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# DADA submission to the Inquiry into the Protections within the Victorian Planning Framework



Darebin Appropriate Development Association Inc.

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DADA has been assessing standards in development applications and completed developments in Darebin for over 10 years. We are very disappointed in the varied quality of completed developments and do not believe that the livability and sustainability of housing available should vary depending on the postcode of the development.

In Darebin the quality of development varies significantly from the more affluent southern wards of the municipality to the less affluent northern wards revealing the inconsistency in the assumption that all new development proposals will be an "improvement". We wonder why there are stark differences in design and development outcomes if the Darebin Planning Scheme and the Better Apartment Design Standards apply equally across whole council area.

*'Gentrification of affluent suburbs inevitably leads to poor livability outcomes in poorer postcodes' as shown in research conducted by Dr Melissa Checker, in New York <sup>1</sup>*

## **1. Meeting the Planning Scheme Objectives and Standards**

It is common practice that at every level of the planning application process planning scheme objectives and design standards are traded off against other factors. This 'trading off' of the standards has led to a practice where developers make ambit claims in planning applications so that they can trade back to a position for approval.

So that councils can complete a decision in the given constraints of time, to prevent expensive legal cases at VCAT and to get dwellings built, Councils and VCAT are willing to approve planning applications that are below standard.

It is DADA's belief that the planning scheme should be used strictly as the basic requirements on which to build better outcomes, rather than a tool to negotiate around and trade off against. Equity of improved outcomes cannot be achieved unless the trading off of standards and objectives is stopped.

## **2. Variations to the Approved Planning Proposal**

Council officers tell us that they have no idea what will be the final outcome of a development regardless of the approved planning proposal. This is because developers commonly build and then subsequently apply for and receive a variation to the approved plans. Some developers change plans and do not apply for a variation. Added to this problem is that variation approvals are assessed in-house by council and community objectors or representatives do not get any overview or input.

Council, to some extent, relies on neighbours to notify and request an enforcement officer to inspect completed developments to ensure the completed development complies with the approved proposal. Relying on private building inspectors to enforce approved building and development requirements has been a massive failure in ensuring appropriate oversight of the building and development industry and adequately protecting consumers and residents from poor livability outcomes.

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<sup>1</sup> Dr Melissa Checker, Future Tense, Sun 26 Sep 2021, 12:30pm,  
<https://www.abc.net.au/radionational/programs/futuretense/should-we-really-aim-for-sustainable-development/13540946>

### **3. Fast Tracked Projects**

So that major developments can be completed in a shortened timeline the Victorian Planning Authority has produced a fast track program which is aimed at streamlining the approval process and removing community input with the loss of third party objection rights.

It has been a practice for planning officers to take only a 'desktop view' of a site rather than carrying out a site visit before recommending approval of planning proposals. This has led to negative outcomes where particular aspects of sites are missed and not addressed through the process.

To radically improve livability, wellbeing and sustainability outcomes for future growth in developments, planning applications and approvals should be excluded from the fast track process and third party objector rights need remain for all planning applications.

### **4. Open Space**

Both quantity and quality of open space, whether private or shared, have not been adequately provided in development in Darebin. Council's own research has shown that in the future 18% of new developments need to provide open space to make up for the lack across the local government area.<sup>2</sup>

Unfortunately Darebin Council, like a number of other LGA's, has struggled to gain approval for an 18% open space levy in the proposed planning scheme amendment. Planning Panels of the Department of Environment, Land, Water and Planning have so far rejected any LGA that asks for more than 5% open space requirement in planning proposals. This will result in an inability to make up already lost open space capacity and loss of livability and further degradation of some northern suburbs.

The open space requirement is another aspect of high and medium density dwelling development that can currently be traded for a cash payment or the alternate allocation of open space elsewhere in the municipality. It is obvious that Open space must be located where it's most needed, otherwise clearly reducing livability and decreasing health and safety outcomes for residents. Open space provision should not be traded for cash grants. Planning scheme provision must ensure that passive open space is provided adjacent to residential dwellings for ease of use and improved livability, wellbeing and sustainability.

The Covid 19 pandemic has provided sharp magnification of the faults of high density living and of the lack of adjacent private open space in apartment dwellings. It has shown that shared open space either adjacent or nearby does not replace the provision of attached private open space, especially for families with young children.

