

Commissioner Foreword



Dear Subscribers,

Welcome to the July edition of Common Ground.

When planning community education activities, our BCCM information and community education team use data insights and your feedback to identify the issues that clients need to know about. As our data shows maintenance in community titles schemes continues to be a hot topic, in this month's edition of Common Ground we are exploring body corporate and owner maintenance responsibilities.

Maintenance obligations can be affected by a number of factors, including the registered survey plan for a scheme. To make it easier to understand the differences that can arise, included are two articles that discuss maintenance obligations in schemes registered under the two most common types of survey

plans – building format plans and standard format plans. Each article includes information to help you to identify the boundaries of an owner's lot and the common property, an important step in determining who is responsible for what.

Upcoming webinars in August will then take an in-depth look at these maintenance obligations. One webinar will focus on maintenance in schemes registered under building format plans and the other will focus on standard format plans, so that you only need to register for the webinar that is relevant for your scheme. If you are unsure which type of plan applies to your scheme, you may wish to contact Titles Queensland on 07 3497 3479 to ask for a copy of the registered survey plan for your scheme. Of course, you are also more than welcome to register for both webinars.

If you have a topic you would like us to consider for future articles or webinars please make sure you let us know by emailing bccm@justice.qld.gov.au.

Michelle Scott
Commissioner
Office of the Commissioner for Body Corporate and Community Management



Standard Format Plan Maintenance



Maintenance in a body corporate can be a confusing issue. Many owners and committees assume the body corporate, for example, is responsible for all the exterior building maintenance. Maintenance responsibilities, however, vary considerably depending on the nature of a scheme's registered survey plan.

This article discusses and provides clarification on maintenance issues in a standard format plan (**SFP**), formerly known as a group title plan.

