

Addendum to City of York Local Plan Habitats Regulations Assessment

Assessment of new Policy ST15A

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Issue	Prepared and Checked by	Approved by
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Bernie Fleming

HRA Ecologist

Richard Stockwell

Regional Director



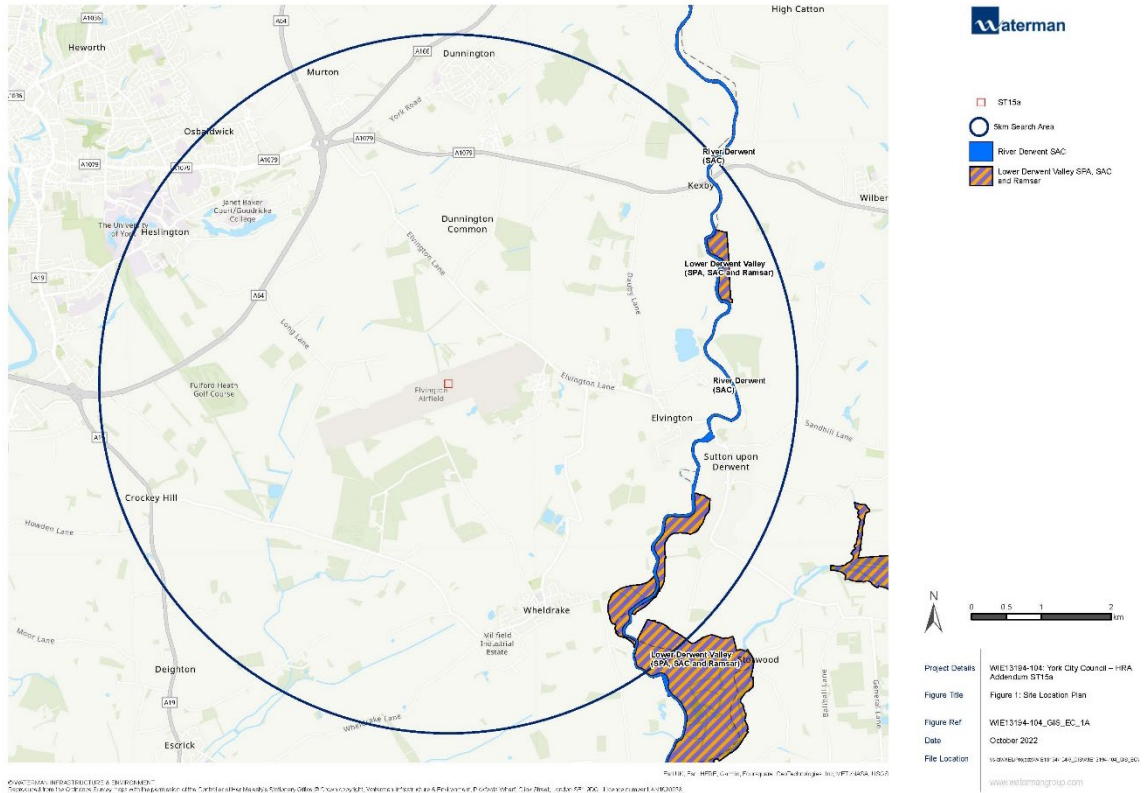
1. Introduction

- 1.1. The role of a Habitats Regulations Assessment (HRA) is to assess the impact of plans of projects on internationally important wildlife sites. Together, these Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar sites are known as 'European sites'. For the purposes of this HRA, it is considered the evaluation of Ramsar sites is safely accommodated by the assessment of the Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) and no further mention of Ramsar sites is made unless necessary.
- 1.2. The City of York Council (the Council) formally submitted its Regulation 19 Publication Draft of its Local Plan (the Plan EX/CYC/45)1 in February 2018. It was accompanied by an HRA which was revised in October 2020 ("the 2020 HRA"). The Hearings for the Examination in Public of the Local Plan concluded in September 2022.
- 1.3. This addendum to the 2020 HRA ("the HRA Addendum") has been prepared in response to a request by the Inspectors that the Council considers the impact of a change to the Plan that would see the allocation of a secondary school (Policy ST15A) with an annual 150 pupil entry, adjacent to the already proposed and assessed Elvington Garden Village (ST15) (refer to Figures 1 and 2). It is anticipated that the catchment of the new school will be relatively tightly defined around the new garden village and immediate surrounds, and will not extend into the adjacent districts of East Riding to the east or Selby to the south.