Communal open space is only useful if it is big enough to provide for required social distancing in a pandemic and big enough to provide a variety of outdoor activities.

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<sup>2</sup> *Breathing Space: The Darebin Open Space Strategy*, City of Darebin, 2018, <https://www.yoursaydarebin.com.au/openspacestrategy>

## 5. Number of Bedroom in Apartments

Census data from 2016 has shown that the rate of build of three bedroom dwellings has dropped dramatically and has not and will not meet current or future housing needs. Conversely there has been a glut of two bedroom apartments built, many remaining empty for long periods of time or in use only because they are the only type of dwelling available.

The Darebin Housing Policy 2015<sup>3</sup> indicates that future need of three bedroom housing is approximately 27% of new building fabric. The graphic below illustrates the loss of three bedrooms in Darebin from 2011 to 2016. The data is similarly reflected and a number of local government areas in Melbourne. This needs to be addressed.

### Change in number of bedrooms per dwelling, 2011 to 2016

City of Darebin



Three bedroom apartments allow a greater flexibility of living than one and two bedroom apartments. Residents of three bedroom apartments can range anywhere from one person to at least six. We do not want to see families forced to live in smaller dwellings because that is the only type available and/or affordable.

Bob Birrell and Ernest Healy point out the failure of apartment development in Melbourne (and Sydney) to meet housing needs, *'In our view, the main reason for this outcome is that high-rise apartments do not meet the needs of the main source of growth in demand for dwellings, which is coming from families with children. High-rise apartments are simply unsuited to their requirements'*<sup>4</sup>

Apartment planning applications should reflect the percentage of dwelling types, by bedrooms that is required in each local government area in order to meet the housing needs in the future.

<sup>3</sup> Darebin Housing Policy 2013 revised 2015, City of Darebin

<sup>4</sup> Page 13, The Australian Population Research Institute, Research Report, July 2018, Immigration and the Housing Affordability Crisis in Sydney and Melbourne, Bob Birrell Ernest Healy

Local government should be able to reject planning applications that do not include the appropriate mix of dwellings. Ensuring the correct mix of housing types in a development also helps create more diversity in the development and helps create more mixed communities in large developments. Providing for families in apartment developments helps stabilize apartment communities and help reduce the transient nature of residents. This helps build community which in turn improves health and wellbeing.

## **6. Windows, Ventilation and Direct Sunlight**

The common practice of lack of provision of windows especially in bathrooms is a poor outcome for the livability of apartment dwellings. Every room in a dwelling should include windows to allow for views of the sky, passive ventilation and cross ventilation.

Lack of passive ventilation in bathrooms means operating fans to prevent growth of disease causing moulds at the end user's expense. Likewise lack of passive ventilation for cooling creates a greater reliance on air-conditioning. This is a poor outcome for resident's health, budgets and sustainability.

Research has shown that views of the sky from rooms helps create better health outcomes through improved sleep hygiene and improved mental health.

The Covid 19 pandemic has magnified the faults of high density living with poor ventilation. An ability to ventilate a living space is critical to keeping residents safe in a pandemic spread via micro-droplets.

There is still a concern regarding the siting and orientation of high rise apartment blocks where the north face of the building receives the northerly sun, but the south side receives none. This problem could be easily resolved by above the podium or even at grade, rotating the building 45 degrees.

## **7. Green Washing**

Apartments sold off the plan have created particular negative outcomes for buyers and subsequent residents when green facilities and 'best practice' appliances are promised, though not included in contracts because of their shared nature across multiple dwellings, and then not delivered.

Developers improve their bottom line by increasing the cost of individual apartments in a development with good green credentials, and then not providing what was promised.

There is an appetite in the buyer's market for greater green standards than currently required in the planning provisions. Buyers who seek better standards are not protected by government policy if sustainable infrastructure is not provided.

Higher sustainable requirements is better for the livability of everybody on the planet not just those who live in the high and medium density developments and in the adjacent neighbourhood.

