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The Report of the Executive

The Executive met at County Hall, Northallerton on Tuesday, 24 July, 2007. Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Chris Metcalfe, Caroline Patmore, Helen Swiers, John Watson OBE and Clare Wood

Also in attendance:- County Councillors Michael Knaggs, Les Parkes, Stuart Parsons and Jim Snowball

The Executive met again at County Hall, Northallerton on Tuesday, 21 August, 2007. Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Chris Metcalfe, Caroline Patmore, Helen Swiers, John Watson OBE and Clare Wood.

Also in attendance:- County Councillors John Blackburn, John Blackie, Eric Broadbent, Mrs M-A de Courcey-Bayley, Heather Garnett, Ron Haigh, Bill Hoult, Margaret Hulme, Paul Richardson and John Savage.

The Executive met again at County Hall, Northallerton on Tuesday, 25 September, 2007.

Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Caroline Patmore, Helen Swiers, John Watson OBE and Clare Wood.

Also in attendance:- County Councillors Eric Broadbent, Ron Haigh, Margaret Hulme and Michael Knaggs.

1. Development Plan for Adult Learning 2007/08: The County Council is required to submit a Development Plan for Adult Learning to the local Learning and Skills Council. The plan covers the period 2007–2008 and supplements the plan previously approved for the period 2006– 2009.

The draft plan has been prepared using a structure provided by the national Learning and Skills Council. It includes a summary of the priorities to be addressed and a statement of activity which gives details of learner numbers, at different levels of learning, in both accredited (FE) and non-accredited (Adult and Community Learning – which includes both Family Learning and Personal and Community Development Learning) provision. The draft plan is attached to this report marked Appendix A.

Four major factors have influenced the planning for the next twelve months:

- The requirement to address the priorities of the national and local Learning and Skills Council.
- The recent Ofsted inspection of the Adult Learning Service (May 2007).
- The changes in the arrangements for charging learners and employers for FE and non-accredited provision.
- Observations made by Members of the Area Committees and the working group of the Economic Development and Regeneration Overview and Scrutiny Committee

Following detailed consultation on the plan with senior officers and managers from the local Learning and Skills Council, the final funding allocations have now been agreed and are included in the Summary Statement of Activity at Appendix B.

The Executive has approved proposals to charge learners the fees in the table below

for the period 2007/8 and 2008/9.

Full fees (per hour)	ACL	FE	Learning
Concessionary fees (over 2006/7)	ACL	FE	Learning
Following legal advice on the implications of age discrimination legislation	£2.25	£2.25	£2.25
Concessionary fees for older learners, the Adult Learning Service will continue to offer	£2.25	£2.25	£2.25
Concessionary fees for the over 65 age group. Where necessary and in order to compete effectively in the open market with other providers of adult learning, officers of the Adult Learning Service are to have the authority to offer incentives to learners to encourage them on to North Yorkshire County Council provision (always of course within the financial regulations of the authority). Such an incentive might involve offering a 50% reduction on fees for a progression course to a Skills for Life learner who successfully completes their course. The national proposals for charging learners and employers who wish to undertake provision for English for Speakers of Other Languages (ESOL) is still unclear and, although officers have prepared draft guidance for learners and are also consulting employers, further clarification is needed from the national Learning and Skills Council before the fees can be set for this group of learners.	£2.50	£2.50	£2.50
	£1.75	N/A	£1.75

The Development Plan for Adult Learning is set within a context of the national and local priorities of the Learning and Skills Council, with the most significant change being the continued shift towards the Full Level 2 entitlement, employer engagement and Skills for Life. The provision of Family Learning and the learning opportunities for adults with learning difficulties and disabilities continues to be safeguarded within the allocations for adult learning. The plan also takes into consideration the need to provide learning which does not lead to a qualification but meets the needs of the local community in relation to health and social well-being, which is particularly relevant to the demographic make-up of the population of the rural county of North Yorkshire. The plan takes into consideration the current corporate priorities, the Council's and Children and Young People's Plans. There will continue to be links to the 14 – 19 agenda and the Parenting Support Strategy, with Family Learning and other learning opportunities making an important contribution to the Children and Young People's Plan.

