

Farming and native vegetation removal

This practice note provides guidance on the operation of planning permit exemptions for native vegetation removal associated with farming activities.

In Victoria a planning permit is required to remove, destroy or lop native vegetation. However, there are specific exemptions which enable native vegetation to be removed without the need for a planning permit.

Native vegetation is defined in planning schemes as plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses.

Follow these steps before removing native vegetation under an exemption

1. Confirm the exemption requirements and conditions

The requirement to obtain a planning permit to remove, destroy or lop native vegetation and the related exemptions can be found at Clause 52.17 of all planning schemes.

No council approval or notice is required to remove native vegetation if an exemption applies. However, some exemptions require approval from the Department of Sustainability and Environment before native vegetation can be removed.

Some exemptions include conditions about the type or amount of native vegetation that can be removed. You should check the relevant planning provisions before undertaking any works that may impact upon native vegetation.

If you are unsure if an exemption applies consult your local council.

2. Check whether a planning scheme overlay applies to the land

Several environment and land management planning scheme overlays include separate requirements to obtain a planning permit to remove, destroy or lop any vegetation (both introduced and native vegetation). These overlays are:

- ▶ Environmental Significance Overlay (ESO, Clause 42.01)
- ▶ Vegetation Protection Overlay (VPO, Clause 42.02)
- ▶ Significant Landscape Overlay (LSO, Clause 42.03)
- ▶ Erosion Management Overlay (EMO, Clause 44.01)
- ▶ Salinity Management Overlay (SMO, Clause 44.02)

The planning permit requirements under these overlays are separate to the requirements under Clause 52.17. This means that if one of the overlays covers your land, a permit may still be required to remove native vegetation even if an exemption under Clause 52.17 applies. Each overlay has its own list of exemptions for vegetation removal.

3. Check whether a native vegetation precinct plan applies to the land

A native vegetation precinct plan is a plan relating to native vegetation within a defined area. The native vegetation precinct plan is incorporated into the planning scheme and listed in the schedule to Clause 52.16.



Clause 52.16 requires a planning permit to remove, destroy or lop native vegetation. However, a planning permit is not required if the removal, destruction or lopping of native vegetation is in accordance with an incorporated native vegetation precinct plan or is exempt under the table to Clause 52.16-4.

4. Check whether other laws apply

Even if removal of native vegetation is exempt under the planning scheme, other legal requirements about native vegetation removal may apply under Victoria's *Flora and Fauna Guarantee Act 1988* and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

5. Avoid native vegetation removal where practical

Several exemptions do not apply where there is a practical opportunity to site buildings and works to avoid the removal, destruction or lopping of native vegetation.

Land owners and land managers should always carefully assess the location of new buildings and works to avoid impacts on native vegetation where it is practical to do so.

This requirement implements the first step (**avoid**) of the three step approach to native vegetation defined in *Victoria's Native Vegetation Management – A Framework for Action* (Department of Natural Resources and Environment 2002).

6. Minimise the extent of native vegetation removal

All exemptions operate on the basis that the removal, destruction or lopping of native vegetation is to be undertaken to the minimum extent necessary. Where the removal, destruction or lopping of native vegetation under an exemption cannot be avoided, the extent and impacts of removal must be minimised through the planning, design and carrying out of activities, buildings and works.

This requirement implements the second step (**minimise**) of the three step approach to native vegetation defined in *Victoria's Native Vegetation Management – A Framework for Action* (Department of Natural Resources and Environment 2002).

7. Obtain any consents required

Several of the planning permit exemptions require the consent of the Department of Sustainability and Environment to remove native vegetation. This consent must be obtained prior to removing native vegetation.

The consent of the relevant land manager is always required to remove native vegetation on public land including parks, road reserves and Crown land.

How the exemptions work

The following section explains how the exemptions work in more detail.

What happens when more than one exemption applies?

The exemptions operate independently of one another. For example, a large standing dead tree cannot be removed under the dead vegetation exemption. However, a large standing dead tree may be removed to construct a property boundary fence under the Fences exemption or, if it presents an immediate risk of personal injury or damage to property, it can be removed under the emergency works exemption.

