

NETWORK DISCHARGE CONSENTS FOR WELLINGTON – KEY CHALLENGES AND LESSONS LEARNED

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ABSTRACT

Community expectations and regulation are driving a need for significant investment in water infrastructure to improve environmental outcomes. Part of this is lifting the performance of wastewater and stormwater networks, including to improve the quality of discharged stormwater and reduce the frequency of wastewater network overflows.

Wellington Water has applied for 'global' resource consents for stormwater discharges and wet weather wastewater overflow discharges across Wellington, Porirua, and Hutt Valley. These applications will set out a framework for long-term programmes of works to deliver improved outcomes over time.

For Wellington Water, this works programme is unusual in that it is being developed in response to the policy framework and consenting process, rather than starting the consenting process with a defined programme to improve levels of service already in mind. The regional RMA policy framework has also informed the way that the consenting process itself is structured, in terms of the grouping and sequencing of consents being sought (other frameworks may necessitate different approaches elsewhere).

This work will be driven by community and in particular mana whenua aspirations. Wellington Water is including formal structures in the proposed consent conditions to give effect to Mana Whakahaere and is creating space for mana whenua at each step in the process. Along the way, the work programme and particularly the sequencing of sub-catchments will need to occur on a principled basis that is informed by the policy framework, rather than being solely driven by the most vocal communities or stakeholders, or by efficiency of delivery.

The consenting programme raises additional challenges from a planning perspective, including the need to at least 'maintain' all sub-catchments while sequencing 'improvements' elsewhere, and managing site specific effects on identified high value areas (including wetlands) in the context of a global consent application.

This exercise has also highlighted challenges with the legal and policy framework at a national level. Inconsistent approaches and restrictive national policies risk preventing consents from being obtained in the first place, rather than driving real-world improvements once consent is granted. A lack of specific guidance or standards for wastewater overflows or stormwater discharges means water service entities risk being 'caught in the middle' between the environmental and economic regulators. All stakeholders have high (possibly unrealistic) expectations of what the work programme will deliver. Finally, the Wellington Water applications have been progressed against the background of simultaneous Resource Management Act 1991 (RMA) and Water Services

reform, and expected changes to the Wellington Regional Plan, creating uncertainty which has had to be actively managed as part of this consenting programme.

This paper outlines the key features of the consenting programme, challenges and initial lessons from an operational/service provider, planning, and legal perspective.

KEYWORDS

wet weather, overflows, wastewater, stormwater, network, consenting

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1 INTRODUCTION

Wellington Water Limited (Wellington Water) is the Wellington region's professional water services provider. It is a shared-service council-controlled organisation jointly owned by the Wellington, Porirua, Hutt, and Upper Hutt City Councils, South Wairarapa District Council and the Greater Wellington Regional Council. Wellington Water manages drinking water, wastewater, and stormwater services on behalf of these councils.

Community expectations and regulation are driving a need for significant investment in water infrastructure to improve environmental outcomes. Part of this is lifting the performance of wastewater and stormwater networks, including to improve the quality of discharged stormwater and reduce the frequency of wastewater network overflows.

Wellington Water is committed to increasing the performance of its networks and implementing Te Mana o te Wai. Historically, wet weather overflows have been managed on a case-by-case basis where there was sufficient interest. Now, community and mana whenua expectations for water quality are increasing, and Wellington Water wants to implement a planned and coordinated wet weather overflow reduction strategy, that enables it to assess priorities for investment across the whole network. Alongside that is implementation of a Stormwater Management Strategy to reduce contamination of water bodies via the stormwater network.

While a large part of the impetus for this programme of work is community expectations and service delivery, the other driver is the regulatory framework under the Resource Management Act (RMA) which requires us to get resource consents for the existing and ongoing discharges. Wellington Water has applied for 'global' resource consents for stormwater discharges and wet weather wastewater overflow discharges across Wellington, Porirua, and Hutt Valley. These applications are intended to set up a framework for long-term programmes of works to deliver improved outcomes over time.

The RMA framework (including the regional plan and policy provisions that are specific to the Wellington Region) require consents to be sought, but also makes those consents quite difficult to obtain and affects the way the applications need to be framed. The application processes are both at early stages and we anticipate various challenges along the way. We are expecting that we will be frequently changing the application, particularly in response to mana whenua engagement, which is still in the early stages.