¹ Waterman (2020). Habitats Regulations Assessment of the City of York Council Local Plan. October 2020.

- 1.4. HRAs are carried out by the competent authority, in this case, the Council. Government guidance² allows competent authorities to reduce the duplication of effort by drawing on earlier evidence and conclusions where there has been no material change in circumstances and it remains reliable and robust. Consequently, this current HRA draws on the findings of the 2020 HRA where possible but evaluates ST15A in the context of contemporary evidence and best practice. If there are any issues regarding the earlier assessment, they will be highlighted in the following text, and the policy assessed context.

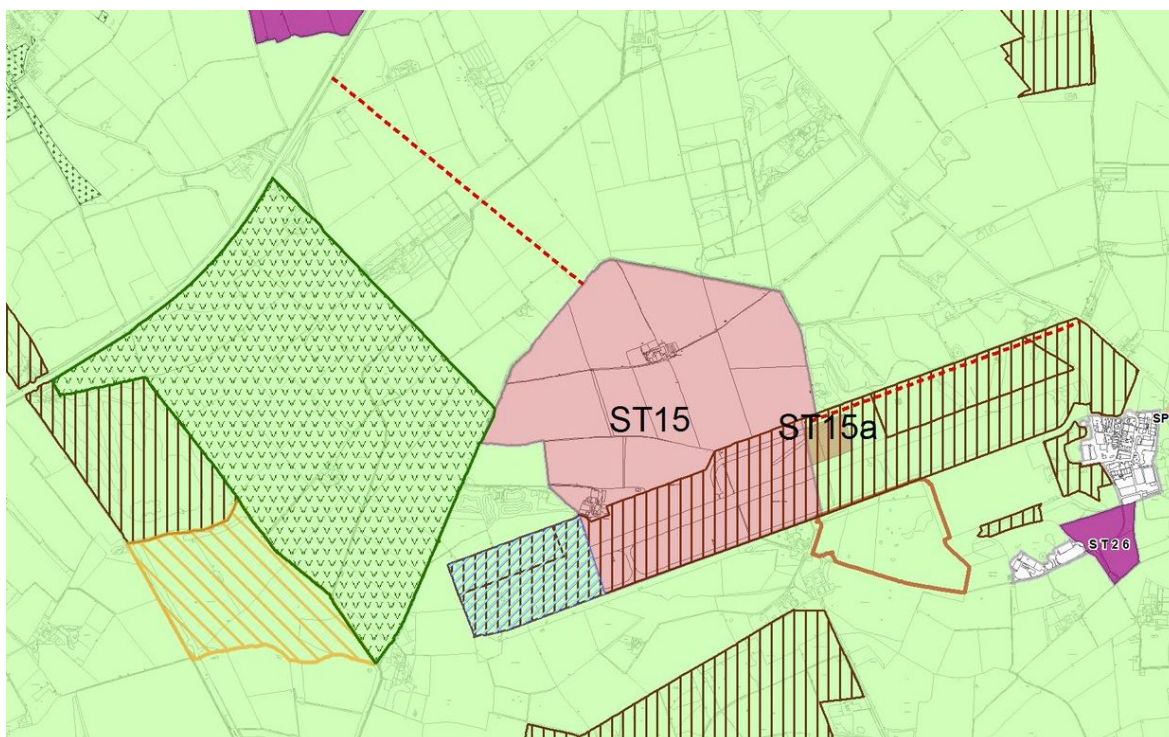
Figure 1: Map of setting of ST15a



- 1.5. Overall, it is considered that the proposed development is not directly connected with or necessary to the management for nature conservation of any European sites, so eliminating the possibility that this proposal could be excluded from the need for an HRA.
- 1.6. Importantly, although this HRA has been prepared to help the Council discharge its duties under the Habitats Regulations, the Council is the competent authority, and it must decide whether to accept this report as part of its appropriate assessment.
- 1.7. Further, this HRA has been prepared for the purposes of preparing and examining the Plan. Where individual allocations/policies are the subject of any planning application it will be necessary in due course to demonstrate compliance with the Conservation of Habitats and Species Regulations 2017 before permission is granted. Whether the 2020 HRA and this HRA Addendum is appropriate for the purpose of determining the acceptability of specific proposals will have to be decided when an application is made.