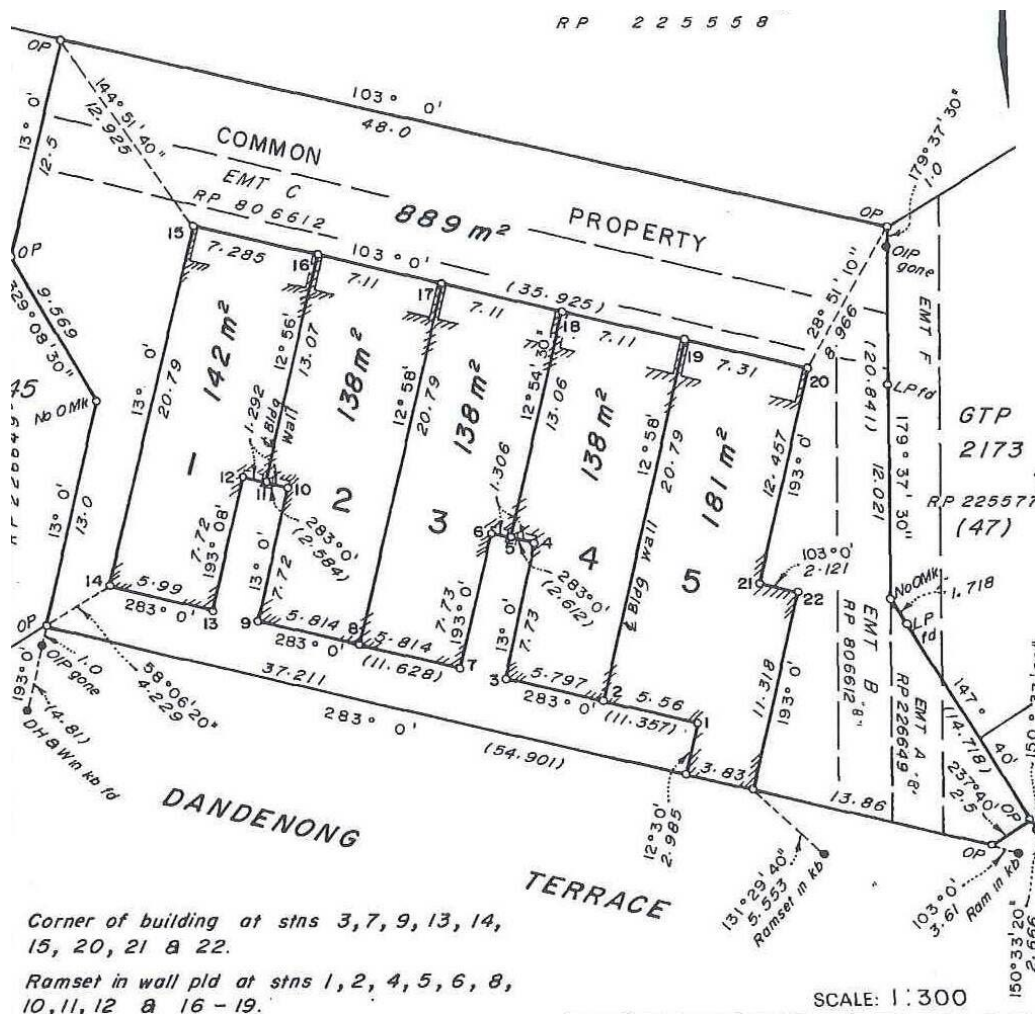
Boundaries in a standard format plan

Working out whether the land, and any building on the land, is part of an owner's lot or the common property depends on where boundaries are located.

A SFP defines land horizontally, using marks on the ground, or a structural element of a building (e.g. survey pegs in the ground or the corner of a building). The boundaries are unlimited under the ground and into the air.

How to identify the boundaries

This is an example of a survey plan for a SFP:




To fully interpret a survey plan, or accurately measure where boundaries lie, you may need to consult a qualified surveyor.

Common property is usually marked as such. Darker lines inside the main outer boundary of the scheme land show the boundaries of the lots.

Responsibility for maintenance

Generally, maintenance for both structural and non-structural elements of most parts of the buildings located within the boundaries marked on the survey plan are the owner's responsibility under [Section 211](#) of the Standard Module. As boundaries are unlimited under the ground and into the air, an owner is responsible for not just the walls, but elements beneath the ground within the boundaries, foundations, and roofing structures.



The body corporate must maintain common property in good condition under [Section 180](#) of the Standard Module. If the common property is structural in nature, it must be maintained in structurally sound condition. Examples may include gyms, pool changing areas, saunas and storage sheds.

Exceptions inside the lot boundaries

In many cases there may be utility infrastructure (gutters, storm drains, sewers, cables, wiring etc.) located within an owner's lot that services more than just that lot. Any shared utility infrastructure will remain common property, meaning it is usually the body corporate's responsibility, even if it is located inside the boundaries of the owner's lot.

An owner is responsible for any part of utility infrastructure that meets three criteria:

- it services only their lot
- **and** is also located within the owner's lot boundaries
- **and** is not located within a boundary structure.

You can read more about [utility infrastructure maintenance](#) on our website.

Common questions around responsibility for maintenance

These are some examples of particular elements of a building and the responsibilities for maintenance.

Exterior walls

There is a common misconception that the body corporate should pay for maintenance of the exterior of the building from the sinking fund. As the walls are within the boundaries of the lot, an owner is responsible for painting, or maintaining rendering or cladding, or otherwise maintaining the exterior surface of the walls under [Section 211](#) of the Standard Module.

Adjudicators have made it clear the body corporate cannot use sinking fund money or vote to raise a special levy to pay for maintenance of owners' lots in a SFP.


In [Bayshore Central \[2017\] QBCCMCmr 550 \(8 November 2017\)](#), the adjudicator held:

[25] Owners are responsible for all aspects of the maintenance of all parts of their lots, including the exterior surfaces of buildings constructed on their lots. Adjudicators have consistently confirmed that a body corporate cannot take responsibility for painting and other maintenance of lots in a SFP.

[26] If an owner fails to comply with their obligation to maintain their own lot in good condition, a body corporate can carry out the work itself and recover the reasonable cost of that work from the owner. The body corporate, as always, would need to act reasonably in doing so, including in determining whether a lot was not in good condition and whether the owner was on notice of the alleged need to undertake maintenance.

Bodies corporate are not permitted to accumulate money in the sinking fund for painting the owners' buildings. An adjudicator ordered that the monies were to be refunded in [Somerset Park \[2017\] QBCCMCmr 412 \(24 August 2017\)](#), finding:

[23] Motion 13 of the AGM of 26 October 2016 proposed that the body corporate agree to repaint the buildings ... with the costs incurred to be met from the existing funds in the sinking fund. The motion was lost with 48 votes against and 23 in favour. In my view, Motion 13 should have been ruled out of order by the chairperson. It proposed to authorise work financed from the sinking fund that is the responsibility of lot owners under section 168(2) of the Accommodation Module (now Section 201 of the Accommodation Module).



