

**Memorandum of
Understanding between
TENTERFIELD SHIRE COUNCIL**

and

Transport for NSW

for

Project

Management &

Delivery of the

Dumaresq Overflow Channel Bridge Reconstruction Project

20-Mar-2023



<p>The Project</p>	<p>This Memorandum of Understanding (MOU) relates to the project management and delivery by Transport for NSW (TfNSW) of works to upgrade of Dumaresq Overflow Channel Bridge located 90km West of Tenterfield (Project). Further details about the Project are set out in Annexure A.</p> <p>The Project is being delivered by TfNSW for and on behalf of the Tenterfield Shire Council (TSC).</p>
<p>Aims of this MOU</p>	<p>This MOU documents the basis on which TfNSW will develop and deliver the Project for and on behalf of the TSC and sets the requirements and expectations of a collaborative approach to achieve documented project outcomes.</p> <p>This MOU also defines and allocates responsibility for the financial costs and risks of the Project between the parties and sets a framework for governance to manage these matters. The parties will enter into a separate funding agreement to capture these responsibilities and risks.</p> <p>The intended benefits of this MOU, which will arise through a collaboration of resources and expertise, include to:</p> <ul style="list-style-type: none"> • Leverage TfNSW’s and TSC's technical expertise to achieve synergy in the delivery of the Project • Facilitate TSC access to extensive resources possessed by the broader TfNSW organisation • Respond quickly and flexibly to issues arising in connection with the Project • Assess risks and mitigation strategies so TfNSW and TSC are fully aware of, and well positioned to manage any exposure to risks associated with the Project • Provide opportunities for professional development of TSC and TfNSW staff, • Foster and encourage the development of a mutually beneficial ongoing, cooperative relationship between TfNSW and TSC. <p>TfNSW will develop and deliver the Project using its internal and contract resources. Where practicable TSC resources may also be engaged on the Project.</p> <p>TSC will make monthly payment to TfNSW to cover the cost of carrying out the Project. Payment requests will be supported by an Invoice, financial ledger and Monthly Status Report (MSR).</p> <p>This MOU will assist to ensure project scope is managed so that the total cost falls within the approved project funding agreement and the project is delivered within Natural Disaster funding guidelines.</p>
<p>Involvement of TfNSW</p>	<p>Section 55(3)(b) of the <i>Local Government Act 1993</i> (NSW) provides that the requirement to undertake a competitive tender process for the award of a contract to carry out works does not apply to a contract entered into by a council with the Crown (whether in right of the Commonwealth, New South Wales or any other State or a</p>

	<p>Territory), a Minister of the Crown or a statutory body representing the Crown.</p> <p>This MoU evidences the arrangements agreed to by TSC and TfNSW for the delivery of the Project.</p> <p>TfNSW will, however, competitively tender the carrying out of some the works contemplated by the Project in accordance with its procurement requirements.</p>
<p>Objectives</p>	<p>TfNSW and TSC will work together to achieve the following Project objectives:</p> <ul style="list-style-type: none"> • To ensure delivery of the Project by 30 June 2024 • To deliver the Project within budget parameters to meet the criteria of ‘Australian Government Disaster Recovery Funding Arrangements 2018’ and ‘NSW Essential Public Asset Reconstruction Works Guidelines’ and minimise all project related costs that are ineligible for cost recovery under said guidelines • To meet AS5100 bridge design requirements and ensure that any departures are documented and agreed to by TSC as the owner of the Project • To meet legislative requirements for environment and safety, develop and deliver the Project in an efficient manner and provide a value for money, high quality product • To deliver the Project to any other standards, specifications or requirements accepted by the project governance team (see the Monitoring and Project Governance section below).
<p>Monitoring and Project Governance</p>	<p>TfNSW and TSC will establish a Steering Group, with membership and objectives as defined at Annexure B.</p> <p>TSC and TfNSW will each appoint officers who shall support the Steering Group.</p> <p>The Steering Group will focus on ensuring the Project objectives and principles (as more particularly described in Annexure B) are being achieved as well as release the Project hold points described in Annexure B, allowing the Project to progress through key scope and funding gateways in accordance with Australian Government Disaster Recovery Funding Arrangements 2018’ and ‘NSW Essential Public Asset Reconstruction Works Guidelines.</p> <p>The Steering Group will maintain a strong focus on financial and scope governance to ensure that:</p> <ul style="list-style-type: none"> • the risk of any cost over-run is well managed and minimised; and • the total cost of the Project is within the ULG Amount and the Project is delivered within Natural Disaster funding guideline. <p>In the event that a cost over-run is forecast by TfNSW, the Steering Group will agree on the actions to be taken to ensure that this does not eventuate.</p>