² Habitats regulations assessments: protecting a European site. Defra and Natural England. 24 February 2021. <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site> (accessed 14 October 2022)

Figure 2: Policy Map extract indicating extent of ST15a, including map modifications proposed in Policy SS13 of the emerging draft City of York Local Plan



2. Screening

- 2.1. The approach to screening and its low threshold is described in sections 1.3.2 – 1.3.5 of the 2020 HRA.
- 2.2. For the purposes of this HRA, the high level conservation objectives of the European sites potentially at risk can be summarised as requiring that the favourable conservation status of the qualifying features should be maintained or restored as required; these objectives are provided in full in Appendix A of the 2020 HRA. Elaboration of these objectives is provided in Natural England's 'Supplementary Advice' for each European site.

3. Screening “the likely significant effect test

- 3.1. ST15A lies immediately adjacent to the considerably larger Elvington Garden Village (ST15). Mindful of Government guidance, it is considered reasonable to assume that likely significant effects identified in the 2020 HRA for ST15 will also apply to ST15A (see sections 3.3 and 3.5) of the 2020 HRA). These comprised the following:
 - The loss, from construction of ST15A of ‘functionally linked land’ may support non-breeding birds of the Lower Derwent Valley SPA approximately 2.5km to the south-east (alone); and
 - The impact of air pollution generated by traffic associated with ST15A on the River Derwent SAC (in combination with other plans or projects);

- 3.2. However, the specific characteristics of ST15A and the provision of new evidence requires reconsideration of some aspects of the 2020 HRA. This is limited to the following:
- Due to the recent publication of Yorkshire Water's Drainage and Wastewater Management Plan (DWMP24)³, there is now greater concern regarding the disposal of wastewater from development that could impact the floating vegetation community, and populations of bullhead, river lamprey and sea lamprey of the River Derwent SAC. Given that the river has a direct hydraulic link to the Humber Estuary SAC, these concerns can also be applied to the latter's populations of river lamprey and sea lamprey. Consequently, in this Addendum HRA, likely significant effects could not be ruled on the River Derwent SAC and Humber Estuary SAC from ST15A. As individual discharges are considered unlikely to represent significant effects alone, this is only likely to be significant in combination with other plans or projects;
 - The risk to the Lower Derwent Valley SAC and River Derwent SPA/SAC identified for the large residential allocation of ST15 in the 2020 HRA, has been ruled out in the case of ST15A. This is because the school population of students and staff can be considered to be fully engaged throughout the day with heavily restricted opportunities to visit nearby European sites. Furthermore, they are unlikely to be accompanied by dogs. Should families choose to visit these European sites before or after school, the nearest formal entrance with a car park is around 4km distant (as the crow flies) and where access is carefully managed by Natural England. Consequently, likely significant effects have been ruled out alone or in-combination in this Addendum HRA.
- 3.3. Other than in the case of the two issues above, all the findings of the 2020 HRA, including those potential impact where likely significant effects were ruled out, were accepted by Natural England.
- 3.4. Given these circumstances, and the absence of any other credible pathways, harmful impacts on these and all other European sites in the area are ruled out of the need for appropriate assessment in this Addendum HRA.

4. Appropriate Assessment

- 4.1. Consequently, an appropriate assessment is only required to evaluate the impact of:
- The loss of functionally linked land on the Lower Derwent Valley SPA;
 - The impact of air pollution on the River Derwent SAC; and
 - The impact of wastewater on the River Derwent SAC and Humber Estuary SAC.
- 4.2. A competent authority may only consent to a project if, following an appropriate assessment, 'it can ascertain' ... 'beyond reasonable scientific doubt', that '... it will not adversely affect the integrity of [a] European site'. 'Integrity' has been defined variously by the Courts as the 'structure and function' or the 'constitutive characteristics' of a site or its features. Further details of the appropriate process are provided in sections 1.3.6 – 1.3.16 of the 2020 HRA and the legal principles were dealt with during the Examination process.
- 4.3. The conclusion of the appropriate assessment is set out below. The appropriate assessment relies on evidence provided for the 2020 HRA which remains robust but also draws on new evidence, other publicly available information and professional opinion.
- 4.4. Each potential threat is considered in turn below.

