

# CONTRACT FOR CARRYING OUT CERTIFICATION WORK

This contract meets the requirements of Section 31 of the Building Development Certifiers Act 2018 and Part 5 of the Building Development Certifiers Act 2020.

## Privacy Notification

*The personal information provided in this contract is done so as required by the Environmental Planning and Assessment Act 1979, and in accordance with such act, the information may be available for public inspection. This personal information may be available for public inspection under clause 268 of the Environmental Planning and Assessment Regulation 2000 or may also be available under the Government Information (Public Access) Regulation 2009. You may make a request that the Council suppress your personal information from being made publicly available. Council will consider any such application in accordance with the relevant legislation*

This is a contract between the person appointing the Principal Certifier and Parkes Shire Council, where Council will carry out certification work for the applicant upon being appointed as the Principal Certifier in relation to the subject development.

The person appointing the Principal Certifier must have the benefit of the development consent and is usually the owner of the land or someone authorised to act on their behalf. The builder cannot appoint the certifying authority unless they are the person with the benefit of the development consent.

## 1. Introduction

- The Parkes Shire Council is the certifying authority and the principal certifier and employs accredited certifiers who are authorised to carry out the certification work, which is the subject of this contract, on behalf of Council. Each authorised officer holds a certificate of individual accreditation that authorises the holder to do that certification work.
- The applicant seeks to engage the Council to perform certification work on the terms set out in this contract.

## 2. Registered Certifier

<b>Name</b>	Parkes Shire Council	
<b>Address</b>	2 Cecile Street Parkes	
<b>Postal Address</b>	PO Box 337, Parkes NSW 2870	
<b>Email</b>	council@parkes.nsw.gov.au	
<b>Telephone number</b>	(02) 6861 2373	
The following officers are employed by Council as registered Certifiers and may carry out certification work and inspections under this contract:		
<b><i>Name</i></b>	<b><i>Class of Registration</i></b>	<b><i>Registration Number</i></b>
Brendan Hayes	Building Surveyor - Unrestricted	BPB1558
Michelle Bicket	Building Surveyor - Unrestricted	BPB1635
Scott Brakenridge	Building Surveyor - Restricted (Class 1 & 10)	BPB1649

## 3. Details of the Person Appointing the Principal Certifier

<b>Name</b>	
<b>Company/Organisation</b>	
<b>Postal Address</b>	
<b>Telephone number</b>	
<b>Email</b>	
<b>Role (Owner, Builder, etc)</b>	





#### 4. Details of the Certification work to be undertaken

The following certification works are requested to be undertaken (please select);

- ☐ The determination of an application for a Complying Development Certificate under Section 4.28(6) of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- ☐ The issuing of a:
- ☐ Construction Certificate under Section 6.5(1)(a) of the EP&A Act
  - ☐ Compliance Certificate under Section 6.5(1)(d) of the EP&A Act
  - ☐ Occupation Certificate under section 6.5(1)(c) of the EP&A Act
- ☐ Appointment as Principal Certifier under Section 6.6(1) of the EP&A Act for building works.
- ☐ The carrying out of functions as Principal Certifier under the EP&A Act.
- ☐ The carrying out of inspections under Section 6.5(1)(b) of the EP&A Act and the subsequent issue of inspection reports for those inspections.

Council will undertake the certification work in a professional manner and in accordance with the requirements of the EP&A Act and the Environmental Planning and Assessment Regulation 2000.

In signing this contract the owner grants consent to Council's authorised officers, as mentioned above, to enter the property to carry out inspections for the certification work indicated above, during reasonable working hours and in accordance with the powers of entry as permitted under the Environmental Planning and Assessment Act 1979.

Where Parkes Shire Council is appointed as the Principal Certifier the service agreement in the attached Schedule A will apply. This agreement sets out the services provided by Council when appointed as Principal Certifier and the Council and Owner's obligations when Council is appointed as Principal Certifier.

#### 5. Description of the site and development works to be undertaken

Description of the development			
Site Address	Number	Street	Town
Title Details	Lot	DP	Section
Type of Approval	Consent Authority	Determination Number	Determination Date
Development Consent	Parkes Shire Council	DA	
Complying Development Certificate	Parkes Shire Council	CDC	
Construction Certificate	Parkes Shire Council	CC	

#### 6. Plans, Specifications and Documents

Related Plans, specifications or other documents issued with the consent or certificate.