	<p>Following completion of the Project’s scoping and design phase, and in accordance with the Project Governance Hold Point process, the construction estimate will be revised and approved by the Steering Group prior to proceeding into the delivery phase (including procurement).</p>
<p>Funding</p>	<p>The capital costs associated with the Project will be funded through Essential Public Asset Reconstruction Works for AGRN960. Under this facility, an upper limit grant to TSC has been approved in the amount of \$13,210,934.00 (estimate v01 - 9 September 2022 of \$11,487,769.00 + 15%) (the ULG Amount), under Project Number P.0081019.01.001.001.003.</p> <p>TfNSW Natural Disaster Recovery team and TSC are giving further consideration to and will agree on, the proportion of the ULG Amount that will be available to cover the cost of designing and constructing the Project (the Construction Budget). The Construction Budget will be determined upon completion of final design and estimate in compliance to ‘Guidance note 3B deterministic contingency estimation 2018’ P90 estimate as referenced in the DRFA 2018 Section 6.5.3.</p> <p>TfNSW shall:</p> <ul style="list-style-type: none"> • provide monthly, to TSC, forecasts of anticipated monthly project expenditure for the duration of the project; and • update its milestones monthly and present these to the Steering Group via the milestone status report (MSR). <p>The separate funding agreement contemplated by the MOU will set out the agreed arrangements for the payment of costs associated with the design and construction of the Project. These arrangements will include the following:</p> <ul style="list-style-type: none"> • On submission of a monthly invoice TSC will provide payment to TfNSW to the Billable WBS of P.0082362.05.001.017 for costs incurred in the previous month comprising: <ul style="list-style-type: none"> ○ amounts payable by TfNSW to contractors and suppliers it has engaged to carry out the works and/or supply materials and/or goods in connection with the works; and ○ TfNSW’s internal and other costs incurred in connection with the Project. • TSC shall pay the amount of TfNSW’s invoice within 10 Business Days from the date TfNSW’s invoice is received. • The allocation of responsibility for cost exceeding the Construction Budget. <p>In addition to the funding agreement contemplated by this MOU, the parties will put in place the necessary arrangements (for example, a purchase order or similar arrangement) to facilitate payments by TSC to TfNSW for the purpose of funding payments relating to the design and construction of the Project.</p>

<p>TfNSW Obligations</p>	<ol style="list-style-type: none"> 1. Provide all necessary technical support, planning and assistance necessary for the design and construction of the Project. 2. Subject to the terms of this MOU, provide all necessary approvals required for the Project. 3. Engage contractors to carry out the works comprising the Project (on standard TfNSW contract terms) and use reasonable endeavours to ensure the appointed sub-contractors complete the works in accordance with the requirements of the contract. 4. Deliver the final design for the Project (including final estimate of construction costs to a P90 standard) to inform the Construction Budget and the Steering Group's approval of the construction cost estimate. 5. Develop, deliver and manage the Project in accordance with its AS/NZS ISO9001 Quality, ISO45001 Safety, ISO 14001 Environment Management Systems and associated project plans and procedures for Project Development and Delivery. 6. Facilitate the rectification of any defects identified by TSC up until the cessation of the defect's liability period which is 12 months from the practical completion date. 7. Prepare and submit to TSC all documents required for TSC to grant a consent or approval for the carrying out of the works as required by the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<p>TSC Obligations</p>	<ol style="list-style-type: none"> 1. Review and approve all application documents submitted in connection with any consent or approvals for the carrying out of the works as required by the <i>Environmental Planning and Assessment Act 1979</i> (NSW) and otherwise consider and assess any applications for an approval made to it in accordance with all applicable statutes and regulations and provide a response to any applications made to it within a reasonable time of the lodgement of that application. 2. Accept responsibility for the long-term care and maintenance of the Project following the works achieving practical completion, on the basis that TfNSW has no responsibility, obligation and/or liability in connection with Project once practical completion has been achieved (subject to TfNSW obligation #5 referred to above) 3. Without limiting 2 above, manage the rectification of defects appearing in the works comprising the Project post practical completion, including providing notices to the contractor. 4. Project reporting to the TfNSW Natural Disaster team.