## **8. Defects**

*'More than half of Victorians who live in apartments have reported their homes have unrectified defects, according to a national survey. The Apartment Living Report surveyed 3600 apartment owners nationally and revealed that **54 per cent** of the more than 1000 Victorians surveyed are living in apartments with*

defects.<sup>5</sup> The study by Nicole Johnson and Sacha Reid<sup>6</sup>, based on 212 building audit reports, found apartment buildings with at least one type of defect was alarmingly high at: 97% in NSW, **74% in Victoria** and 71% in QLD.

Page 59 at 5.2<sup>7</sup> includes a list of the major negative impacts on resident's health and wellbeing ranging from significant, serious and alarming.

Internationally, the disaster of the Grenfell Tower fire in London in 2017 is an example of poor regulations producing the absolute worse outcome for residents of defects in apartment buildings.

The regulatory environment for the prevention of building defects needs to be improved to prevent the negative impacts on resident's health and wellbeing. The removal of private building inspectors and reintroduction of government employed building inspectors should go some way to reduce conflict of interest and better standards in apartment developments.

A prohibitive fine system for those developers who do not meet the planning and building regulations should have a positive impact on health and wellbeing outcomes for residents.

## **9. Visual Mass and Street Frontages**

A key factor negatively affecting the livability of new dwellings in the suburbs has been the increase of visual mass and the creep of frontage to the footpath.

The planning scheme currently allows a new development to come forward to an average position between the fronts of the adjacent dwellings on either side. Over time this means new developments move forward toward the footpath. With the added increase in height allowances the creep creates overwhelming visual mass to a streetscape. We see substantial front gardens reduced to ground zero to allow for the creep forward and a loss of heritage street frontage.

At a time when we are trying to encourage people to get out of their cars and walk the neighbourhood to improve their health and wellbeing government bodies are removing the welcoming and protective aspects such as cooling canopy cover and inviting street frontages.

Greater set back from the road and footpath allows for more substantial landscaping to reduce noise, improve air quality and allow for passive heating and cooling of new dwellings, leading to better livability and wellbeing of residents.

The planning scheme should be improved to protect street frontages, reduce visual mass, increase vegetation and canopy and support community engagement. There should be significant fines for developers who remove and damage significant trees along with a requirement to replace like for like in canopy cover of removed or damaged trees.

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<sup>5</sup> The Urban Developer, Nina Hendy, Tue 17 Aug 21

<https://www.theurbandeveloper.com/articles/owners-report-defects-in-50pc-of-apartments>.

<sup>6</sup> The Examination of Building Defects in Residential Multi-owned Properties, by Nicole Johnson (Deakin) and Sacha Reid (Griffith), June 2019

<https://www.mopresearchhub.org/wp-content/uploads/2019/06/Examining-Building-Defects-Research-Report.pdf>

<sup>7</sup> Ibid

## **10. Maximum Height limits and Podium Heights**

As discussed elsewhere high density/high rise apartment developments are not meeting the needs for housing in our city. Compounding the problem of the poor standard of livability offered by this type of dwelling complex is the tendency for VCAT to override local council decisions to take control of maximum height limits.

VCAT has approved development applications rejected by Darebin Council. VCAT has inappropriately exceeded height limits set in the local planning scheme by introducing the idea of podiums as an addition to the set height limit. Maximum height limits should include the podium heights in the total or we will have the situation of ever increasing heights thanks to increasing podium heights. This makes a farce of the concept of maximum height limits and is a contradiction of the state government insistence that maximum height limits be included in the planning scheme.

To create more appropriate street frontage podium heights in new apartment designs should not exceed average heights of surrounding buildings and must be included in the maximum height limits required in the local planning scheme.

## **11. Quality of Materials, Fixtures and Fittings**

One of the key elements in apartment design that impacts livability and wellness is the varying quality of materials, fixtures and fittings used both internally and externally.

As discussed elsewhere, the desire for increased profits for developers has led to multiple deaths of residents but exterior cladding is not the only area of failure of government regulation.

It is not uncommon for developers to include, in contracts for apartments bought off the plan, better quality materials, fittings and fixtures than they deliver. As this does not usually fall into the role of council enforcement officers the extra cost and the stress of enforcing the contract has a multitude of negative impacts on the wellness of owner/residents.