*'As referred to in the relevant development consent, construction certificate or complying development certificate, including subsequently approved modifications'.*

#### 7. Fees and Charges

##### Certification Work

Fees and Charges for appointment of Council for certification work are based on its annual fees and charges which are published on its website at [www.parkes.nsw.gov.au](http://www.parkes.nsw.gov.au). Fees for completion of work under this contract are:

Service	Fee
Complying Development Certificate	
Construction Certificate	
Inspection Fees	
Occupation Certificate	
<b>Total</b>	



## Contingencies

The fees above provide for Council to carry out 1 (one) inspection for each critical stage, or other inspections of the building as determined by the certifier to enable the issue of the required Part 4A certificates.

Additional fees may be charged in the following circumstances:

- (i) Additional critical stage inspections or other inspections due to the staging of building works or variations in the construction sequence.
- (ii) Reinspection of works as a result of the relevant stage of construction not being ready, incomplete or unsatisfactory.
- (iii) Additional on-site meetings.

These and any other fees for contingencies are also based on Councils annual fees and charges.

## 8. Payment

### Determination of Applications

If the certification work relates to the issue of a:

Complying Development Certificate, Construction Certificate, Compliance Certificate, Inspection Report or Occupation Certificate

You must pay the fees and charges on or before the lodgement of the application for that certificate or report, excluding any fees and charges for work arising as a result of unforeseen contingencies.

### Appointment as Principal Certifier

If the certification work relates to the functions of a Principal Certifier, you must pay the fees and charges before Council commences those functions, excluding any fees and charges for work arising as a result of unforeseen contingencies.

### Unforeseen contingencies

If Council carries out work as result of unforeseen contingencies, Council will:

- (i) Calculate the fee based on its annual fees and charges; and
- (ii) Give you an invoice within 21 days after the completion of that work.

You must pay any fees and charges for unforeseen contingencies within the invoice terms.

### Unpaid fees

In circumstances where Council is appointed as Principal Certifier and the fees are not paid in accordance with this contract, you as the person appointing the Principal Certifier acknowledge and accept liability for all or any unpaid fees and any associated debt recovery costs plus interest incurred from the time of appointment.

You acknowledge and accept that Council, as Principal Certifier may suspend services where fees have not been paid, or remain outstanding.

## 9. Execution of Contract

This contract is made on the date it is signed by Council:

### Applicants Signature

I accept the terms and conditions of this contract including the associated payment of fees and confirm that:

- I have freely chosen to engage Parkes Shire Council as the registered certifier;
- I have read the contract and documents accompanying the contract and understand the roles and responsibilities of the person and the registered certifier.

Signature		Date	
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### Council's Signature

Signed for and on behalf of Council by an authorised officer:

Officer's Name	
Officer's Position	
Signature	
Date	



#### **10. Statutory Obligations of Accredited Certifiers**

This contract must attach any document containing information about the statutory obligations of registered certifiers that is published by the NSW Fair Trading for the purpose of clause 31 of the Building & Development Certifiers Regulation 2020 and available on its website about the role and objections of certifiers, the applicant's role and information available on the online register of certifiers.



**This agreement applies where a person with the benefit of a development consent (Owner) appoints Parkes Shire Council (Council) as the Principal Certifier.**

The agreement sets out:

- (i) The services Council provides when appointed as Principal Certifier; and
- (ii) The Council's and Owner's obligations when Council is appointed as Principal Certifier.

### **Appointment of Council as Principal Certifier**

The Owner must appoint a Principal Certifier before works commence on site. This is a legal requirement under 6.6(1) of the Environmental Planning and Assessment Act, 1979.

Note: "Owner" refers to the person having the benefit of the development consent or complying development certificate for development involving building work or subdivision work.

### **Notice of Commencement of Work**

At least 2 days before commencing any work the Owner must notify Council of the intention to commence work.

This notice must be given by providing the Notice of Commencement of Building or Subdivision work to Council. This form will be attached to documentation sent to the owner where Council is appointed as the Principal Certifier.

### **Council's Services and Responsibilities as Principal Certifier**

As Principal Certifier, Council will check that building work complies with the Development Consent, Construction Certificate, the National Construction Code Series (NCC), relevant Australian Standards and environmental standards of construction.