The Adult Learning Service works closely with Adult and Community Services, particularly in the areas of Family Learning (Library and Information Services) and provision for adults with learning disabilities (Adult Social Care). Adult Learning Service officers continue to contribute to the Older People's strategy and the adult/healthier communities' thematic group of the North Yorkshire Strategic Partnership. The Adult Learning Service has an important role more generally in encouraging partnership working. North Yorkshire County Council recently gained the GO Award for its whole organisational approach to Skills for Life and this was achieved through a strong partnership between the Adult Learning Service and the Learning and Development Unit. North Yorkshire County Council was the first local authority in the region to achieve this award.

The plan has been the subject of consultation with the North Yorkshire Learning Partnership and partner organisations and agencies within North Yorkshire. The Learning and Skills Council has established an Adult Strategy and Planning Group which involves the major providers of adult learning including North Yorkshire County Council. This group has set a clear framework for collaborative planning for adult learning across the seven district council areas of North Yorkshire.

Members of some Area Committees have expressed concerns over the reduction in enrolments in September 2006 compared to previous years. The main reason for this was the operational difficulties caused by the timing of the restructuring of the Community Education Service and the impact this had on the establishment and operation of bases for

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the newly established Adult Learning Service. The concerns expressed have since been allayed, following an increase in the number of enrolments in the spring and summer terms. The final number of enrolments for 2006/7 will be slightly lower than those for 2005/6, however more rigorous planning and monitoring arrangements for 2007/8 should ensure that enrolments for the next twelve months will be at least at the level for 2005/6, if not higher.

The Executive supported a number of amended/additional improvement indicators to be made to the Development Plan for Adult Learning, which were proposed by a working group of the Economic Development and Regeneration Overview and Scrutiny Committee.

- To maintain and further develop access to learning opportunities in the remote and rural areas of North Yorkshire. (additional Improvement Indicator)
- To ensure that the Adult Learning Service delivers on targets for which it is responsible in the Local Area Agreements and supports partners through the Area Learning Partnerships towards achieving targets in the Local Area Agreements generally. (amendment to an existing Improvement Indicator)
- To further develop packages of training for staff, including migrant workers, in the travel and tourism industry in North Yorkshire with an overall aim of providing Full Level 2 qualifications.

Performance against targets and commitments set out in the Development Plan for Adult Learning is monitored in different ways and at different levels:

- Senior managers from the local Learning and Skills Council meet with providers of post-16 Education and Training on a termly basis to review progress. The Adult Learning Service is also required to submit statistical information to the national Learning and Skills Council on a termly basis.
- Running alongside the preparation of the Development Plan for Adult Learning is a requirement to produce an annual self assessment report and quality improvement plan. The Self Assessment Report (SAR) and Quality Improvement Plan are submitted to the local Learning and Skills Council on 31 December each year. The SAR identifies strengths and areas for improvement through addressing all five questions in the Common Inspection Framework for all 15 sector subject areas. The Quality Improvement Plan describes how the Adult Learning Service will address the areas for improvement and build on the strengths identified in the SAR.
- A team of 11 Ofsted inspectors undertook an inspection of the Adult Learning Service in May 2007. The Service was judged to be a good service and 11 out of the 12 areas were judged to be good with one area, ICT, graded satisfactory. Over 58% of the teaching was graded good or outstanding and no teaching was judged inadequate. Only two areas, Family Learning and ICT, did not receive an improved grade since the last inspection in 2003. A post-inspection action plan will be prepared over the summer and this will be reported to the Executive Member for post-16 Lifelong Learning and members of the working group of the Economic Development and Regeneration Overview and Scrutiny Committee.
- Regular reports on Adult Learning are taken to all seven Area Committees of the County Council. The reports include statistical performance data as well as reports on specific projects. The performance of individual areas is also monitored through regular management meetings between Area Adult Learning Managers and the two Education Officers (Adult Learning) when specific targets in the

operational plans will be reviewed and appropriate action taken.

- Performance against the targets set out in the Development Plan for Adult Learning will be reported to members of the working group of the Economic Development and Regeneration Overview and Scrutiny Committee in November/December 2007.
- A report monitoring performance against targets set out in the Plan will be brought to the Executive Member with responsibility for Lifelong Learning in Spring 2008.