[24] It is apparent that owners have been contributing toward the cost of repainting the buildings in the scheme via contributions to the sinking fund. This is contrary to law and the question now arises as what should be done with the contributions that have been accumulated for that purpose.

Shared common walls

Often there are shared walls between two lots. The boundary measurements on the survey plan show the exact boundary, but it is likely to be the centre of the wall structure. Owners are still responsible for the non-structural and structural maintenance of that wall. As it is shared between two lots, it may be that some maintenance will have to be shared between the two owners.

Roof

A roof is a structural part of the building. Adjudicators have stated that a roofing structure is not utility infrastructure.

When there is a single shared roof that covers more than one lot, an owner will still be responsible for the portion of the roof located within the boundaries of their lot. It may be that a group of owners will need to jointly repair or replace a roof that covers more than one lot. The body corporate may offer to supply the maintenance services to owners, at their cost. Supply of services is discussed below in more detail.

Foundations

Foundations in a SFP are most likely within the boundaries of the lot and therefore the responsibility of the owner to maintain. Remember that boundaries are unlimited under the ground.

Subsidence under the ground within the lot boundaries is usually the owner's responsibility to maintain.

Windows and doors

The owner is responsible for maintaining doors, windows and their associated fittings, as these elements are usually part of the building and within boundaries of a lot.

Balconies

Balconies located within the boundaries of a lot are an owner's responsibility. This includes both structural maintenance of wooden joists, framework or cement slabs, and non-structural maintenance of balustrades, tiles or painting, for example.


Supply of maintenance services

The body corporate might co-ordinate supplying maintenance services for owners under [Section 210](#) of the Standard Module, but it cannot force an owner to use their services.

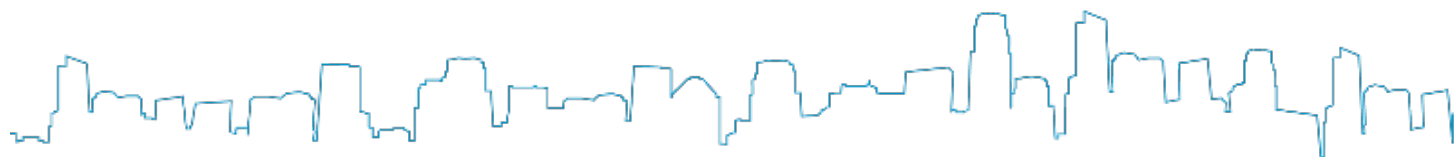
A typical example of this is painting the buildings or replacement of the roofs. The body corporate can obtain each owner's agreement to have the body corporate carry out the maintenance service(s). Each owner who wishes to participate agrees to reimburse the body corporate for their share of the maintenance costs. The body corporate might offer a service agreement for the owners' benefit, with costs and terms clearly stated.

Services organised in this way remain the financial responsibility of the owners and should not form part of the budgets or general contributions levied on owners.

This article clarifies the main issues arising around maintenance in a SFP. As shown by the adjudicators' orders, most of the building maintenance in this type of plan is the individual owner's responsibility. Communication with



owners and co-ordination of any agreed maintenance services by the body corporate will potentially help owners understand their responsibilities.



Building Format Plan Maintenance



Owners and committees are often confused about who is responsible for maintenance within their body corporate. This is not surprising as it is not always a simple issue, especially in a scheme registered under a building format plan (BFP), where the body corporate might be responsible for parts of a lot.

This article explains who is responsible for maintenance within a scheme registered under a BFP.

Many community titles schemes built after 1997 are registered under a BFP. A quick check of the registered survey plan is recommended to confirm that a BFP applies in the circumstances.

This article provides general advice only and lot owners or bodies corporate need to take their own advice, as each case depends on its facts.

The general principles

Responsibility for maintenance usually depends on whether the parts of the building are common property or not.

Parts of the building outside the boundaries on the survey plan are usually common property and the body corporate's responsibility to maintain under [Section 180](#) of the Standard Module.

There are exceptions to this general principle in the case of a BFP. Some utility infrastructure and structural elements of the building located within the lot boundaries, for example, remain a body corporate maintenance responsibility.