As Principal Certifier Council will endeavour to:

- (i) Carry out inspections of the building work as specified in the contract;
- (ii) Advise upon when third party certification may be required;
- (iii) Advise upon the specific works to be completed or consent conditions to be satisfied before issuing occupation certificate(s);
- (iv) Issue the occupation certificate, subject to compliance with the required provisions of the Act.

Council may also serve notices and orders if there is a departure from the development as approved. Council may also issued Penalty Infringement Notices (PIN) if there is a departure from the development as approved.

The owner will need to ensure that a sign is erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifier.

### **Inspections**

#### ***Mandatory Inspections***

Council will undertake mandatory critical stage building inspections where applicable during the building process. These inspections may include:

#### ***Class 1 or 10 building: (single dwellings, carport, garages, shed, swimming pools)***

- (i) After excavation for and prior to the placement of any footings;
- (ii) Prior to pouring in-situ reinforced concrete building element;
- (iii) Prior to covering of the framework of any floor, wall, roof, or other building element;
- (iv) Prior to covering waterproofing in wet areas;
- (v) Prior to covering any stormwater drainage connections;
- (vi) In the case of a swimming pool, as soon as practicable after the barrier (if one is required under the Swimming Pools Act 1992) has been erected;
- (vii) After building work has been completed and prior to occupation certificate being issued in relation the building;
- (viii) Other non-mandatory inspections, as required by the certifier, to satisfy compliance e.g. insulation.



***Class 2, 3 or 4 building: (flats, boarding houses, residential parts of hotels, motels, schools)***

- (i) Prior to covering of fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread, inspection of a minimum of one of each type of protection method for each type of service, on each storey of the building comprising the building work;
- (ii) Prior to covering the junction of any internal fire-resisting construction bounding a sole-occupancy unit, and any other building element required to resist internal fire spread, inspection of a minimum of 30% of sole-occupancy units on each storey of the building containing sole-occupancy units;
- (iii) Prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building;
- (iv) Prior to covering any stormwater drainage connections;
- (v) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.

***Class 5, 6, 7, 8 or 9 building: (office, shop, car park, hospital, school, church, theatres)***

- (i) In relation to a critical stage inspection of a class 9a and 9c building, as defined in the *Building Code of Australia*—prior to covering of fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread, inspection of a minimum of one of each type of protection method for each type of service, on each storey of the building comprising the building work;
- (ii) Prior to covering any stormwater drainage connections;
- (iii) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.

***Other inspections***

In addition, Council may require other inspections to be carried out in order to issue the requested certificates. The stages of construction that may be required to be inspected by Council as the Principal Certifier prior to proceeding to the next stage of construction or covering of works, or the issue of certificates, will be notified with the release of the construction certificate, or subsequent written inspection reports when additional issues may arise during construction.

***Concurrent inspection***

The nominated inspections may only be carried out concurrently with the agreement of the Principal Certifier. All concurrent inspections will be charged as per Council's Fees and Charges. Where requested, all other nominated inspections must be carried out separately. Council as the Principal Certifier must carry out the final inspection in order to issue the required occupation certificate.

***Notice before inspection***

The Owner must ensure that the Principal Contractor (i.e. the builder) provides Council with a minimum of forty eight (48) hours notice (excluding weekends and public holidays) when each critical stage inspection is ready to inspect. All critical stage inspections must be carried out to allow for the Occupation Certificate to be issued. Occupation of the building may not be permitted where inspections have not been carried out as requested.

To notify Council that works are ready for inspection, telephone Council on (02) 68612373 between 8.30am and 5.00pm Monday to Friday to book an inspection.

***Approval of inspections***

Until Council has confirmed in writing that it is satisfied with each stage of construction, building work should not continue to the next stage of construction. You are advised to be on site for the inspection or contact Council for the result of the inspection if you need to proceed immediately to the next stage.

If Council is not satisfied with the relevant stage of construction work, they will notify the Owner in writing and inform them of the reasons for this and the need (if any) to carry out a re-inspection.

***Payment for inspections***

In regard to the critical stage inspections payment in full must be forwarded to Council before any site inspections can take place. Please refer to Council's Fees and Charges for the cost of inspections.



### **Missing critical stage inspections**

If any critical stage inspection applicable to the development is not carried out by reason of not notifying the Principal Certifier, or some unavailable circumstance, the Owner or any other person must, within two (2) days of becoming aware that the inspection has been missed, inform the Principal Certifier in writing of that fact and the circumstances causing the inspection to be missed. If the Principal Certifier is not satisfied with the reason then it may not be in a position to issue the required Occupation Certificate.