The Executive RECOMMENDS:

That the Development Plan for Adult Learning 2007/08, a copy of which is attached to this report marked Appendix A, be approved

2. Revised Prudential Indicators 2007/08 to 2009/10: The Prudential Code requires appropriate arrangements to be in place for the monitoring, reporting and revision of Prudential Indicators previously set. These arrangements were agreed by the County Council in February 2004. The Prudential Indicators for 2007/08 to 2009/10, approved by County Council on 21 February 2007, were based on a Capital Plan approved by Executive on 21 November 2006.

The Annual Treasury Management and Prudential Indicators report, considered by the Executive on 26 June 2007, reported the 2006/07 outturn position on Prudential Indicators, compared with the last update set of Indicators for the year, as approved by County Council on 21 February 2007. The 2006/07 outturn did not, however, consider any updates to the various Indicators set for the three year period 2007/08 to 2009/10 and it is therefore necessary to revise the Prudential Indicators for the three years up to 31 March 2010. As a result of Capital Plan updates and other changes, many of the Prudential Indicators need revising, particularly those for capital spending, the capital financing requirement and authorised debt levels. Rather than consider individual Prudential Indicators in isolation, however, a full review of Indicators has been undertaken as part of the ongoing financial monitoring process. This is necessary because:-

- (i) the Indicators approved in February 2007 included a number of provisional forecasts
- (ii) subsequent, and more up to date information has become available resulting in forecasts for future years having to be refined

A Prudential Indicators update and monitoring report is therefore attached as Appendix C. This sets out every Prudential Indicator in terms of:

- (i) Indicators approved in February 2007
- (ii) Updated Indicators as at August 2007
- (iii) Comments on the reasons for all variations being proposed

In general the updated Indicators reflect a number of common factors including:

- (i) 2006/07 outturn – capital spending, capital financing and new borrowing as reported to Executive on 26 June 2007

- (ii) an updated Capital Plan
- (iii) latest information and approvals on schemes self funded from grants, contributions and from revenue
- (iv) updated forecasts of debt change estimates and interest earned on surplus cash balances
- (v) various other miscellaneous refinements

The Executive RECOMMENDS:

<p>That the revised Prudential Indicators for the period 2007/08 to 2009/10, as set out in Appendix C to the report, be approved.</p>

3. Rights of Way Improvement Plan: As Highway Authority, the County Council has a statutory responsibility to produce a Rights of Way Improvement Plan, covering the whole of North Yorkshire, by November 2007, in accordance with the Countryside and Rights of Way Act 2000. The Plan has been prepared in accordance with the guidance issued by Defra and the Department of Transport, the latter relating to the integration of rights of way and local transport planning. The Plan sets out how the County Council proposes to improve the management, maintenance, location and promotion of local rights of way in the future. Key components of plan preparation have included an initial public consultation in 2004; an assessment of the entire rights of way network; research of how rights of way deliver other policy agendas; and an assessment of stakeholder requirements.

The Rights of Way Improvement Plan has been jointly prepared by the County Council, as lead Highway Authority, together with the two National Park Authorities who have delegated responsibility with regard to rights of way within their areas. The Plan has had further support from a wider steering group composed of officers based at District Councils and Areas of Outstanding Natural Beauty. Advice and input has been provided by members of three Local Access Forums in North Yorkshire, who have a statutory role in preparing the Plan. A public consultation on the draft Plan was held between 1 April and 30 June 2007. A total of 250 responses were received from individuals, groups and organisations. The results of this consultation and the changes proposed in response to the comments received were considered by the Environment and Heritage Overview and Scrutiny Committee on 5 September 2007, who resolved to support the proposed amendments to the Plan.

A full report on the consultation and the responses received, which sets out further detail on the submitted comments and outlines the main changes that have been proposed as a result, was considered by the Executive. The draft Plan, its policies and proposals, have received a high level of support from a variety of individuals, groups and organisations. These include a number of key stakeholders, notably Natural England whose remit covers Improvement Plans, the Government Office for Yorkshire and Humber and Sport England. Their comments highlight particularly effective elements, including the setting of national best practice in the techniques used to develop the Plan.