This paper identifies some of the key challenges that have arisen to this point.

2 BACKGROUND

2.1 WASTEWATER NETWORK OVERFLOWS

Wastewater network overflows (WNOs) are a common occurrence in wet weather when the wastewater network is overloaded with rainwater (which enters the wastewater network mainly via inflow and infiltration (I&I)). The overflows exit the network via a variety of mechanisms, such as manholes, pump station overflow points and constructed network overflows. Sometimes they exit directly to freshwater or the coast, in other places they go via the stormwater network, and in other locations they go onto land and then into water.

The constructed overflows have been deliberately designed to go to water in many situations in order to manage public health risks, however this standard practice now attracts greater scrutiny under the RMA.

2.2 STORMWATER DISCHARGES

The stormwater network serves a critical function by safeguarding people, property and infrastructure from flood hazards. In this regard the stormwater network is intended to effectively collect and convey regular rainfall runoff away from urban properties and roads to reduce the risk of flooding. While the runoff and flood management function of the stormwater network provides significant economic and social benefits to the community, it can also result in adverse effects on the environment. The journey of stormwater across the urban landscape results in the run-off becoming polluted with litter and other contaminants before ending up in waterbodies, affecting water quality and ecosystem health, and resulting in the deterioration of the values held by Mana Whenua and the community for those waterbodies. In addition, the stormwater network changes natural drainage patterns, increasing peak flows to our waterbodies at times of rain and reducing baseflows at other times. This is why in more recent years, stormwater systems have started to be designed to also protect the environment from the adverse effect of stormwater and contaminants.

2.3 CURRENT CONSENTING STATUS

Greater Wellington's Regional Plan makes it clear that resource consents for these activities are required so that Wellington Water and its clients can continue to legally operate the wastewater and stormwater networks.

Currently, most wastewater wet weather overflow discharges in Wellington are either covered by existing stormwater consents or do not have consents at all.

This ad hoc approach will be replaced by a global consent approach to ensure that the wet weather overflows are managed in a comprehensive and integrated manner. There will be a consistent approach to managing discharges across the Wellington area, particularly in terms of assessing effects, implementing consent conditions, monitoring and reporting requirements, modelling, and initiatives to progressively reduce the frequency of overflows.

In relation to stormwater, Wellington Water was granted a "Stage 1" global stormwater consent (WGN180027 [34920]) on 30 November 2018 for a five-year period, expiring on 30 November 2023. Wellington Water's Stage 1 stormwater consent also authorises the discharge of stormwater occasionally contaminated with wastewater. The Stage 1 consent focusses on monitoring and data collection to help determine the most effective interventions for reducing stormwater contamination. It also requires Wellington Water to develop a Stormwater Management Strategy (SMS).

The Stage 1 consent will be replaced by the Stage 2 global stormwater consent which has now been applied for. The Stage 2 consent will focus on managing the stormwater discharges from the local authority stormwater networks in a manner that progressively reduces their adverse effects.

Consent is being sought for 35 years for both wet weather overflows and stormwater.

3 THE GLOBAL RESOURCE CONSENT APPLICATIONS

3.1 OVERVIEW

Wellington Water has applied for 'global' resource consents for stormwater discharges and wet weather wastewater overflow discharges across the Wellington region. These applications are for three wet weather wastewater network overflow consents (one for Hutt Valley and Wainuiomata; one for Porirua and the northern suburbs of Wellington; and, one for the remainder of Wellington City), and one global stormwater discharge consent which covers discharges from the Porirua City, Wellington City, Hutt City and Upper Hutt City networks.

Wellington Water had originally intended that the wastewater overflow applications would also cover new wet weather overflows and dry weather overflows from blockages. However, at the time the applications needed to be lodged the Natural Resources Plan (NRP) did not provide a clear consent pathway for these other categories discharges. This paper discusses the policy challenges in further detail below.

The wastewater and stormwater consents have been sought for a 35 year term. Wellington Water considers that the certainty of a long term consent is required to provide sufficient time for the implementation of the various mitigation structures, processes and physical works that will form part of these consents. This includes various mechanisms such as implementing Te Mana o te Wai, with a focus on mana whakahaere, prioritising sub-catchments, setting a containment standard for wastewater, implementing sub-catchment management plans for stormwater, and establishing large and new work programmes. These mechanisms need to be developed, implemented and funded through several financial planning cycles in order to be effective.