Exemptions with time limits

Several exemptions only allow a specified area or amount of native vegetation removal within a five year period. The five year period commences on the day that native vegetation is first removed under the exemption.

If a land owner or manager reaches the exemption limit in two years, no more native vegetation can be removed under that exemption for another three years.

Contiguous land in the same ownership

Several exemptions permit a specified area or amount of native vegetation removal on contiguous land in the same ownership. Contiguous land is land which may be in different titles but which either shares a boundary or is in close proximity, for example, located either side of a road.

For example, if a property ownership is made up of three separate 25 hectare titles with shared boundaries, under the Pest animal burrows exemption the maximum amount of native vegetation (not including a tree) that can be removed across all three titles is 1 hectare. The exemption **does not** enable the removal of 1 hectare of native vegetation on each title.

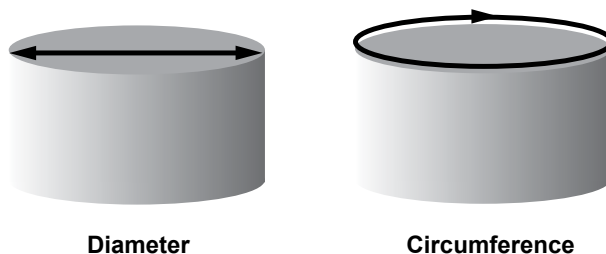


Calculating tree size

Several exemptions include specific conditions related to the size of a tree. For example, the dead vegetation exemption does not apply to a standing dead tree with a diameter of 40 centimetres or more at 1.3 metres above ground level.

Measuring diameter requires measuring the distance through the tree and there are special tapes that do this. Alternatively the circumference can be measured around the tree. The diameter of the tree can then be estimated by dividing the circumference by **3.14**.

$$\text{Diameter} = \frac{\text{Circumference}}{3.14}$$



Agricultural production

Two exemptions apply to the removal of native vegetation associated with the construction or maintenance of buildings and works used for agricultural production. This includes a dam, utility service, bore and accessway.

Agricultural production is any form of primary production of renewable commodities including crop raising, cattle grazing, animal breeding and intensive animal industries. It **does not** include extractive industry, mining or timber production from native forest.

Keeping track of vegetation removal

Land owners and managers should keep a detailed record of the native vegetation which is removed under an exemption.

The record can include photos, maps and details of the amount and type of vegetation removed, the date of the removal, method of removal and the reason for the removal.

This information is important to demonstrate compliance with the exemption conditions and track the amount of native vegetation that has been removed over time.

Exemptions under Clause 52.17

Under Clause 52.17 there are 31 different exemptions covering a range of activities and types of native vegetation. Several of these exemptions are specifically related to farming activities and are described in detail below.

Lopping and pruning for maintenance

This exemption allows the pruning or lopping of native vegetation for maintenance purposes only.

Under this exemption no more than one-third (1/3) of the foliage can be removed from any individual plant.

This exemption **does not** apply to:

- ▶ pruning or lopping of the trunk of a tree or shrub
- ▶ native vegetation within a road or railway reservation.

The types of maintenance activities that this exemption would cover include maintaining private accessways and keeping overhanging branches clear of buildings.

Grasses

This exemption allows the mowing or slashing of native grasses for maintenance only.

Where grass does not form part of a lawn, garden or other planted area, the grass must be maintained at a height of at least 100 millimetres above ground level. This is to ensure the ongoing health of the grass.

Other exemptions permit the complete removal of native grasses if associated with specific activities, for example, the construction of a dam in the Farming Zone or Rural Activity Zone.

Regrowth

This exemption allows the removal of native vegetation regrowth on land which has previously been lawfully cleared of naturally established native vegetation.

Under this exemption the vegetation regrowth **must be** less than 10 years old.

This exemption **does not** apply to regrowth after native vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.

There are separate options under this exemption for Bracken (*Pteridium esculentum*) and native vegetation covered by a Property Vegetation Plan or within a timber plantation.



Dead vegetation

This exemption allows the removal of native vegetation which is dead, other than large standing dead trees.