Timing	The parties will use their respective best endeavours to procure that the works comprising the Project achieve practical completion by June 2024.
Relationships	<p>Nothing in this MOU:</p> <ol style="list-style-type: none"> 1. creates any relationship of partnership, employment, agency, joint venture, or other similar relationship between TSC and TfNSW; or 2. shall be construed as fettering any discretions of TfNSW or TSC in dealing with any application made to them or approval sought from them and without limitation, nothing in this MOU shall be construed as limiting or fettering in any way the exercise of a statutory discretion or duty by TfNSW or TSC. <p>Neither party has the right or authority to:</p> <ol style="list-style-type: none"> (a) bind the other party by any representation, declaration, or admission; (b) make any contract or commitment on behalf of the other party; or (c) assume any obligation or responsibility on behalf of the other organisation.
Scope Variations	<p>When delivering the project, TfNSW must not undertake or permit any variation to the agreed scope of works or incur any costs in addition to those contemplated by the scope of works, without the prior approval of the Steering Group.</p> <p>The Steering Group will have the flexibility to agree on scope adjustments required to ensure the project best suits the objectives, including the need for the total cost to fall within the approved budget and timing.</p>
Project Finalisation	<p>Bruxner Way is currently designated as a Regional Road. TSC is the roads authority for Bruxner Way. On completion of the Project and achievement of practical completion of the works comprising the Project:</p> <ol style="list-style-type: none"> 1. TfNSW will hand over the Project to TSC; 2. TSC will accept the handover of the Project; and 3. TfNSW will arrange for the works contractor to correct all defects in the works listed in the notice of practical completion (or otherwise identified prior to practical completion but not remedied) as soon as possible after practical completion.
Insurance	TfNSW agrees that it, or its contractors will, for the duration of the Works, have in place the following insurances:











	<ul style="list-style-type: none"> Workers' Compensation as per current Workers Compensation Act 1987 (NSW). Public Liability for an amount of \$20,000,000, Professional Indemnity for an amount of \$20,000,000, Product Liability for an amount of \$20,000,000, and Motor Vehicle cover for loss of and/or property damage caused to or by a motor vehicle while being used for the purpose of or in connection with the TMF Agency's business. <p>Before TfNSW commences the Project and whenever requested in writing by TSC, TfNSW agrees to provide satisfactory evidence of the above insurances being affected and maintained.</p>
Community Engagement	The Steering Group shall agree to a community engagement protocol that governs communication, media, and external issues management.
Issues Resolution	<p>Where there is any dispute between TSC and TfNSW in connection with this MOU (including in relation the undertaking of the Project and payment to TfNSW), either party may refer the dispute to the TfNSW Project Manager and the TSC Project Manager for resolution.</p> <p>If after a period of [5] Business Days the dispute remains unresolved either party may refer the dispute to the Project Steering Group for resolution.</p> <p>If the dispute cannot be resolved by the Steering Group within [5] Business Days from the date on which it was referred to the Steering Group, the Steering Group may refer the dispute to the Director Infrastructure, TSC and the Senior Manager, Bridge Maintenance North, TfNSW.</p> <p>If any dispute cannot be resolved by is the methods set out above within [20] Business Days of the date the dispute was first referred to the TfNSW Project Manager and the TSC Project Manager, either party may refer the dispute to the Chief Executive Officer, TSC and the Director, Maintenance and Delivery, TfNSW for determination. Any such determination shall be final and binding on the parties.</p>
Documents forming this MOU	<p>Documents forming the MOU include:</p> <ol style="list-style-type: none"> This Memorandum of Understanding Annexure A – Project Details Annexure B – Steering Group Any documents referred to in this MOU as forming part of the MOU
Term of MOU	This MOU is to operate from the date of the MOU until completion of the 12 month defect's liability period for the works comprising the Project.
No contract	The terms of this MOU are not intended to be legally binding on the parties, however the parties commit to:


	<ol style="list-style-type: none">1. acting in good faith and to the behaviours and actions as set out in this MOU; and2. entering into agreements and any other arrangements when appropriate or necessary for undertaking the Project, whether or not contemplated by this MOU.
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APPROVAL

<p><u><i>Fiona Keneally</i></u> <small>Fiona Keneally (Mar 20, 2023 11:38 GMT+11)</small></p> <hr/> <p>Fiona Keneally Director Infrastructure For & on behalf of Tenterfield Shire Council</p>	<p><u><i>nicholas mcmullen</i></u> <small>nicholas mcmullen (Mar 20, 2023 14:00 GMT+11)</small></p> <hr/> <p>Nicholas McMullen Senior Manager Bridge Maintenance North For & on behalf of Transport for NSW</p>
<p><u><i>Daryl Buckingham</i></u> <small>Daryl Buckingham (Mar 20, 2023 12:25 GMT+11)</small></p> <hr/> <p>Daryl Buckingham Chief Executive For & on behalf of Tenterfield Shire Council</p>	<p><u><i>Brett Butcher</i></u> <small>Brett Butcher (Mar 20, 2023 17:03 GMT+11)</small></p> <hr/> <p>Brett Butcher Director Maintenance and Delivery North For & on behalf of Transport for NSW</p>

ANNEXURE A: PROJECT PLAN

-  22-013 - CWHA_TSC_Dumaresq Bridge_Preliminary Structural Assessment Report on existing bridge_220518
-  22-013 - CWHA_TSC_DUMARESQ FLOOD CHANEEL BRIDGE CONCEPT DRAWING_220829
-  22-013 - CWHA_TSC_DUMARESQ FLOOD CHANEEL BRIDGE CONCEPT DRAWING_REVIEW_220819
-  22-013_CWHA_TSC_Transmittal-T1
-  22144 Dumaresq Flood Channel Bridge Concept Estimate 19.08
-  35007a logs
-  35007A-FIG 2
-  35007Arpt Dumaresq Valley
-  draft_Project Management Plan (form803) - Dumaresq Bridge
-  Dumaresq Flood Channel bridge_OptionsReport-FinalE211109

-  Dumaresq Tenterfield TfNSW Delivery model_06102022

-  M&D Dumaresq Flood Channel Bridge Concept Estimate v01
-  MSR_Dumaresq Bridge_07Dec22
-  P.0081019.01.001.001.003_AGRN960_Tenterfield Shire Council_Proposed Works
-  Program Development v1 2022-12-07
-  TSC AGRN960 - Dumaresq Bridge Form 306 EPARestoration

ANNEXURE B: PROJECT STEERING GROUP

Membership

Tenterfield Shire Council	Director Infrastructure Project Manager
Transport for NSW	Senior Manager Bridge Maintenance North Works Manager

Objectives

The Steering Group shall provide general project oversight by:

- Receiving timely reports from the Project Manager and reviewing project scope, budget, estimate, program to assure that it conforms with the provisions attached to the funding grant.
- Recommending and agreeing to the scope and estimate of the project as well as eligibility under 'Australian Government Disaster Recovery Funding Arrangements 2018' and 'NSW Essential Public Asset Reconstruction Works Guidelines'.
- Recommending and approving standards and specifications to guide the design and construction of the works.
- Integrating TfNSW and TSC Resources and appropriate execution of work packages by both parties. Work packages may include community engagement, site investigations, environmental approvals, land acquisition, project design, tendering, project construction, project reporting, project finalisation.
- Recommending to Tenterfield Shire Council and TfNSW any significant variation to the approved project scope and delivery plan.
- Certification of the cost of the works and facilitating Asset handover and acceptance.
- Releasing the "*Project Governance Hold points*", other hold points such as design, Planning approval, construction and handover and approving the construction estimate.