If Council is required to carry out additional or reinspections a further charge will apply as per Council's Fees and Charges.

### **Documentation**

Prior to the issue of the Part 4A certificates, the commencement of construction, or at any stage of construction, Council may ask the Owner to provide specialist reports, plans, specifications and certification of building materials, process or works. Typical documents include structural engineering and other specialist details, survey reports, compliance certificates and fire safety certificates.

Any compliance certificates or other certification required must be prepared by an accredited certifier or other suitably qualified person and must reference the relevant provisions of the NCC, Australian Standards and approved drawings, to the satisfaction of Council.

**Note:** It is an offence to knowingly make a false or misleading statement in an important aspect, or in connection with any document lodged with a certifying authority for purposes of the Environmental Planning and Assessment Act 1979 or the Environmental Planning and Assessment Regulation 2001 (clause 283 of the EP&A Regulation).

### **The Owner's Responsibilities**

When Council is appointed as Principal Certifier the Owner must:

- (i) Ensure that a sign is erected in a prominent position on site showing the name and telephone number (outside of working hours) of the principal contractor (builder) and stating that unauthorised entry to the site is prohibited;
- (ii) Ensure that valid public liability insurance cover to the value of \$10,000,000.00 (minimum) is held by the Owner/the builder;
- (iii) Ensure the Principal Contractor is advised of the inspections required by Council and that the directions of Council are to be observed to ensure compliance with the development consent, construction certificate, NCC and the terms of this Agreement;
- (iv) Notify at least forty-eight (48) hours before each stage of construction for which Council requires an inspection is ready to be inspected (or re-inspected);
- (v) Provide any specialist reports, plans, specifications and certification of building materials, process or works requested by Council at any stage of construction prior to issue of an occupation certificate;
- (vi) Comply with all relevant legislation, consents and approvals relating to the subject development including but not limited to the following Acts and regulations made there under:
  - The Environmental Planning and Assessment Act 1979;
  - The Contaminated Land Management Act 1997;
  - The Protection of the Environment Operations Act 1997;
  - The Local Government Act 1993;
  - The Roads Act 1993;
  - The Road Transport (Safety and Traffic Management) Act 1999.

**Note:** To vary and modify a condition of consent requires the submission and approval of an application under s96 of the Environmental Planning and Assessment Act 1979.

- (vii) Inform Council of any known breach of any relevant legislation or matter that may require rectification or remediation as soon as practicable but not less than twenty-four (24) hours after the Owner becomes aware of the breach or matter.
- (viii) Pay the service and inspections fees detailed in Council's Fees and Charges.

### **Replacing Council as Principal Certifier**

If the Owner wishes to at any stage after the appointment to replace Council with another Principal Certifier it will need Council's authority in writing to do so. The procedure is outlined on The Building Professionals Board Website at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

### **Further Information**

For further information please contact Council's Planning and Environment Department between 8.30am and 5.00pm Monday to Friday on (02) 6861 2373.





## Information about registered certifiers – building surveyors and building inspectors

**Important: this is a summary document only.**

Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Fair Trading website has more information about certifiers.

Under section 31(2) of the *Building and Development Certifiers Act 2018* and clause 31 of the *Building and Development Certifiers Regulation 2020*, a contract to carry out certification work must be accompanied by an applicable document made available on the website of the Department of Customer Service (which includes NSW Fair Trading)<sup>1</sup>. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

This document summarises the statutory obligations of the registered certifier who will assess your development and your obligations as the applicant for the development. It also sets out the types of information that can be found on Fair Trading's online register of registrations and approvals.

### Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

### Who does a registered certifier work for?

A registered certifier is a public official and independent regulator, registered by the Commissioner for Fair Trading.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of \$110,000 and/or two years imprisonment.

<sup>1</sup> Visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) and search 'certification contracts'.





## Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

## What does a registered building surveyor do?

Registered building surveyors issue certificates under the *Environmental Planning and Assessment Act 1979* (construction certificates, complying development certificates and occupation certificates), act as the **principal certifier** for development, and inspect building work.

The principal certifier will attend the site to carry out mandatory inspections at certain stages. When construction is complete, the certifier may issue an occupation certificate, which signifies that the work:

- is 'suitable for occupation' – this does not necessarily mean all building work is complete
- is consistent with the approved plans and specifications
- meets all applicable conditions of the approval.