(a) Functionally linked land (Lower Derwent Valley SPA)

³ Yorkshire Water (2022). Draft DWMP24. June 2022.

- 4.5. ST15A essentially represents a physical extension to the proposed Elvington Garden Village (ST15). This lies just a few kilometres to the west of the Lower Derwent Valley on land that is considered to be functionally linked to the mobile non-breeding bird populations of the SPA.
- 4.6. Whilst no mitigation for mobile species appears to be embedded in Policy ST15A comprehensive requirements for mitigation are already embedded in ST15. This anticipates the establishment of extensive areas of wet grassland and public open space. Together, these would provide enhanced areas of functionally linked land for bird populations from the SPA and provide alternative recreational opportunities for new residents as well as links to existing countryside routes (to reduce disturbance of the bird populations). However, there are insufficient opportunities within ST15 to deliver all aspects of the built development alongside the measures to provide public open space and ecological mitigation. If this could not be secured, adverse effects could not be ruled out.
- 4.7. The opportunity to implement these mitigation measures is provided by Policy/Allocation OS10 which is situated immediately adjacent to the west of ST15. The purpose of OS10 is described as the provision of ‘significant areas of open space ... in connection with a strategic site’ designed to ‘mitigate ... for ecological impacts’ and, as a ‘New Area for Nature Conservation on land to the South of the A64 in association with ST15’.
- 4.8. This Addendum HRA considers that that the scale, management and design of OS10 would ensure this mitigation measure would be sufficiently to accommodate any additional non-breeding birds that could be displaced or disturbed by ST15A. Furthermore, it is considered that overall delivery of OS10 can be secured by Policy GI6.
- 4.9. Therefore, it is considered this would ensure that the targets provided in Natural England’s supplementary advice would be met to:
- “Maintain the extent and distribution of suitable habitat (either within or outside the site boundary) which supports the feature for all necessary stages of the non-breeding/wintering period ...”.*
- 4.10. **Accordingly, it is considered, beyond reasonable scientific doubt, that adverse effects on the integrity of the Lower Derwent Valley from the displacement or disturbance of non-breeding birds can be ruled out alone**
- (b) Air pollution (River Derwent SAC)
- 4.11. Development is typically associated with increased traffic and emissions which can increase the airborne concentration of nitrogen oxides (NO_x) and ammonia (NH₃); together these influence the subsequent rate of nitrogen deposition from the atmosphere. This can lead to the nutrient enrichment and acidification of soils, encouraging more tolerant ruderal species at the expense of sensitive plant, lower plant and invertebrate communities. In high concentrations, ammonia can result in direct toxic effects on vegetation, a factor which may also be true of NO_x. Larger animals, such as small mammals and birds are considered immune to direct effects but can be vulnerable to change in their supporting habitats. Furthermore, it can exacerbate the effects of other factors such as climate change or pathogens, for example.
- 4.12. However, levels of nitrogen deposition fall quickly in the first few metres from the roadside before gradually levelling out; contemporary best practice guidance is clear that beyond 200m, they become difficult to distinguish from background levels. In other words, impacts at 10m, 50m or

200m can be very different from those at the roadside. Consequently, only those Habitat sites found within 200m of a road are considered vulnerable.