A large tree has a diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

Removing a large standing dead tree requires a planning permit. The planning permit process enables the potential habitat values of the tree to be properly assessed.

Dead vegetation can provide nesting sites for many bird species, shelter for bats and small native animals such as possums. In some areas dead vegetation represents the most important habitat attribute and is an important part of the ecosystem, providing a substrate for fungi and invertebrates.

Weeds

This exemption allows the removal of native vegetation in association with the removal of a weed listed in the schedule to Clause 52.17.

In some circumstances when removing weeds the incidental removal of native vegetation cannot always be avoided. This exemption covers these circumstances.

Under this exemption the maximum extent of native vegetation which can be removed on contiguous land in the same ownership in a five year period is:

- ▶ 1 hectare of native vegetation which does not include a tree; and
- ▶ 15 native trees if each tree has a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level.

You must obtain a planning permit to exceed these limits.

Pest animal burrows

This exemption allows the removal of native vegetation in association with the removal of pest animal burrows.

In some circumstances when removing pest animal burrows the incidental removal of native vegetation cannot always be avoided. This exemption covers these circumstances.

This exemption only applies to land in the Farming Zone and the Rural Activity Zone.

Under this exemption the maximum extent of native vegetation which can be removed on contiguous land in the same ownership in a five year period is:

- ▶ 1 hectare of native vegetation which does not include a tree; and
- ▶ 15 native trees if each tree has a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level.

You must obtain the written agreement of an authorised officer of the Department of Sustainability and Environment to exceed these limits.

Complying with the *Catchment and Land Protection Act 1994*

Exemptions allow the removal of native vegetation to comply with a land use condition or land management notice served under the *Catchment and Land Protection Act 1994*.

Planted vegetation

This exemption allows the removal of native vegetation that has been planted for commercial and landscaping purposes including crops, pasture, agroforestry, shelter belts, woodlots, gardens and the like.

This exemption **does not** apply if public funding was provided to assist in planting or managing the native vegetation and the terms of the funding did not anticipate removal or harvesting of the vegetation.

Emergency works

This exemption allows the removal of native vegetation which presents an immediate risk of personal injury or damage to property.

Under this exemption, only that part of the native vegetation which presents the immediate risk can be removed.

For example, if a tree branch has been damaged in a storm but the remainder of the tree is unaffected, only the branch which poses the immediate risk can be removed without a planning permit.

Fire protection

Clause 52.17 includes several exemptions that allow the removal of native vegetation to reduce the threat to life and property from wildfire, including the removal of native vegetation for fire fighting measures, periodic fuel reduction burning or the making of a fuel break or fire fighting access track up to six metres wide (specific regulations that apply to burning off on private land).



There are also exemptions that enable residents to reduce the fuel load around a dwelling or other building used for accommodation to manage risk from wildfire. These exemptions only apply to native vegetation on land in the same ownership as the land on which the building is located.

The definition of accommodation under Clause 74 of planning schemes includes dwellings (ie. houses), camping and caravan parks and retirement villages.

These exemptions can only be used to protect **existing** houses and other buildings used for accommodation. If native vegetation is required to be removed to protect a proposed dwelling from wildfire then a planning permit may be required and the vegetation removed may need to be offset.

Trees overhanging a dwelling

This exemption allows the lopping or removal of any part of a tree overhanging a dwelling or other building used for accommodation. Under this exemption only that part of the tree which is overhanging the building and which is necessary for fire protection can be removed or lopped.

Native vegetation within 30 metres of a dwelling

This exemption allows the removal of native vegetation within 30 metres of a dwelling or other building used for accommodation provided:

- ▶ at least 50 percent of native shrubs are retained; and
- ▶ native grasses are kept to at least a height of 100 millimetres.

This exemption **does not** apply to trees.

Native vegetation beyond 30 metres of a dwelling

This exemption allows the removal of native vegetation beyond 30 metres of a dwelling or other building used for accommodation and up to a maximum distance of 95 metres.

The distance of native vegetation which can be removed depends on the location and type of native vegetation and the slope of the land.

The distance must be calculated using the Table and Diagram in Clause 52.17-7.