Notwithstanding the oversight role provided by the Steering Group, project development, delivery and finalisation including day to day and contract administration is the responsibility of TfNSW.

Conduct of the Steering Group

Meetings of the Steering Group shall be held at least monthly and more often as the Steering Group decides until practical completion at which time the Steering Group will be dissolved. Monthly meetings may be held via tele or video conference arrangements, however there will be a face-to-face meeting generally held quarterly.

The Chairperson shall be the Director Infrastructure, Tenterfield Shire Council.

In the absence of the Chairperson, as the Steering Group's first item of business, the Steering Group shall elect one of its number to preside at the Meeting.

Face-to-face meetings shall be held at the Tenterfield Shire Council office or at a mutually agreed location on site.

Secretarial support shall be provided by Tenterfield Shire Council. Minutes and any business papers shall be circulated to each member of the Steering Group at least three business days prior to each meeting. Minutes shall be taken at each meeting as a separate stand-alone document. Draft minutes shall be circulated to each member not more than ten business days after each meeting. Minutes shall be formally adopted at the following meeting of the Steering Group.

A Meeting shall not proceed unless a quorum of at least two persons, not less than one from each of Tenterfield Shire Council and TfNSW, are present.

The steering group may choose to invite guests as required to the project meetings on an as needs basis. This could include but is not limited to the TfNSW local government and Natural disaster teams.

A milestone status report shall be prepared and submitted to Tenterfield Shire Council and TfNSW following each meeting summarising project status:

- Approved project scope.
- Variations to approved project scope.
- Approved budget.
- Current estimated project cost.
- Approved completion date.
- Current estimated project completion date.
- Work packages - scope, contractor, approved cost, current estimated cost, approved date of completion, estimated date of completion, brief overview of progress and issues, brief summary of actions to address issues.

Dispute Resolution

The Steering group shall collaboratively work together to complete the project.

Should an issue be elevated to the steering group and appropriate action not be able to be agreed by the steering group the issue will be elevated to the Chief Executive TSC and TfNSW Director of M&D North.