- 4.13. Specific impacts are assessed by calculating the relative contribution of development (and, bearing in mind the Wealden decision, in-combination with other plans or projects) in relation to the relevant critical levels for NO_x and ammonia, and the various critical loads for nitrogen deposition.
- 4.14. Furthermore, the Wealden decision⁴ requires the assessment of air pollution to be carried out in combination with other plans or projects. In this context, this would incorporate proposed growth in the emerging local plans of the neighbouring East Riding and Selby local authorities.
- 4.15. The air quality assessment carried for the York Plan was carried out in 2017, and although dated indicated exceedances of the air quality thresholds at four river crossings of the River Derwent SAC.
- 4.16. However, the 2020 HRA was able to dismiss concerns given that inputs from growth represented a handful of discrete point sources along a 400ha SAC that would be rapidly diluted within an existing meso/eutrophic system that is inherently resilient to air pollution (the latter a function of its high nutrient loading from agricultural run-off across its 2000ha catchment).
- 4.17. Central to this approach is the advice provided on APIS which states:
'Deposition of ... nitrogen from the atmosphere is unlikely to be the largest source of this nutrient to eutrophic standing waters and, therefore, in general nitrogen deposition is unlikely to be very harmful ... even when close to sources'.
- 4.18. This overall position was accepted by Natural England during examination of the 2020 HRA.
- 4.19. Confidence in this approach can be drawn from the more recent HRAs of the East Riding and Selby plans which all have boundaries with the SAC. The former carried out a new air quality assessment which although again, showed exceedances, ruled out adverse effects for the same, qualitative reasons as described above. For the latter, adverse effects were scoped out prior to screening, again for similar reasons. Whilst ST15A would not have been considered in the air quality assessment for York's Plan or that of East Riding, it is considered that both remain valid as ST15A would add only a minute increase to road traffic in the catchment which would be limited to just the single crossing at Elvington with the others being too far distant to be affected.
- 4.20. Consequently, it is also considered that there would be no conflict with the conservation objectives for the River Derwent SAC:
'Maintain concentrations and deposition of air-pollutants to at or below the site-relevant Critical Load or Level values given for this H3260 feature of the site on [APIS]'.
- 4.21. Therefore, the outcome of the 2020 HRA can be adopted safely:
- 4.22. **Accordingly, it is considered, beyond reasonable scientific doubt, that adverse effects on the integrity of the River Derwent from air pollution can be ruled out alone or in-combination.**

(c) Wastewater disposal (River Derwent SAC and Humber Estuary SAC)

- 4.23. Wastewater disposal has the potential to pollute inland and coastal waters. Downward trends in water quality can directly or indirectly result in changes in the abundance, distribution, vigour and quality of a range of animal and plant communities, and directly challenge achievement of the

⁴ Wealden District Council v Secretary of State for Communities and Local Government, Lewes District Council and the South Downs National Park Authority (Defendants) and Natural England (Interested Party) [2017] EWHC 351 (Admin).

conservation objectives. Given the similarity of issues, both European sites are considered together.

- 4.24. Natural England's SIP for the River Derwent identifies pollution as a current threat highlighting the role of agriculture though wastewater disposal is not cited. WwTW that discharge into the Derwent along its course (including those beyond the site boundary) include Hunmanby, Folkton, Malton, Stamford Bridge, Pocklington, Wilberfoss, Howden and, in Selby, at Wheldrake; all providing secondary treatment. Whilst the Derwent therefore provides an important vector for wastewater disposal, the majority in the region is discharged into the Ouse or the Humber directly.
- 4.25. During preparation of the Plan Yorkshire Water indicated that all Wastewater Treatment Works (WwTWs) which accommodated York's waste water were operating within their licensed conditions and had capacity to accommodate predicted levels of growth.
- 4.26. However, Yorkshire Water has recently published its consultation edition of Drainage and Wastewater Management Plan (DWMP24) which will provide the basis for its long-term drainage, flooding and environmental protection programme. This is accompanied by an HRA screening assessment. The latter identified that likely significant effects could not be ruled out on the River Derwent SAC from the Elvington WwTW. This is presumed to be because of its limited capacity to accommodate new development. Although not specified in Policy ST15A, it is presumed that wastewater from the new school would be treated at and discharged directly into the River Derwent from here. The DWMP24 HRA also identified other WwTWs throughout the River Derwent where likely significant effects could not be ruled out.
- 4.27. As the Derwent ultimately feeds the Humber Estuary, the river and sea lamprey of the Humber are similarly vulnerable. Both species of lamprey breed in the Derwent and migrate to the open sea via the Estuary prior to returning to the same river to spawn. Poor water quality could provide a physical/chemical barrier to migration.
- 4.28. For the avoidance of doubt, no water bodies that require nutrient neutrality to be delivered are located within the catchment of the Derwent.
- 4.29. Whilst increased discharges from any individual allocation in the region is unlikely to result in an adverse effect on either SAC alone, cumulative impacts could arise in-combination and this HRA must be mindful of growth elsewhere. It is noted that the Humber receives wastewater inputs not only from the Ouse and Derwent and the north bank, but also from other local authority areas via several WwTWs on the south bank, and the midlands via the River Trent. Similarly, the Derwent receives wastewater from several local authorities upstream. However, York's Plan cannot influence these inputs, and all operate within the same legislative framework as Yorkshire Water. Furthermore, the HRAs of the local plans in the area and other water company programmes have all arrived at similar, positive outcomes.
- 4.30. However, it is clear that without mitigation, adverse effects on the River Derwent and Humber Estuary SACs cannot be ruled out.
- 4.31. The screening assessment for the DWMP24 is superficial, lacking essential detail and appears to identify European sites at risk by the straight-line distance to the nearest European site, rather than the location of an outfall. However, it appears that all potential impacts are associated with currently inadequate wastewater treatment infrastructure that when brought up to the necessary standard should allow it to ascertain that DWMP24 will not result in adverse effects. Other possible solutions (or mitigation) could take the form of requiring phased development in catchments where