The impact of poor quality design and materials has a future toll globally because of the increased waste and cost incurred. Poor quality apartment developments will age faster and need constant renewal, upgrade and renovation. This is a very poor outcome for us all.

Regulators need to better protect owners/residents rights through tighter legislation and greater deterrents for developers to ensure they comply with both the planning scheme and contract law.

## **12. Landscaping**

Darebin Council is not the only LGA in Victoria to record a significant loss of green canopy and green space due to the loss of vegetation through the clear felling of trees for housing development. Some areas of Darebin, specifically those of lower socioeconomic postcodes, have endured the loss of at least 25% of the canopy. This has resulted in an increased heat island effect and poor health outcomes due to higher temperatures in summer. As a result council has had to develop and implement a heat stress strategy and a tree protection strategy.

VCAT has consistently approved development applications that include removal of significant trees and vegetation to be replaced with tube stock. At that rate canopy cover and the improved health and wellbeing it creates will not be returned for at least a generation.

It is a failure of the planning scheme to disregard the significance of vegetation on the health and wellbeing of residents. Canopy replacement should be, at the very least, to the same degree as any canopy removed to help prevent our city getting any hotter in summer.

### **13. Car Parking**

Car parking requirements in the planning scheme are often traded down in apartment development in an attempt to maximize dwelling build and encourage more residents to use other forms of transport.

A common practice for reducing car parking is to advertise apartments as two bedrooms with a study. A two bedroom apartment requires fewer parking spaces but studies are easily converted to bedrooms effectively creating three bedroom apartments without the required parking.

In medium density developments adjacent garages that enter directly into apartments are often converted into bedrooms, forcing parking onto the street creating a more hazardous environment for pedestrians and impacting on waste collection for the whole street.

The use of car stackers, more precisely the non use of car stackers by residents, in an apartment complex has been shown to increase parking in surrounding streets. Parking on the street at a distance from a residential development puts residents at greater risk of crime, health and wellbeing when moving from a locked car to the safety of a locked building.

Over time, car stackers have proven to become less and less popular due to the unreliability, slowness and subsequent lack of confidence in their use.

### **14. Waste Collection**

The common problems around the collection and removal of waste in apartment developments are numerous. If not addressed appropriately these problems create health and safety issues for residents and neighbourhoods.

It is not appropriate, though often seen in medium density developments, that individual dwelling waste bins are stored in garages. Garages are not appropriately ventilated for the purpose and create a risk where residents meet vehicles in the same space.

In high density developments waste collection is often situated at the back of multiple car parks making residents cross entries, driveways and parking spaces to deposit rubbish in either communal or individual bins. These high risk spaces then need to be crossed again on bin night if collection is required from the curb side.

All waste in high density apartments cannot be separated because private companies set the terms and conditions, thus all waste going to landfill and none to recycling.

Individual dwelling waste collection means a number of bins, for recycling as well as general waste. There is not always space for all the bins either on site or come collection night on the curb. Long rows of garbage bins on the curb compounds the problem for neighbours who find no space left to place their bins.

Developers are reluctant to include properly situated and ventilated garbage spaces in prime real estate space where another car space or, even better, an extra apartment could be placed.

Turnover of residents in high and medium density developments is more frequent than in separate or dual occupancy dwellings. In our hinterland suburbs it is common for furniture, appliances and general



waste to be piled on the cube and footpath when an apartment is vacated, creating a hazard that can remain for significant periods before it is cleared by authorities. Taping off the pile of waste is a common practice but this is not sufficient in preventing injury from catching and or tripping.

## **15. Access**

Approximately 18% of the Australian population have a disability, this percentage increases to around 50% for those aged 65 and over.<sup>8</sup> This means that the longer we live, the more likely we are to experience some form of disability. This also means that with our aging population we will need more dwellings with appropriate disability access and provision.

Retrofitting an apartment complex for disability is costly and it is not clear who would pay for this where it hasn't been adequately provided in the first place. Adequate provision for disabled residents and visitors should reflect the percentage of need in the population including provision for the aging population, somewhere around 33%. Disability provision should not be the sole responsibility of social or public housing. A salt and pepper spread in all development complexes is appropriate.