If a shorter consent duration was granted, it would make funding delivery of progressive improvement substantially more difficult and would likely result in more modest aspirations being set under the consents. In short – a re-think of the whole approach would be required.

3.2 CONSENTING PROCESS

For Wellington Water, this works programme is unusual in that it is being developed in response to the policy framework and consenting process, rather than starting the consenting process with a defined programme to maintain or improve levels of service or support growth already in mind.

Community aspirations drive policy and regulation which influence how Wellington Water operates, including these consents. In the Wellington region, the Regional Council has established community groups, called Whaitua Committees, which are developing recommendations for catchment-based water quality and ecosystem outcomes and targets. These include expectations for the reduction in contaminants in stormwater and in the frequency of wet weather overflows.

While this is occurring under the guidance provided in the National Policy Statement for Freshwater Management (NPSFM), there are no fixed national standards for either stormwater quality or wastewater overflows. In absence of such standards, we are finding that the direction in the NPSFM is leading these community groups to quite aspirational recommendations. Thinking nationally, we are aware that councils around the country take very different approaches to wastewater overflows and stormwater discharges, which makes the consenting process difficult to navigate.

The regional RMA policy framework has also informed the way that the consenting process itself is structured, in terms of the grouping and sequencing of consents being sought. Wellington Water has had to decide how to group the wastewater consents, and whether the stormwater discharge consent should be separate or whether it could be combined with the wastewater consents. The planning and policy framework in Wellington has influenced these decisions, so other frameworks may necessitate different approaches elsewhere.

The clearest example of this is that the Regional Plan provides a consent pathway for existing wet weather overflows, but other sources of wastewater contamination will not be captured by the improvement processes under these consents, and would only be able to be 'regulated' by enforcement. This is a very blunt stick, given the long term change that is needed to support Te Mana o te Wai. Wellington Water considers it is better to have a transparent consenting framework where water service providers are expected to plan for and deliver long term change and be held accountable. We are fortunate that the Regional Council agrees and (at the time of preparing this paper) is considering how the Regional Plan should be changed to provide a framework for all water services discharges to implement Te Mana o te Wai.

In a similar way, Wellington Water has (at the time of preparing this paper) not yet determined whether the stormwater and wastewater applications should be heard together, given the overlap and interdependencies between these two networks and their effects.

3.3 IMPORTANCE OF MANA WHENUA AND COMMUNITY ENGAGEMENT

Integrating the aspirations of mana whenua into the overarching structure of the consents is important to Wellington Water.

The relationship with mana whenua is a critical component of Wellington Water's operating model and the consents as well as being necessary for Te Mana o te Wai. At present, we propose to deliver on this through a co-management style Collaborative Committee. The Collaborative Committee would have key oversight over the implementation of the consents and will consist of 50% mana whenua and 50% consent holder (i.e. Wellington Water and the relevant council(s)) members. The membership is designed to give effect to mana whakahaere for mana whenua, and give effect to councils' roles as asset owners responsible for governance of, and investment in, the networks.

The collaborative committee would operate at governance level and would make a number of key decisions, including: levels of service for how often the wastewater network can overflow, direction setting and approval of key strategic and planning documents, prioritisation of physical works, and oversight of community engagement.

Like all councils around Aotearoa New Zealand, our client councils face challenging prioritisation processes both across the full range of services they provide and within water services. There is not enough money to go around. Council involvement in the collaborative committee would help ensure awareness of water quality issues and need for investment when councils are making decision on Long Term Plans.

While we have included this mana whakahaere framework in our resource consent applications, it comes with various risks. It was designed by Wellington Water with no mana whenua input and so represents a placeholder for mana whakahaere. This is because for regulatory purposes, Wellington Water had to lodge the applications within statutory deadlines in order to continue to operate its networks legally, while for relationship purposes, Wellington Water has had to delay mana whenua engagement until sufficient

resourcing is in place. If the proposed framework is not acceptable to mana whenua then significant rework may be required to develop a new framework that is more acceptable to all parties. Trying to manage relationships and governance through an environmental regulation framework is time consuming and challenging.