Project Governance Hold Points

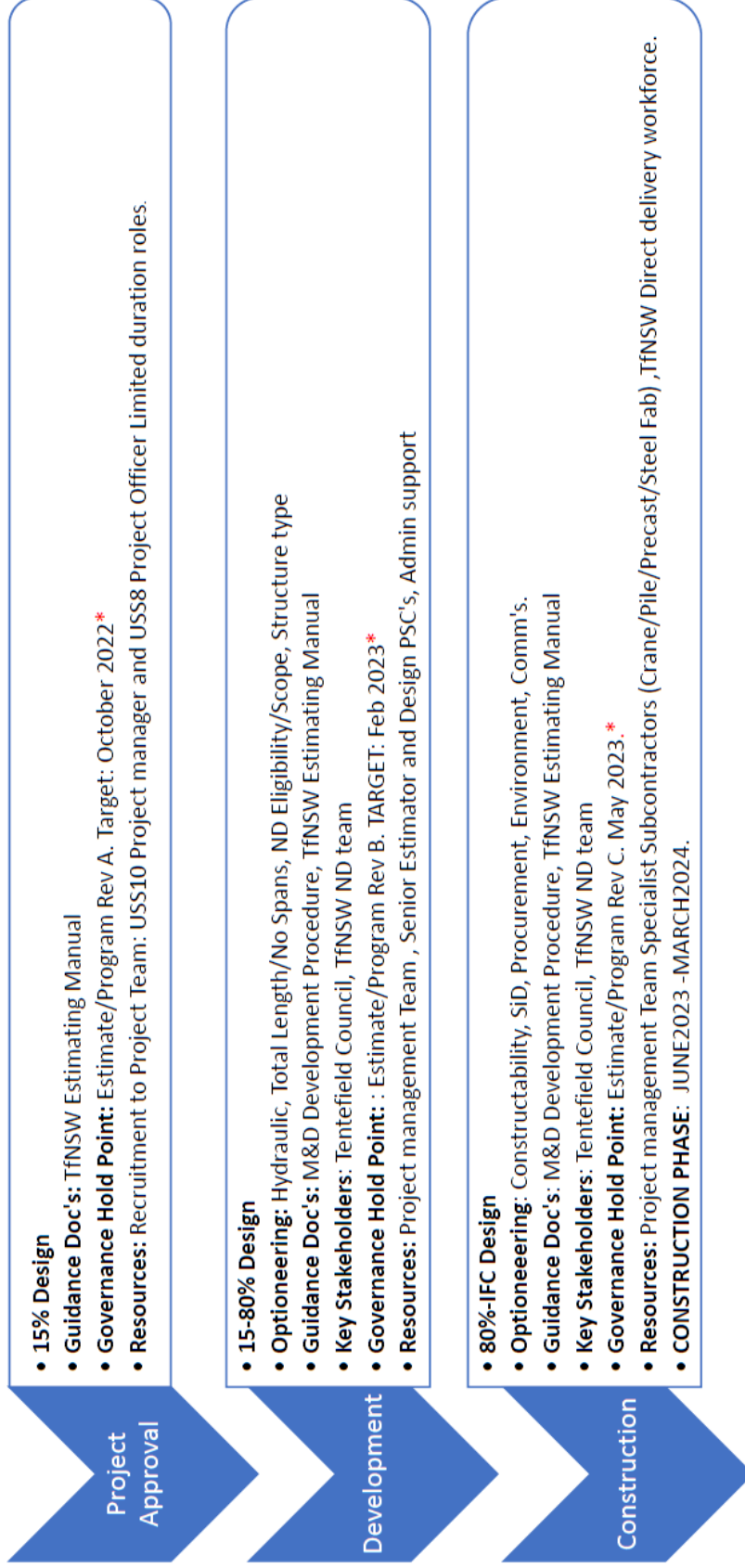
The following hold points are in addition to the hold points identified in the attached "Project Plan on a Page + Governance Model":

- Estimated construction costs exceed Construction Budget.

Dumaresq Overflow Bridge Rebuild Project

Client: Tenterfield Council

Project Plan on a Page + Governance Model



* Hold points to be released by TfNSW Natural Disaster Team and Tenterfield Council ensuring Natural Disaster Eligibility and Asset owner requirements addressed.












Dumaresq Bridge - TSC/TfNSW MOU


Final Audit Report

2023-03-20

Created:	2023-03-15 (Australian Eastern Daylight Time (New South Wales))
By:	chris healy 125060 (chris.healy@transport.nsw.gov.au)
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-  Document created by chris healy 125060 (chris.healy@transport.nsw.gov.au)
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-  Document emailed to Fiona Keneally (f.keneally@tenterfield.nsw.gov.au) for signature
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-  Signer d.buckingham@tenterfield.nsw.gov.au entered name at signing as Daryl Buckingham
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-  Document e-signed by Daryl Buckingham (d.buckingham@tenterfield.nsw.gov.au)
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-  Document emailed to nick mcmullen (nicholas.r.mcmullen@transport.nsw.gov.au) for signature
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-  Signer nick mcmullen (nicholas.r.mcmullen@transport.nsw.gov.au) entered name at signing as nicholas mcmullen
2023-03-20 - 14:00:26 GMT+11

 Document e-signed by nicholas mcmullen (nicholas.r.mcmullen@transport.nsw.gov.au)


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 Document e-signed by Brett Butcher (brett.butcher@transport.nsw.gov.au)

Signature Date: 2023-03-20 - 17:03:34 GMT+11 - Time Source: server

 Agreement completed.

2023-03-20 - 17:03:34 GMT+11

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