Under this exemption:

- ▶ at least 50 percent of native shrubs must be retained; and
- ▶ native grasses must be kept to at least a height of 100 millimetres.

This exemption **does not** apply to trees.

Before any native vegetation is removed, destroyed or lopped under this exemption, a plan must be prepared and submitted to the Department of Sustainability and Environment. The plan must cover the area within 100 metres of the building and show:

- ▶ The north-western and eastern zones of the building as shown in the Diagram to Clause 52.17-7.
- ▶ The slope of the land and the direction of the slope from the building in each zone.
- ▶ The vegetation type within each zone.

The Country Fire Authority's *Building in a Wildfire Management Overlay Applicant's Kit* (CFA 2007) provides practical advice for conducting an assessment of the vegetation around your dwelling and preparing a plan.

The regional offices of the Country Fire Authority and the Department of Sustainability and Environment can assist you to plan for wildfire on your property and provide guidance on how to minimise impacts on native vegetation.

Existing and approved buildings

This exemption allows the removal of native vegetation to enable the:

- ▶ construction of a building approved by a planning permit or building permit granted before 15 September 2008
- ▶ use and maintenance of a building constructed or approved by a planning permit or building permit granted before 15 September 2008.

This exemption applies to all existing and approved buildings, including dwellings, in all zones.

This exemption **does not** apply to:

- ▶ native vegetation to be removed, destroyed or lopped to enable the operation or maintenance of a fence (see below for the exemption that applies to maintaining existing fences)
- ▶ native vegetation located more than 10 metres from a building.



Existing buildings and works in the Farming Zone and Rural Activity Zone

This exemption allows the removal of native vegetation to enable the use or maintenance of a building or works used for agricultural production.

This exemption only applies to land in the Farming Zone and the Rural Activity Zone.

Types of buildings and works covered by this exemption include dams, bores, horticultural trellising and accessways.

This exemption **does not** apply to:

- ▶ native vegetation removed, destroyed or lopped to enable the use or maintenance of a dwelling
- ▶ native vegetation removed, destroyed or lopped to enable the operation or maintenance of a fence (see below for the exemption that applies to maintaining existing fences)
- ▶ native vegetation located more than 10 metres from a building.

New buildings and works in the Farming Zone and Rural Activity Zone

This exemption allows the removal of native vegetation to enable the construction of a building or works used for agricultural production.

This exemption only applies to land in the Farming Zone and the Rural Activity Zone.

The types of buildings and works covered by this exemption include internal fences, dams, bores, and accessways.

Under this exemption the maximum extent of native vegetation which can be removed on contiguous land in the same ownership in a five year period is:

- ▶ 1 hectare of native vegetation which does not include a tree
- ▶ 15 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level; and
- ▶ 5 native trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

You must obtain a planning permit to exceed these limits.

This exemption **does not** apply:

- ▶ to native vegetation removed to enable the construction or operation of a pivot irrigation system or horticultural trellising

- ▶ where there is a practical opportunity to site the buildings or works to avoid the removal of native vegetation.

Construction of a new dwelling in the Farming Zone and Rural Activity Zone

This exemption allows the removal of native vegetation to enable the construction of a new dwelling.

This exemption only applies to native vegetation on land in the Farming Zone and the Rural Activity Zone.

Under this exemption the maximum extent of native vegetation which can be removed on contiguous land in the same ownership in a five year period is:

- ▶ 300 square metres of native vegetation which does not include a tree
- ▶ 5 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level; and
- ▶ 1 native tree if the tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

You must obtain a planning permit to exceed these limits.

This exemption **does not** apply:

- ▶ to native vegetation removed to enable the construction of a tennis court, horse ménage (an arena for horse training and dressage) or swimming pool; or
- ▶ where there is a practical opportunity to site the buildings or works to avoid the removal of native vegetation.

Fences

This exemption allows the removal of native vegetation to enable the construction of a fence on a boundary between properties in different ownership.

The combined maximum width of clearing must not exceed four metres (see Figure 1). Vegetation can be cleared any distance either side of the fence provided the combined width does not exceed four metres.

This exemption also applies to the operation or maintenance of an existing fence, including an internal fence.