Additional challenges are created by seeking partnership with mana whenua for issues that are abhorrent from a Te Ao Māori perspective. The conflict with mana whenua values makes their long-term involvement in the processes invaluable, including for showing alignment with the legal and planning frameworks, but also puts mana whenua in a difficult position, meaning progress is often understandably slow and uncertain.

Community engagement is proposed to occur at two levels; 'globally' (i.e. across all catchments) and per sub-catchment.

1. Global focus: As part of the consents, Wellington Water proposes to establish a community group with a global focus. This group would engage with the Collaborative Committee and would be expected to have views to support the works across the entire catchment. Members would be expected to avoid advocating for their local waterways and networks and instead focus on reducing wet weather overflows across the city. It is likely that this group would work across all four cities and both stormwater and wastewater to achieve an integrated approach.
2. Sub-catchment focus: When a sub-catchment is prioritised, Wellington Water proposes to engage with the local community groups to understand the preferred types of interventions, what local knowledge is available, best ways to engage with residents and businesses and how to manage disruption that may occur (e.g. road works on the main shopping street).

3.4 SUB-CATCHMENT SEQUENCING

Achieving the aspirations and objectives in the consents will mainly be carried out at a sub-catchment level. Both the wastewater and stormwater applications propose that management plans for sub-catchments will be developed under each of the consents (known as 'Sub-catchment Reduction Plans' and 'Sub-catchment Management Plans', respectively). These management plans will set out the physical improvement works, interventions, and other initiatives needed to achieve the aspirations and objectives of the consent in that sub-catchment.

At a broader catchment level, there is a need to determine the priority order or sequence in which the various sub-catchments are addressed. This is because it is not possible to meaningfully improve all sub-catchments at the same time (in terms of either funding or physical resourcing). It may be that the preparation of the sub-catchment management plans will only commence once a sub-catchment has been prioritised as well as recommended by the Collaborative Committee and then adopted by Wellington Water.

Wellington Water will then prepare the sub-catchment management plans in accordance with the consent and with support from a Mātauranga Māori expert as well as oversight from the Collaborative Committee. Once a Sub-catchment Reduction Plan has been prepared, the Collaborative Committee will review the plan and recommend any changes or additions it considers are required to ensure the objectives are achieved in that sub-catchment.

Once a sub-catchment management plan has been carried out, and the aspirations and objectives achieved, the sub-catchment will then need to maintain that level of service.

Wellington Water is continuing to develop a framework for the prioritised sequence in which the management plans will be prepared and implemented. The sequencing of sub-catchments will need to occur on a principled basis that is informed by the policy framework, rather than being driven by the most vocal communities or stakeholders, or solely by efficiency of delivery. While this is still a work in progress and there are numerous views on how this should be done, we expect that the sequencing of sub-catchment interventions will take into account:

- The adverse effect of the discharges on the sub-catchment mana whenua values, water quality, ecology, recreation and amenity values
- The significance of the values in the sub-catchment
- Planned growth and development
- Flood protection investment.

We are also hoping to sequence our sub-catchment effort in a manner that spreads the load over the consent term and does not require all of the most challenging sub-catchments to be addressed in the early stages of the consent term.

Wellington Water cannot prioritise every sub-catchments all at once and is unlikely to be able to advance all sub-catchments with significant values and more than minor effects all at once. In reality, this means that some sub-catchments with significant values or more than minor adverse effects may not be sequenced until later in the life of the consent.

This raises real challenges from a consenting perspective and in terms of aligning the applications with National and Regional Policy direction, some of which directs us to 'avoid' adverse effects on certain values.

3.5 MANAGING UNCERTAINTY

Water and resource management reform have added to the complexity of this consenting process. Wellington Water has had to actively manage this uncertainty by building in processes and points to stop, reflect, and change aspects of the applications in response to changing policy and legislation. This enables us to continue to work with recent confirmed information, rather than constantly trying to adapt to the latest signals.

The Water Services reform is progressing at the same time as Wellington Water's consents and the final details of the reforms at the time of writing this paper are still unknown. What is anticipated is that a new water entity will be responsible for the delivery of the consents as well as the funding.

Resource management reform has just been passed, at the time of preparing this paper. However, with the upcoming election, a change in government may see the new resource management legislation repealed before Christmas.