Some respondents have focussed their comments on local issues, rather than on the strategic objectives, policies and actions of the Plan. While these detailed comments often reflect wider concerns, it is important to note that the Government requires Improvement Plans to adopt a more strategic approach. This includes:

- Current and likely future needs

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- The needs of people with a range of abilities, expectations and interests.
- Opportunities provided by footpaths, cycle tracks, bridleways and restricted byways of exercise, other forms of open-air recreation and enjoyment of their area
- Accessibility for the blind, partially sighted persons and other with mobility problems and
- Supporting the Government transport objectives.

The Plan also builds on statutory duties to provide better information, better management and the creation of carefully chosen new routes in locations which make a real difference. It also examines the role of rights of way improvements in delivering other policy objectives, in order to attract funding partnerships and a wider range of delivery mechanisms, including voluntary means.

Of those who responded, equestrian interests were best represented. Most of their responses supported conclusions from the network assessment which were already addressed by the objectives, policies and actions in the Plan. A handful of land interests felt that the Plan did not address their needs, that they were not consulted and that the Plan has a tourism bias rather than agricultural focus. While these concerns are acknowledged, they have been reflected in the Plan and were taken into account in developing the objectives, policies and actions. Further, land interests have also had the opportunity to present views in the 2004 and 2007 consultations and their interests have been represented on the three Local Access Forums who have been involved in preparing this Plan.

Many comments were received about stopping unlawful motorised vehicular use of rights of way and strong feelings were expressed about restricting lawful vehicular use of "green lanes", the term used to describe byways open to all traffic and unsurfaced unclassified roads. In this context the Plan considers the sustainable management of the rights of way and the future integration with local transport.

In view of the generally supportive nature of the consultation responses, only minor changes have been made to the Plan in order to clarify text, remove ambiguity and reflect minor concerns. There have been no changes to the objectives, policies and action contained in the Plan, apart from the addition of two policies which seek to reduce the

potential environmental impact of the Plan and a third relating to safety issues. These new policies state that:

- SU5 Undertake improvements which are compatible with the landscape, natural and historic environment of North Yorkshire.
- SU6 Ensure that improvements which are undertaken, are compatible with the statutory purposes of Natura 2000 site designation (European sites)
- SA6 Use a range of measures to reduce the potential for conflict when crossing or passing close to railways or other hazardous features.

An Annual Business Plan will be produced and published which will review progress in implementing the Plan.

Members of the County Council were sent a copy of the draft Rights of Way Improvement Plan on CD, at the beginning of the public consultation period, in April 2007. The CD also contained the four supporting technical summaries. Hard copies are also available of the Plan or of any or all of these documents.

The Executive RECOMMENDS:

- (a) That the Rights of Way Improvement Plan for North Yorkshire, a copy of which was circulated with the agenda on CD, be adopted.
- (b) That the Rights of Way Improvement Plan be added to the list of plans and strategies in the policy framework in Article 4 of the Constitution.

3. Acceptance of Grant – Section 31 of the Local Government Act 2003: An issue has arisen in relation to the necessary level of authority the Department of Transport requires in relation to certain grant funded schemes.

For the funding of local transport major schemes, the Department for Transport (DfT) has moved from Transport Supplementary Grant, supported borrowing and Section 56 funding to a 100% grant regime. This is based on powers contained in Section 31 of the Local Government Act 2003. The total grant funding for the Scarborough Integrated Transport Scheme from the DfT is £29.8m; of this £26.2m will now be funded under the new Section 31 arrangements. Total Government funding for the Reighton Bypass Scheme is £6.6m; of this £2.1m will be provided under the Section 31 arrangements.

Prior to 1 April 2007, the grant funding for the two schemes, and thereby the related terms and conditions, were accepted in the normal way by the Corporate Director – Business and Environmental Services and the Corporate Director – Finance and Central Services. Following the changes in grant arrangements introduced by the DfT, and as part of the DfT's subsequent S.31 Grant Determinations for Major Schemes in 2007/08, the DfT has asked authorities specifically to confirm that they accept the terms and conditions of this grant and to provide documentary evidence to this effect. The offer of S.31 Grant carries with it certain terms and conditions which the Authority has to accept before any grant will be paid. Some of these conditions carry a potentially significant financial impact upon the Authority, particularly the commitment by the Authority to repay the grant if the grant conditions are not met. These include, for example, the condition that the scheme must operate for a period of 10 years. The grant terms and conditions are set out in Appendix D attached to this report.

