical to convene an extraordinary meeting of the Board.

This role does not have the authority to vary the adopted NRSOC Business Plan and Budget.

7. Role of the Board

Delegates to the Organisation shall collectively be known as the Board.

The role of the Board shall be to:

- i) Monitor the performance of the Organisation
- ii) Establish a business plan and ensure outcomes therein
- iii) Adopt annual estimates of revenue and expenditure having regard for the business plan
- iv) Review the business plan and its contents as required
- v) Make broad policy decisions within the objectives of the Organisation.

8. The Role of the President

- i) The President shall preside at all meetings of the Organisation

ITEM 8 (continued)**ATTACHMENT 1**

- ii) The President, unless otherwise directed by resolution of the Organisation shall:
 - a. Chair meetings of the Organisation
 - b. Act as spokesperson for the Organisation
 - c. Exercise leadership and give direction to the Organisation
 - d. Represent the Organisation to other Agencies and Governments
 - e. Present the Organisation and its decisions in a positive way to the community, media, government and other interested groups
 - f. Together with the General Managers' Advisory Committee authorise the expenditure of funds provided provisions has been made within the adopted budget
 - g. Call special meetings as required.

9. Role of General Managers' Advisory Committee

The Organisation shall appoint a General Managers' Advisory Committee, comprising of the General Manager of each of the member Council. One of the General Managers shall be appointed as Chairman. The role of the Committee will be to:

- i) Advise on administrative and planning matters.
- ii) Exercise general supervision of the Organisation's staff and resources including the authorisation of expenditure within the budget approved by the Board.
- iii) Submit reports and recommendations to the Board for policy decision.
- iv) Have general supervision of projects and activities in the Business Plan.

10. Meetings of the Board

- i) The Board of the Organisation will meet quarterly in February, May, August and November on the first Thursday of the month (or an otherwise agreed to date) to consider policy and major issues. The Annual General Meeting shall be held in November.
- ii) The financial statements of the Organisation shall be submitted to the Annual General Meetings.
- iii) Each member Council and delegates shall be notified of meetings not less than seven days before each meeting. In the case of a Special Meeting, 48 hours notice shall be given.

ITEM 8 (continued)**ATTACHMENT 1**

- iv) The President will preside at all meetings of the Organisation or, in the absence of the President, the Vice President.

In the absence of the President and Vice President, the delegates present at a meeting shall elect one of their members to preside.

- v) Councillor of a member Council may attend and speak at meetings of the Organisation. Any senior staff of a Council, which is a member, may also attend and speak at meetings of the Organisation with the consent of the meeting.
- vi) A Special Meeting of the Organisation may be called by:
 - a. The President
 - b. Notice signed by three delegates.

11. Business at Meetings

Business conducted at a meeting of the Organisation shall consist of:

- i) Matters of which due notice has been given.
- ii) Matters, which the President determines to be of urgency of which due notices has not been given.
- iii) Consideration of recommendations, reports and correspondence which are consistent with the objectives of the Organisation.

12. Voting

- i) At meetings of the Organisation each delegate, or each bona fide alternative delegate representing a delegate, shall be entitled to vote.
[See Article 5 Representation, items v) and vi).]
- ii) The President shall have both a deliberative vote and, in the event of equality of votes, a casting vote, other than in the election of President or Vice President.
- iii) All votes must be given personally and there is no provision for voting by proxy.

13. Quorum

- i) A quorum at a meeting of the Organisation shall consist of a number being half of the number of Councils plus one.
- ii) A quorum of a Sub-Committee of the Organisation shall be a majority of members appointed.

ITEM 8 (continued)**ATTACHMENT 1****14. Procedure**

The procedure at a meeting of the Organisation shall be in conformity as far as possible with the procedure for meetings of Council and Committees as prescribed by regulations made under the **Local Government Act 1993**, as amended, and in accordance with standing orders adopted by the Organisation which are not in conflict with the above.

15. Resolution of Internal Disputes

- i) Disputes between delegates (in their capacity as members) of the Organisation, and disputes between delegates and the Organisation, are to be referred to a community justice centre for mediation in accordance with the Community Justice Centres Act 1983.
- ii) At least 7 days before a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

16. Disciplining of Delegates

- i) A complaint may be made to the Board by any person that is a delegate of the Organisation:
 - a. has persistently refused or neglected to comply with a provision or provisions of the rules;
 - b. has persistently and wilfully acted in a manner prejudicial to the interests of the association.
- ii) On receiving such a complaint, the Board:
 - a. must cause notice of the complaint to be served on the delegate concerned; and
 - b. must give the delegate at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint; and
 - c. must take into consideration any submissions made by the delegate in connection with the complaint.
- iii) The Board may, by resolution, dismiss the council delegate from membership of the Organisation or suspend the delegate from membership of the Organisation if, after considering the complaint, it is satisfied that the facts alleged in the complaint have been proved.

ITEM 8 (continued)**ATTACHMENT 1**

- iv) If the Board dismisses or suspends a delegate, the President must, within 7 days after the action is taken, cause written notice to be given to the delegate of the action taken, of the reasons given by the Board for having taken the action and of the delegate's right of appeal under Article 17.

17. Right of Appeal of Disciplined Delegate

- i) A delegate may appeal to the Organisation in general meeting against a resolution of the Board under Article 16. within 7 days after notice of the resolution is served on the delegate, by lodging with the Executive a notice to that effect.
- ii) The notice may, but need not, be accompanied by a statement of the grounds on which the delegate intends to rely for the purposes of the appeal.
- iii) On receipt of a notice from a delegate under Clause (i), the Executive must notify the Board which is to convene a general meeting of the Organisation to be held within 28 days after the date on which the Executive received the notice.
- iv) At a general meeting of the Organisation convened under Clause (iii):
 - a) the Executive and the delegate must be given the opportunity to state their respective cases orally or in writing, and
 - b) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- v) If at the general meeting the Organisation passes a special resolution in favour of the confirmation of the resolution, the resolution is confirmed.