4 CHALLENGES FROM A LEGAL AND PLANNING PERSPECTIVE

The process of applying for these network discharge consents has also highlighted challenges with the legal and policy framework at a national level.

4.1 INFORMATION REQUIREMENTS

Firstly, the RMA framework does not distinguish between applications for 'global' consents for discharges over a wide area, and for 'normal' resource consent for a single point source

discharge. In theory the same requirements for assessment of effects on the environment apply as if it were a single discharge.

However, it is not realistic to expect the same level of information and assessment to be available for a large number of intermittent discharges over a wide area. Instead, the location or occurrence of some overflow points may be based on modelling rather than direct observation. The assessment of effects also necessarily focusses on the cumulative effect of overflows at a catchment or sub-catchment level, rather than direct effects at source, again using modelling more than direct assessment. Localised effects on sites and habitats of significance are very challenging to assess in detail in the context of global applications.

At present, there is no formal guidance as to the level of assessment or information that should be required. Instead, applicants are left to gather what information they can, and then engage with the regulators (regional councils, who may have different practices and expectations) in order to identify any gaps or concerns.

Wellington Water is proposing to overcome some of its information gaps through the future sub-catchment planning processes. That is, as part of preparing sub-catchment management plans, Wellington Water is proposing to gather more specific information on matters such as stream bank scour or effects on natural inland wetlands. While this seems a pragmatic solution, we are aware that it may not be seen as aligning with the expectation in the RMA that the resource consent application should contain an assessment of environmental effects that includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.

Potentially this could be addressed through changes to the RMA (or Natural and Built Environment Act (NBEA)) regimes, by providing for a different kind of resource consent for network discharges or varying the information requirements (in Schedule 6 RMA). In addition, it would be helpful for any national policy direction on network overflows to acknowledge that the same level of information will not always be available and to a large extent the assessment will be based on modelling rather than direct observation.

4.2 THE 'EXISTING ENVIRONMENT' PRINCIPLE

A complicating factor for the assessment of environment effects of network discharges is the case law around what is and is not considered part of the environment when assessing effects.

In essence, the orthodox position is that the 'existing environment' does not include the discharges for which consent is sought – even if these have been occurring intermittently for many years and, realistically, are likely to continue (in the case of stormwater) or are not likely to be fully removed in the short term (in the case of wastewater overflows). That would suggest a need to assess the effects of applications on a hypothetical receiving environment that does not include any discharges of either wastewater or stormwater.

Given the changes to the RMA are intended to focus on outcomes rather than effects, it would again be useful for any national policy direction to confirm that, particularly for stormwater discharges, it is not necessary to come up with a hypothetical 'existing environment' that is urbanised and yet contains no stormwater.

4.3 RESTRICTIVE NATIONAL DIRECTION AND INCONSISTENT LOCAL PRACTICE

Currently, national policy instruments under the RMA are highly restrictive in regulating discharges to water – particularly with respect to wastewater discharges. For example, the NZ Coastal Policy Statement (NZCPS) directs councils to ‘not allow’ discharges of human sewage to water in the coastal environment without treatment. The National Policy Statement for Freshwater Management (NPSFM) creates similar challenges where discharges to freshwater are concerned (including into or near wetlands).

In response to these directions, many regional councils have either provided for wastewater overflows as a ‘prohibited activity’ (such that consent cannot even be applied for), or developed policy frameworks that are not conducive to such consents being granted.

Overall however, there is very little consistency between regions in terms of how particularly wastewater overflows are defined, measured, recorded, or consented. Wastewater networks are typically prone to I&I, and are designed to overflow via controlled overflow points (rather than into private property) when their capacity is exceeded. As such, practically all wastewater networks around the country will experience overflows at least occasionally; the more relevant question is how frequently this occurs and what its effects are.

There is limited information available nationally as to the extent and frequency of overflows, and how these are regulated. However, Water New Zealand’s National Performance Review 2021/2022 (Water New Zealand, 2023) indicates that of the water service providers who responded, about a quarter have their wet weather overflows treated as ‘emergency works’, a slightly lower proportion hold resource consents, while more than 50% of respondents indicated there was ‘no regulatory approach’ to wet weather overflows in their region.