water quality targets were at risk of exceedance from proposed development. This would allow some development to proceed up to the available capacity, with the remainder delayed until the infrastructure was improved.

- 4.32. Given their responsibility for the water environment, Yorkshire Water/Environment Agency are the competent authorities best placed to assess the impact of the DWMP24, not the Council. Although Yorkshire Water has indicated that an appropriate assessment will be carried out, this will not be available until March 2023. Therefore, it cannot be relied upon to inform this HRA Addendum.
- 4.33. Despite this, it is considered in this Addendum HRA that Policy GI2 of the York's Local Plan, which precludes development from taking place if adverse effects cannot be ruled out in project-level HRAs provides adequate mitigation for the purposes of the Local Plan (and ST15A). In practice, it is considered that development of ST15A (and ST15 which presumably will share the same wastewater treatment infrastructure could not proceed until the capacity of Elvington WwTW had been increased to cope with the predicted demand.
- 4.34. Consequently, it is also considered that there would be no conflict with the conservation objectives for either European site as follows:

Humber Estuary

'Supporting processes: water quality – contaminants (habitat)

Restrict aqueous contaminants to levels equating to High Status according to Annex VII and Good Status according to Annex X of the Water Framework Directive, avoiding deterioration from existing levels.'

River Derwent

'Water quality – nutrients

Restore the natural nutrient regime of the river, with any anthropogenic enrichment above natural/background concentrations limited to levels at which adverse effects on the [floating vegetation] feature's characteristic biodiversity are unlikely; and

Ensure water quality and quantity is restored to a standard which provides the necessary conditions to support the [otter] feature.'

- 4.35. **Accordingly, it is considered, beyond reasonable scientific doubt, that adverse effects on the integrity of the River Derwent and Humber Estuary from the discharge of wastewater can be ruled out in-combination.**

5. In-combination Assessment

- 5.1. Air pollution and wastewater disposal have been evaluated in combination with other plans or projects already as part of the assessment process. In contrast, the loss of functionally linked land was considered to be of sufficient magnitude to be identified 'alone' and assessed 'alone'. Given that mitigation is considered to have removed any residual effects, there is no need for an in-

combination assessment. This meets expectations laid out by the Courts and no further assessment is required.

6. Integrity Test

- 6.1. For the purposes of Regulation 105 of the Habitats Regulations, an objective scientific assessment of the implications of Policy ST15A on the qualifying features of the Lower Derwent Valley SPA, the River Derwent SAC and the Humber Estuary SAC has been carried out using the best scientific knowledge in the field and in view of the sites' conservation objectives. It considered the manner in which the project was to be carried out and any conditions and restrictions to avoid, reduce or cancel any potentially harmful effects that it could impose before reaching its conclusion.
- 6.2. On the basis of the evidence available, **it is considered that the Council can ascertain, beyond reasonable scientific doubt, that adverse effects on the integrity of all European sites will be avoided (alone or in-combination). Mitigation (already provided for the adjacent ST15) is required in terms of functionally linked land and the Lower Derwent Valley SPA.**
- 6.3. Given the similarity of the qualifying features, the outcomes above can be applied to SSSIs that underpin the SPA and SAC designations.

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