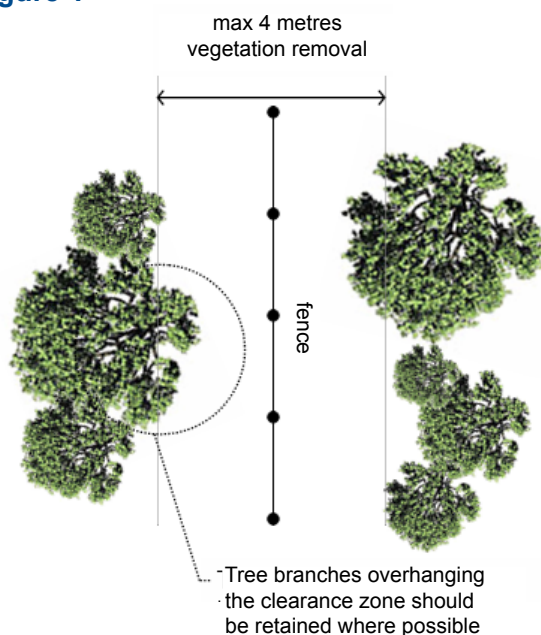
Removal of native vegetation from Crown land requires the authorisation of the Crown land manager.



Removal of vegetation within a road reserve requires the authorisation of the relevant road authority.

This exemption **does not** apply to the construction of fences internal to a property. Removal of native vegetation to enable the construction of an internal fence within the Farming Zone or Rural Activity Zone is subject to the limits detailed in the **New buildings and works in the Farming Zone and Rural Activity Zone** exemption above.

Figure 1



Personal use

This exemption allows the removal of reasonable amounts of wood for personal use by the owner or occupier of the land.

This exemption is limited to removing the vegetation by cutting only, for example by axe, hand saw or chainsaw.

Personal use includes wood used for firewood, the construction of fences and buildings on the same land and hobbies such as craft.

This exemption **does not** apply to:

- ▶ standing living and dead trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level
- ▶ living native vegetation on contiguous land in the same ownership with an area less than 10 hectares.

Grazing

This exemption allows the removal of native vegetation, including native vegetation on unused roads specified under Section 400 of the *Land Act 1958*, as a result of grazing by domestic stock.

Stock movements on roads

This exemption allows the removal of native vegetation as a result of moving stock along a road.

This exemption **does not** apply to the removal of vegetation as a result of holding stock in a temporary fence (including an electric fence) on a roadside for the purpose of feeding.

Exemptions under planning scheme overlays

Under each of the five planning scheme overlays there are categories of exemptions covering a range of activities and types of native vegetation. Several of these exemptions are specifically related to farming activities and are described in detail below.

Bracken

This exemption allows the removal of Bracken (*Pteridium esculentum*).

Under this exemption the Bracken must have naturally established or regenerated on land lawfully cleared of naturally established vegetation.

This exemption **does not** apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.

Noxious weeds

This exemption allows the removal of a noxious weed the subject of a declaration under section 58 or section 58A of the *Catchment and Land Protection Act 1994*. This exemption does not apply to Australian Dodder (*Cuscuta australis*).

Pest animal burrows

The exemption allows the removal of vegetation to enable the removal of pest animal burrows.

The written agreement of an officer of the Department of Sustainability and Environment is required before any vegetation can be removed under this exemption. This is different from the Pest animal burrows exemption under Clause 52.17 described above.



Complying with the *Catchment and Land Protection Act 1994*

Exemptions allow the removal of native vegetation to comply with a land use condition or land management notice served under the *Catchment and Land Protection Act 1994*.

Planted vegetation

This exemption allows the removal of vegetation which has been planted or grown as a result of direct seeding for Crop raising or Extensive animal husbandry.

Crop raising is defined in planning schemes as land used to propagate, cultivate or harvest plants, including cereals, flowers, fruit, seeds, trees, turf, and vegetables.

Extensive animal husbandry is defined in planning schemes as land used to keep or breed farm animals, including birds, at an intensity where the animals' main food source is obtained by grazing, browsing, or foraging on plants grown on the land.