We suggest that what is needed is a legal and planning policy framework that acknowledges that wet weather overflows occur, and are not able to be avoided in the near future, and provides for them to be consented and reduced over time (though long term programmes of work). At present, there is a real risk that rather than driving higher performance standards and better environmental outcomes once consents are obtained, current provisions risk preventing consents from being obtained in the first place. Because consents are often the first step to investing in improvements, barriers to the grant of consent can become barriers to achieving better environmental outcomes.

4.4 A NEED FOR CLEAR STANDARDS

An important role of the necessary national direction will be to provide clear guidance as to the ‘levels of service’ or ‘performance standards’ that need to be achieved over the life of the consents (e.g. in terms of the frequency of wastewater wet weather overflows, or contaminant loads of stormwater). To provide certainty to service providers (going forward, water service entities) we also suggest that if such standards are set at a national level then local councils should not be able to impose more stringent standards.

At present, under the current framework, there is likely to be a significant disparity in some cases between the environmental outcomes that communities aspire to, and the infrastructure improvements that they are willing or able to fund as ratepayers.

It is hoped that in the future, water reform will mean greater flexibility for the new water service entities in investing in network improvement work programmes. However, there remains a risk under the new regime that water service entities will be 'caught in the middle', between the environmental and economic regulators, i.e. that the investment required to meet environmental standards costs more than the economic regulator allows entities to increase charges to fund the works. It is inescapable that the level of service (or environmental outcomes) that can be achieved is tied to, and limited by, the level of investment available. This points to a need for coordination or at least compatibility between environmental and economic regulation going forward.

4.5 LAW REFORM

At the time of writing, the current Wellington Water applications are expected to continue to be processed under the RMA. However, the replacement of the RMA with the NBEA (with associated new policy instruments) will also have implications for how network discharge consents are determined in the future.

For example, the NBEA regime will include a new system of environmental limits and targets being set in the 'national planning framework' (NPF) or NBEA plans, with very little scope for exemptions. Activities that do not meet these limits and targets will not be able to get consent. In order to be workable, this regime will need to acknowledge the reality of network discharges and allow for progressive improvement over time – otherwise network discharges will be 'unconsentable' where they cannot comply with limits on 'day 1' (or occur in catchments that are already degraded).

Other provisions would prevent consent being granted for activities that have a 'more than minimal' effect on 'places of national importance' (which are broadly defined). This is likely to raise similar issues as apply to wetlands and high value sites. Depending on how these 'places' are ultimately defined, it may be difficult to show that no such effect occurs given there will be uncertainty around the location and extent of some discharges.

5 KEY TAKEAWAYS

Global consents are difficult to fit into the current consenting mould. The RMA framework caters to an activity in a particular location, and does not provide an easy path for a 'global' activity which traverses multiple sites.

It is imperative that the consent applications respond to the policy framework. For Wellington Water, the regional plan has driven how these consents have come together, including the programme of works and levels of service to be delivered.

In approaching the task of securing consents for network discharges, it pays to expect considerable risk and ambiguity, which needs to be managed upfront rather than shied away from. Global consents are large and complex pieces of work, with significant implications both for service provider budgets and community and mana whenua values; it is therefore inevitable that the process will be complicated.

In order to make real improvements, a long-term consent (ideally 35-year duration) is required. However, securing consents will be just the start of the journey; Wellington Water will need to be continuously engaging with councils, mana whenua and the local community throughout the life of the consents as information changes and the programme adapts.

Partnership with mana whenua is vital to the success of these consents (particularly where long durations are sought), and necessary for Te Mana o te Wai. Wellington Water currently has a placeholder for engaging with mana whenua in the form of a Collaborative Committee (and also alternative 'Plan B' mechanisms as a contingency, to ensure independent Te Ao Māori and Mātauranga Māori expertise will be provided to inform the implementation of the consents), and engagement in this space is ongoing. However, in our view a true partnership approach (whatever that ultimately looks like) is both the right thing to do and vital for the work programme to be successful.

The process to date has highlighted a number of challenges in the legal and policy framework that applies to such activities. While the current applications are likely to proceed under the current framework (with perhaps some changes to the regional plan), it is hoped that further clarity and policy direction can be provided in the short term to assist other water service providers undertaking this journey in the years to come.

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