These conditions are similar as those applied to the grant arrangements prior to 2007/08. The Department of Transport has stated:

“However rare it may be to invoke these conditions, we are bound, as a matter of due diligence, to seek assurance that they have been accepted by the Authority in a way which would be legally binding.”

The Department has advised that there are two ways in which the Authority may demonstrate that this necessary acceptance is in place.

- “(i) that the Chief Finance Officer (or any other person) has the legitimate authority to accept the conditions on the Authority's behalf. In this case they would sign the section that says “I accept the grant offer for and on behalf of XXXX Council” In signing this the person is not only committing the Authority to meet the conditions but to repay the grant if the grant conditions are not met. If the person has the authority to do this there should be a document in writing that confirms this, for example something in the Constitution or Articles of the Council that defines the powers of the Section 151 Officer.

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A copy of this document is needed as evidence, provided of course that it confers the necessary powers (eg to enter into binding financial agreements). If the list of the Section 151 Officer's powers is particularly extensive it would be helpful for that Authority to indicate which particular power gives the authority to enter into the agreement and why. Powers to apply for grants or to make grant *claims* are not in themselves sufficient, nor is a general duty to "administer the financial affairs of the council".

- (ii) if there is no single person who appears to hold such authority, or there is any doubt as to this, then the grant acceptance needs to be ratified by a body with the necessary authority such as the full council or a council committee.

In this instance the person signing the form is not directly accepting the conditions on the Authority's behalf but is confirming that they have been accepted by a body that had the authority to do so.

In this case the Department would need a copy of actual minutes that agreed the grant conditions. (Please note that minutes should show not just that the grant was accepted but that it was accepted *under the terms and conditions offered*).

AND (unless the decision was of the full council) a copy of the document that confirms that the body that took the decision (eg cabinet) has the power to do so eg to enter into binding financial agreements."

A robust response to this issue has been submitted to the DfT by the Corporate Director - Business and Environmental Services and Corporate Director – Finance and Central Services. In relation to the schemes themselves, it has been pointed out that

- the Reighton Bypass scheme is almost complete and grant to 31 March 2007 paid
- a significant amount of work has already been carried on the SITS scheme and grant to 31 March 2007 paid
- the Department decided to change to S.31 grant and then apply these conditions retrospectively
- County Council officers have previously accepted grant conditions on these two schemes that were similar to those now specified for S.31
- no other grant schemes (including ESF etc) apply acceptance criteria in this way

In addition, copies of the relevant extracts from the Financial Procedure Rules that relate to the submission of grant applications and certification of claims, have been forwarded.

Claims submitted and not paid since 1 April 2007 on the two schemes amount to £1.5m on Reighton and £2.6m for SITS, a total of £4.1m now withheld by the DfT pending the resolution of this issue.

The DfT officials have indicated that they do not regard the arguments and evidence put forward by the County Council as "sufficient for our purposes". Effectively the DfT does

not accept that the Corporate Director – Business and Environmental Services and / or Corporate Director – Finance and Central Services have the necessary authority to accept the terms and conditions attached to S.31 grant. Because of this position, and the fact that the amount of grant outstanding, but not being paid, will accumulate, the Executive recommends that the County Council formally resolves to accept the terms and conditions of Section 31 Grant set out in Appendix D to the report. To avoid the need for such issues to be referred to full County Council, in future, however, the Executive has asked the Audit Committee to consider an amendment to the Scheme of Delegation to Officers, together with consequential amendments to the Finance Procedure Rules, to add to the authority of the Corporate Director - Finance and Central Services the power to agree the terms and conditions of grant offers made to the Council; to accept such grant offers and sign associated documentation on behalf of the Council, provided that, in case of grant offers that exceed (a sum to be set by the Audit Committee) the agreement and acceptance shall be subject to consultation with the Corporate Director to whose service the grant is relevant and with the Head of Legal Services. It is anticipated that the Audit Committee will bring a recommendation about such changes to County Council, in due course.