We have seen an improvement in apartment design with the introduction of government guidelines for disability but still see some failures, particularly in shared spaces. Lifts that can fit a wheelchair also need to be large enough for the wheelchair to rotate and lift buttons need to be at wheelchair height. Waste storage and private storage spaces need to be wheelchair accessible and height. Provision for disability parking needs to reflect the number of dwellings provided for people with disabilities in each apartment complex, approximately 33%.

First responder access to apartments, or lack of the adequate provision for it, has a very direct effect on the health and safety of residents and visitors to apartment dwellings.

In suburban apartment design we have seen poor access provision relying on narrow one way lanes for access. Where parking is forced onto surrounding streets there is very little, if any, safe parking on the street and double parking of first responder vehicles creates safety problems as well.

Like provision for residents and visitors with disabilities there should be provision for the safe access and parking of first responder vehicles built into the planning scheme.

## **16. Provision of Social and Affordable Housing**

DADA does not believe in the gifting of public land to developers to provide a mere 10% extra provision of social housing. The loss of public land in this way will inhibit the ability to provide social housing in the future when there is no possibility of reconfiguring space. It is an end game.

DADA has advocated for a salt and pepper mix of social housing in all developments. The percentage of which should reflect the projected need. If the local housing policy indicates that future social housing needs will be 20% then that is what each development application should include, evenly spread throughout the development, not segregated in one area.

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<sup>8</sup> *People with disability in Australia 2020*: Australian Institute of Health and Welfare, 2020  
[People with disability in Australia](#).

Similarly, development applications should also reflect the need for affordable housing in a salt and pepper mix. Further, the terminology of 'affordable housing' needs to be clearly defined as a percentage of income not, as has been commonly argued by developers and councils alike at VCAT, that affordable means cheaper, that any two bedroom apartment with a lower price tag meets the definition of affordable. This definition is spurious and has underpinned the glut of one and two bedroom dwellings built since 2016.

### **17. Housing as an Investment Vehicle**

Though there has been a dramatic increase in the supply of housing in the inner cities of Melbourne and Sydney, there has not been a corresponding reduction in sale prices or rents in housing in the middle ring and outer suburbs. Contrary to claims by the property industry, the problem of unaffordable housing is not a supply problem.

Negative gearing tax breaks on the ownership of two or more homes has led to the demand for housing as a commodity and artificially sustains the need for more housing while increasing prices. It has also created a glut of development of one and two bedroom dwellings, many of which are left empty and left a vacuum in the provision of three or more bedroom dwellings. This creates greater competition for the larger dwellings and drives up the median house price.

DADA believes access to quality affordable housing is a human right and that this will only be achievable by removing tax breaks for negative gearing on investment properties and by applying appropriate penalties to vacant dwellings.

### **18. The VCAT Appeal Process**

VCAT should not be determining planning decisions on their merits, but only upholding an appeal where a Council has behaved unreasonably, for example by ignoring its own standards, or treating similar applications inconsistently. But in practice VCAT acts like a planning body in its own right and as data overwhelmingly shows in favor of developers, one reason why so many developers are eager to raise a case at VCAT.

Prior adverse decisions at VCAT problematically set precedents for future rulings creating further poor outcomes for communities that live with these decisions.

In order to stem the tide of appeals VCAT has increased the cost of community driven appeals meaning that very few residents can afford to appeal, or even worse to pay the costs of losing a case.

DADA has experienced the devolution of the appeals process from a non-advocacy type to one much more like aggressive court cases. On occasion VCAT mediators have encouraged lawyer representatives bullying behavior in an attempt to cower community representatives in order to reach a decision at the consultation stage rather than progressing to a full hearing. Generally there is consistent disregard and poor treatment of community representatives. At worst VCAT members have arrived at a hearing having already made a decision in favour of the developer, as is obvious by their disregard of both community representatives and biased application of the rules.

## **19. Third Party Appeal Rights**

The DADA Charter states 'DADA represents and provides assistance to residents who might feel unheard and powerless when development is happening near them.' We are very concerned that third party appeal rights have been eroded by successive state and local governments. Third party appeal rights have been completely by the 'fast track' process where significant sites are listed for development approval by the state government and not able to be considered by the local council or local residents.