The certifier does not manage or supervise builders or tradespeople or certify that the builder has met all requirements of the applicant's contract with the builder.

## What does a registered building inspector do?

Registered building inspectors carry out inspections of building work<sup>2</sup> with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

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<sup>2</sup> Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.



## Principal certifier enforcement powers

If the principal certifier becomes aware of a non-compliance with the development approval, the certifier must, by law, issue a direction to you and/or the builder, requiring the non-compliance to be addressed. If it is not, the certifier must notify the council which may take further action.

The certifier is also required to respond appropriately if a complaint is made about the development.

## Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au):

- [Details of registered certifiers](#) (or search 'appointing a certifier' from the homepage)
- [Disciplinary actions against certifiers](#) (or search 'certifier disciplinary register' from the homepage).

## Questions?

The Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '[what certifiers do](#)' for information about a certifier's role and responsibilities.
- Search '[concerns with development](#)' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au) provides information on the NSW planning and development certification system.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Fair Trading website for more information.

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## Role of registered certifiers – *Home Building Act 1989*

**Important: this is a summary document only.**

This is the form of information about the role of a registered certifier, approved by the Secretary for the holder of a contractor licence to give to the other party to a contract. It is an offence under section 11B of the *Home Building Act 1989* if the licence holder does not provide this document to the other party before entering into a contract.

This requirement applies to a contract under which the licence holder undertakes:

- to do, in person, or by others, any residential building work or any specialist work, or
  - to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done,
- but only if a registered certifier will be required with respect to some/all of the work.

This requirement does not apply to:

- a contract to do residential building work entered into between the holder of a contractor licence and a developer with respect to the work,
- a contract for which the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed \$5,000,
- a contract of a class prescribed by the *Home Building Regulation 2014*<sup>1</sup>.

### A registered certifier is a public official, independent of the contractor

Registered certifiers are public officials who do not work for builders, contractors, developers or property owners. A certifier can be from the private sector or your local council.

A certifier's role is to make an independent assessment to determine if relevant requirements of the *Environmental Planning and Assessment Act 1979* have been met to warrant the issuing of a construction certificate, complying development certificate or occupation certificate.

Certifiers do not supervise or manage builders, contractors or building sites.

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<sup>1</sup> None are currently prescribed by the Regulation.



## What are a certifier's responsibilities at each stage?

**Before construction starts, a certifier's responsibilities include to:**

- check whether the proposed work will meet legislative requirements if built in accordance with the approved plans and specifications
- advise which inspections will be mandatory as the work progresses
- notify the council of their appointment as the principal certifier
- check your builder or contractor is licensed and insured under the *Home Building Act 1989*
- check whether any applicable conditions of your consent or approval are met
- check whether any applicable fees are paid, such as the long service levy
- install a sign on the building site, showing the certifier's details
- inspect the building site (if required).

**During construction, a certifier's responsibilities include to:**

- inspect the work in person, at each required stage
- if a non-compliance is identified, issue a direction to you and/or the builder requiring certain action to be taken, and notify the council if the required action isn't taken
- respond appropriately to any complaints about the development, including informing the council if needed.

**After construction is finished, a certifier may issue an occupation certificate if:**

- all relevant conditions of your consent are met, and you have applied for the occupation certificate, and
- all inspections have been carried out and the work is found to be satisfactory, unless an inspection (other than the final inspection) was missed under circumstances deemed unavoidable by the certifier (and evidence of suitability of the work is provided), and
- the work is 'suitable for occupation' in accordance with the Building Code of Australia. Important: this is a minimum standard of compliance that must be met. It does not guarantee that all the work has been completed. For example, a house or apartment may be suitable for occupation while painting or landscaping is still being completed.

An occupation certificate does not certify that the conditions of your contract with the builder have been met. The contract with your builder is a different contract to the contract with your certifier and must be considered separately.



## Your obligations

Appoint and enter into a contract with your chosen certifier. The choice and appointment of a certifier is yours – your builder may recommend a certifier but cannot appoint the certifier for you, cannot offer to change the contract price, and cannot refuse to carry out work if a particular certifier is not appointed.

You must communicate with your builder, who will notify the certifier of each stage of work so the certifier can inspect it. If an inspection is missed, the certifier may have to refuse to issue an occupation certificate. You can request that the certifier and builder copy you into all correspondence between them.

## Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au):

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