Emergency works

This exemption allows the removal of vegetation which presents an immediate risk of personal injury or damage to property.

Under this exemption, only that part of the vegetation which presents the immediate risk can be removed.

For example, if a tree branch has been damaged in a storm but the remainder of the tree is unaffected, only the branch which poses the immediate risk can be removed.

Applying for a planning permit to remove native vegetation

A planning permit is required to remove, destroy or lop native vegetation not covered by an exemption.

Native vegetation removed under a planning permit may be required to be offset. A native vegetation offset is any works or other actions to make reparation for the loss of native vegetation arising from the removal of native vegetation.

A planning permit applicant's kit to help applicants provide the right information for proposals that involve removing relatively small areas of native vegetation or a small number of trees is available from the Department of Sustainability and Environment.

Councils must refer planning permit applications involving the removal of larger areas of native vegetation to the Department of Sustainability and Environment. A guide explaining how the Department of Sustainability and Environment will assess referred planning permit applications is also available.

More information is available online

Native vegetation planning provisions

Clause 52.17 and overlay provisions can be viewed online at www.dpcd.vic.gov.au/planningschemes

Practice and advisory notes that explain the operation of the native vegetation planning provisions are available at www.dpcd.vic.gov.au/planning/publications. The practice notes are:

- ▶ *Managing native vegetation in the planning system* – how to plan for the protection and removal of native vegetation using native vegetation precinct plans and property vegetation plans.
- ▶ *Native vegetation offsets* – how to determine and provide offsets.
- ▶ *Assessing applications involving native vegetation removal* – how to assess a planning permit application for native vegetation removal.
- ▶ *Preparing a native vegetation precinct plan* – when a precinct plan can be used and how to prepare a precinct plan to manage native vegetation.
- ▶ *Buildings and native vegetation removal*.
- ▶ *New exemptions for native vegetation removal in planning schemes* that provides information about the introduction of new exemptions on 15 September 2008.

Wildfire protection and native vegetation

Information about managing native vegetation for wildfire protection is available from the Country Fire Authority website www.cfa.vic.gov.au and the *Building in a Wildfire Management Overlay Applicant's Kit* (CFA 2007).

Information about burning off regulations is available from the Department of Sustainability and Environment Website www.dse.vic.gov.au.



Noxious weeds and pest animal burrows

Information about noxious weeds and pest animal burrows is available from the Department of Primary Industries website www.dpi.vic.gov.au.

Zones and overlays

To find out what zone land is in or if an overlay covers a property:

- ▶ use the online mapping tool Planning Maps Online at www.land.vic.gov.au
- ▶ view the relevant planning scheme maps at www.dpcd.vic.gov.au/planningschemes
- ▶ contact your local council.

More information about zones, overlays, planning schemes and the planning permit process is available in the *Planning: a Short Guide* booklet.

Information about native vegetation

Information about native vegetation in Victoria is available on the Department of Sustainability and Environment website www.dse.vic.gov.au/nativevegetation

Other legislation

For further information on the *Flora and Fauna Guarantee Act 1988* visit the Department of Sustainability and Environment website or contact the Department 136 186 or by email at customer.service@dse.vic.gov.au.

For further information on the *Environment Protection and Biodiversity Conservation Act 1999* visit the Department of Environment, Water, Heritage and the Arts website at www.environment.gov.au/epbc or contact the Department on (02) 6274 1111.

Useful links

Department of Planning and Community Development

- ▶ [Publications / Practice Notes](#)
- ▶ [Planning schemes / amendments](#)
- ▶ [Planning maps online](#)
- ▶ [Victoria Planning Provisions](#) (Clauses and Overlays)

Victorian Legislation

- ▶ www.legislation.vic.gov.au (select 'Victorian Law Today')

Department of Sustainability and Environment

- ▶ [Native vegetation](#)
- ▶ [Victoria's Native Vegetation Management – A Framework for Action](#)
- ▶ [Planning Permit Applicant's Kit](#)

Country Fire Authority

- ▶ [Building in a Wildfire Management Overlay Applicant's Kit](#)

Commonwealth Legislation

- ▶ [Environment Protection and Biodiversity Conservation Act 1999](#)

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