Darebin Council changed the open and transparent process of hearing objections at a planning committee meeting to a 'call it in' model, giving individual Councilors power to block objections without hearing from community objectors. This erosion of third party appeal rights at the local council level is aimed to prevent VCAT cases and to shorten decisions time. In Darebin it has resulted in an abundance of poor quality buildings and housing that does not meet community expectations or provide adequate housing.

DADA believes that the timeline for decisions on development applications be lengthened to allow for adequate review and input by the community.

DADA supports a recommendation that political donations by property developers be banned at all levels of government.

DADA calls for the removal of the 'fast track' process to ensure third party objector rights are protected especially for significant sites.

DADA believes third party appeal rights must be protected and strengthened at all levels of the planning and development process.

## **20. Heritage**

Professor Michael Buxton says that our heritage protection is ineffective compared to that of many other countries. There is no proper consideration of precincts, and our system relies too much on the use of the heritage overlay. Overlays omit too many important areas and buildings. The process is costly, cumbersome, and the overlay protection provisions are weak and contrary to the need to build.

Our view is that a demolition permit should not be issued without a planning permit and demolitions should not occur until the planning process has decided what is to replace it.

This would put a stop to developers and owners demolishing buildings ahead of consideration of their heritage significance. The current arrangement puts demolition powers in the hands of private building surveyors. Requiring a Council planning permit brings Councils and the community into the picture.

DADA has advocated for a protection of heritage to include the aspect or view from the heritage building as well as of the heritage building. Heritage consideration should include the context of the building. Heritage and neighbourhood character is lost when a significant building is sandwiched in between new developments. A heritage overlay should not sit alone in a precinct that is not zoned to reflect or protect the outlook from a heritage building.

DADA supports the call for a clause to be inserted into the Planning and Environment Act requiring VCAT to give effect to the planning policies of local Councils.

## **21. Residential Zones**

The result of the rezoning process led by the now leader of the opposition Mathew Guy was blatantly political and inequitable. Some city councils ended up with very high levels of protection from overdevelopment in their hinterland suburbs by the application of the Neighbourhood Residential Zone. While other councils areas, Darebin in particular have the least protection of valued suburban landscapes with only 11% NRZ even when data shows that an 80% NRZ in Darebin could still deliver projected development to meet projected population demands within the municipality.

In the ensuing period valued housing fabric and suburban streetscapes have been lost and very poor housing outcomes have been built in place, having adverse effects on the livability of our city.

In light of the Covid 19 pandemic and the decline in housing demand DADA believes that residential zoning outcomes must be revisited and more moderate and equitable zoning across Melbourne be achieved.

## **22. Conclusion**

The poor regulation of planning for developer profits has and will end up costing both the residents and taxpayers more due to the increased need for health and wellbeing support in our communities.

Problems with the development outcomes have been highlighted by DADA and many other community groups for many years. Anecdotal data from those living in the apartments and the neighbourhoods surrounding them should be more valued and respected.

It has been a mantra of the current state government that building and development creates jobs. It has been made even clearer due to the Covid 19 pandemic that building and development creates short term jobs predominantly for men while jobs for women have increased into non-paying, social support roles. This is sexist policy and practice that leads to inequality of access and provision of resources and to poor health and wellbeing outcomes, especially for women.

The land given away by the government for a small increase in social housing provision needs to stop and political donations by developers must be banned to eliminate outside influences that compromise the good intentions of the Planning Scheme.

We want to see governments at all levels work to fill vacant bedrooms and dwellings before allowing further destruction of our local environment for developer and investor gain.

A wholesale change in thinking and policy development needs to take place at government level. We particularly want to see the removal of housing as a commodity to be traded for profit and a return to the concept of housing as a protected basic human right.

There needs to be a switch of focus in government thinking at all levels to address the establishment of truly diverse communities and social cohesion, rather than the focus on high density apartment developments for mainly transient residents.

We do not believe the hype that dwellings will not be built if developer profits are reduced. We expect to see greater obligation on developers, through the change in regulation, to improve living outcomes for all residents.

DADA submission to the Inquiry into the Protections within the Victorian Planning Framework

We look forward to the final outcomes of your inquiry in the hope for even better planning and development outcomes in the near future.

Maria Poletti

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