The Executive RECOMMENDS:

That the terms and conditions attached to Section 31 Grant, as set out in Appendix D to this report, be accepted in respect of the grants for the Reighton By Pass Scheme and the Scarborough Integrated Transport Scheme.

5. Amendment of Officers' Scheme of Delegation and Terms of Reference of Appeals Committee: The Council's Attendance Management Policy, introduced in 2005, deals with the termination of employment of Council employees on the grounds of attendance and sickness. The policy also includes a process for the consideration of appeals against termination on these grounds. Currently the process provides that appeals would be considered by a panel comprising at least one Member, a senior manager (who has not previously been involved in considering the matter), and an HR adviser, with prior advice from Occupational Health. The relevant powers are not specifically described in the Officers' Scheme of Delegation and the process needs to be amended as, legally, a single non-Executive member cannot take decisions on behalf of the Council.

Ill health dismissals differ from dismissals on grounds such as conduct and capability, due to their sensitivity and lack of culpability. They also require input from Occupational Health and therefore appeals to a panel are considered to provide a more appropriate forum for their consideration. It is proposed that an appeal on such an issue will be decided by a senior manager in consultation with a Member, neither of whom has previously been involved in the matter. The role of the Member will be to provide a view as part of a panel; the senior manager will chair the panel and make the decision, taking into account the views of the Member and Occupational Health.

Appropriate additions to both the Officers' Scheme of Delegation and the terms of reference of the Appeals Committee, to make clear the different mechanism for appeals against dismissals under the Council's Attendance Management Policy, are set out below.

The Executive RECOMMENDS:

a) That the terms of reference of the Appeals Committee be amended by the additional of the text shown below, in italics:-

“To hear and determine appeals against decisions of Officers of the Council, where provision exists for appeals to a Member level body or relevant decisions of the Governing Bodies of voluntary aided schools where the Governing Body so requests in respect of:-

- Dismissals, including selection for redundancy, *except that appeals against dismissals under the Council’s Attendance Management Policy shall be determined, in consultation with a Member to be drawn from the Appeals Committee and an HR advisor, by a senior manager who has not previously been involved in the matter, and who is duly authorised to determine the appeal in accordance with paragraph 3.7 of the Officers’ Delegation Scheme”*

b) That paragraph 3.7 of the Scheme of Delegation to Officers’ be amended by the addition of the words set out, in italics, below:-

“3.7 Chief Officers are authorised to take any action with respect to the recruitment, appointment, promotion, training, grading, discipline, authorisation of senior managers to determine appeals against dismissal under the Council’s Attendance Management Policy (in consultation with a member drawn from the Appeals Committee and an HR adviser), determination of wages and salary scales.....”

and that the Constitution be amended accordingly

6. Appointments to Committees and Other Bodies: The Executive recommends, below, a number of appointments to the Committees of the County Council and, in order to provide opportunity for political groups and independent members on the Council to propose changes to memberships, or substitute memberships of committees, or other bodies to which the County Council makes appointments, the Executive recommends below that such nominations be approved.

Recognising the significant workload of the Appeals Committee and the significant differences between appeals on home to school transport matters, which relate to the application of a County Council policy, and determining personnel related appeals, which relate to employment law and case law, the Executive has agreed that the benefits and/or the disadvantages of establishing a separate committee to determine appeals on personnel related issues, should be considered further. This may include the possibility of appointing a chairman of the committee who is independent of the County Council and of allocating seats on the committee outside the arrangements for political proportional allocation of seats.

The Executive RECOMMENDS:

a) That Councillor Camacho be appointed to the Scrutiny of Health Committee as substitute member for the Craven District Council and that Councillor Rob Johnson be appointed to the Pension Fund Committee as second named substitute for the North Yorkshire District Councils

b) That any proposals for other changes to memberships, or substitute memberships or other bodies to which the County Council makes appointments, put forward by the relevant political group, at or before the meeting of the Council, be approved.

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JOHN WEIGHELL
Chairman

County Hall,
NORTHALLERTON.

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