18. Powers of the Organisation

- i) The Organisation shall, for the mutual benefit of the areas of the member Councils have power, in accordance with this Constitution, to:
 - a. Make submissions to Governments and other agencies in respect of the areas of the member Councils, consistent with the objectives of the Organisation and adopted Business Plan;
 - b. Carry out the objectives of the Organisation; and

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- c. Receive funds in respect of the:
 - i. staffing of the Organisation
 - ii. carrying out of projects or studies agreed by the Organisation
 - iii. for any purpose that may be authorised by the Organisation.
- ii) The above shall not affect the right of an individual Council acting in its own right on any matters.
- iii) The control, regulation, maintenance and management of the exercise of these powers is vested in the meetings of delegates in accordance with this Constitution subject to any delegation of authority which may have been granted.
- vi) By resolution, and within limits defined in such resolution, to authorise the Executive, a member Council's representative, a staff delegate or a properly appointed sub-committee consisting either whole or part of elected representatives, staff or other persons to exercise or perform on behalf of the Organisation any power, authority, duty or function other than any power, authority, duty or function, the Organisation, by resolution, reserves for itself.

19. Staffing

The Organisation shall have the power to appoint such staff as the Organisation may require from time to time.

20. Advisory Sub-Committees

- i) The Organisation may, from time to time, appoint any number of Committees in connection with any work, activity or object of the Organisation.
- ii) The Organisation shall have power to co-opt any person to assist and/or comprise a sub-committee.

21. Office

The Office of the Organisation shall be at any one of the Member Councils.

22. Financial year

The Organisation's financial year shall commence on 1 July and terminate on 30 June.

23. Finance

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ITEM 8 (continued)**ATTACHMENT 1**

- i) The Organisation shall determine, prior to the February Board Meeting each year, an Annual Budget which will include:
 - the amount of proposed revenue and expenditure by the Organisation
 - the amount in hand available for such expenditure
 - any additional amount required to be raised to meet such expenditure
- ii) In the event of any expenditure not covered by the Annual Budget, the Organisation shall prepare a statement showing:
 - the amount and nature of the extraordinary expenditure
 - the amount in hand available to meet the expenditure after allowing for estimated ordinary expenditure for the balance of the year
 - any additional amount required to be raised to meet the extraordinary expenditure
- iii) The Organisation shall levy each member Council on a basis agreed by all member Councils, the member's proportion of the amount required to meet the expenditure referred to in Clause 20. The member's contribution shall be determined by resolution of the Organisation at the time of adopting the annual budget.
- iv) The Organisation shall pay all moneys received by it to a bank account held in the name of the Organisation and shall use such moneys for the purpose of, and subject to, the terms of this Constitution.
- v) All accounts shall be operated in such manner and by such persons as the Organisation shall from time to time determine. Payments of accounts may be authorised by both the Board President and the Chairman of the General Managers' Advisory Committee. All payments made shall be reported to the Board.
- vi) The accounts of the Organisation shall be kept according to the same principles as the accounts of a member Council and in such books and form as are approved by the auditors to the Organisation.

24. Auditors

- i) The Organisation shall appoint an auditor who shall annually audit the accounts of the Organisation.
- ii) The audited accounts shall be presented to a meeting of the Organisation prior to 30 November each year.

25. Annual Report

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ITEM 8 (continued)**ATTACHMENT 1**

The Organisation shall submit an Annual Report to each of the member Councils with the notice of the Annual General Meeting.

26. Co-operation

For the purpose of performing any powers, duties or functions, the Organisation may make use of the services of an employee of a member Council if the prior approval of the Council is obtained.

27. Termination of Membership

A Council may withdraw from membership of the Organisation on giving twelve months notice of termination to the Organisation. When such termination takes effect, no contribution shall be refunded, no funds will be distributed, and the Constitution remains in force between the remaining members of the Organisation.

28. Amendments

This Constitution may be altered from time to time by a resolution passed at a meeting of the Organisation by votes equivalent to three-fourths the number of delegates entitled to vote, provided that the majority of member Councils are represented by at least one delegate.

29. Termination of Organisation

Upon the termination of this Organisation the debts and liabilities of the Organisation shall be discharged out of the assets of the Organisation. The balance of the assets shall be given or transferred in shares relative to the contribution by each member Council to the member Councils remaining immediately before the termination of the Constitution.

30. Member's Liabilities

The liability of a member council of the Organisation to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of the association as required under Article 23 (iii).

31. Common Seal

- i) The common seal of the Organisation must be kept in the custody of the public officer (Executive Director).
- ii) The common seal must not be affixed to any instrument except by the authority of the Executive and the affixing of the common seal must be attested by the signatures of either 2 members of the

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Executive or by 1 member of the Executive and of the Public Officer (Executive Director)..

32. Custody of Books

Except as otherwise provided by these rules, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the Organisation.

33. Inspection of Books

The records, books and other documents of the Organisation must be open to inspection, free of charge, by a member of the Organisation at any reasonable hour.

ITEM 8 (continued)

ATTACHMENT 1

HISTORY:

Constitution Adopted 15th December, 1999.

Amended: 4 November 2004.

LATE CONFIDENTIAL ITEM**9 COURT ACTION - HUNTERS HILL COUNCIL CHALLENGE TO AMALGAMATION**

Confidential

This item is classified CONFIDENTIAL under Section 10A(2) of the Local Government Act, 1993, which permits the meeting to be closed to the public for business relating to the following: (g) advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Report prepared by: General Counsel

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