This means an owner or committee wishing to confirm the body corporate is responsible for carrying out maintenance work where a BFP is involved, needs to ask three questions:

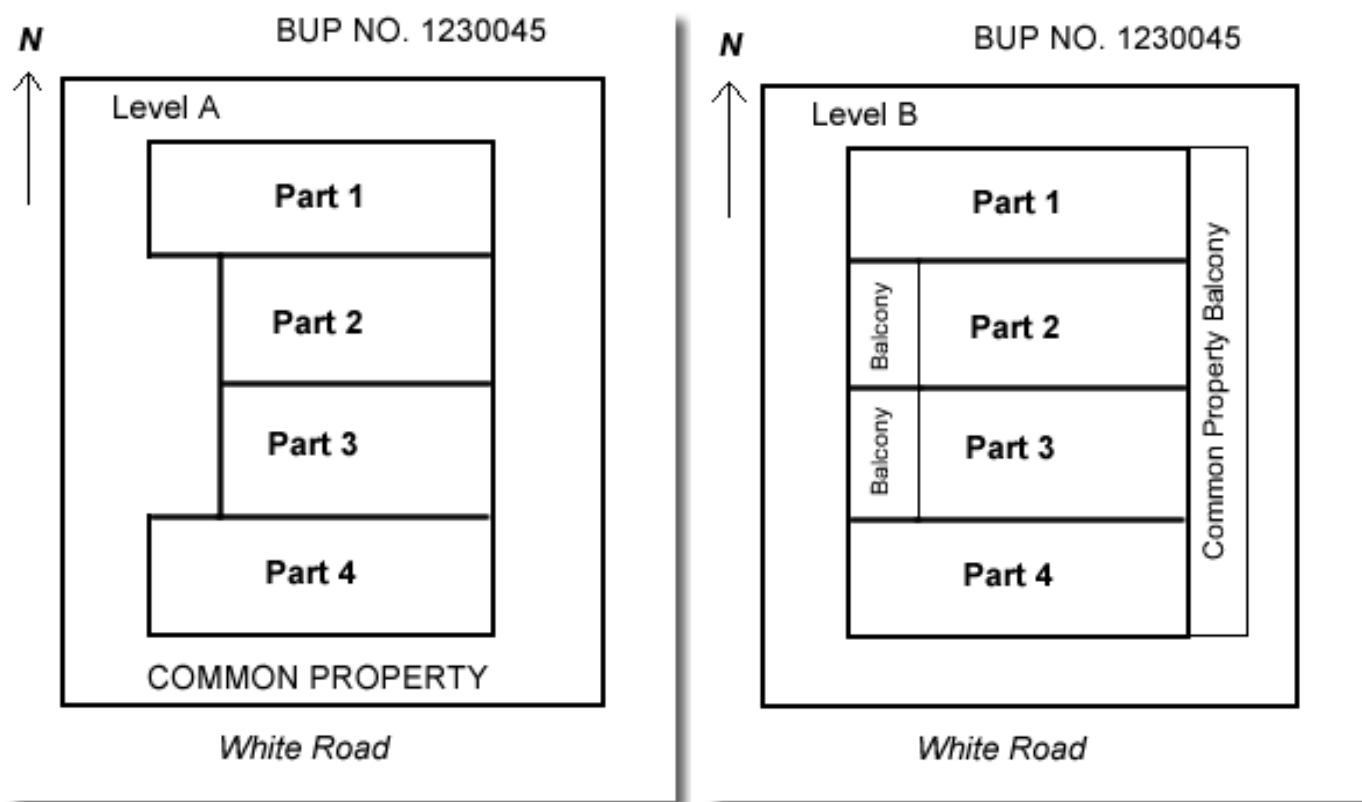
1. Does the maintenance relate to scheme common property?
2. Does the maintenance fall within one of the additional maintenance responsibilities of the body corporate under the Act and regulations?
3. If the answer to either of these questions is "yes", do any exceptions apply to prevent the work being a body corporate responsibility?

Boundaries of lots and common property in a building format plan

The first step in understanding who is responsible for maintaining a building within a scheme registered under a BFP involves identifying what parts of the building are an individual owner's lot and what parts are common property, by identifying where boundaries are located.

The [Land Title Act 1994](#) defines the boundaries in a BFP, earlier known as a building unit plan (BUP). The Act states that where one lot is separated from another lot or common property by a floor, wall or ceiling, the boundary of the lot is the centre of that floor, wall or ceiling.

Here is an example of a BFP/BUP type of survey plan:



To fully interpret a survey plan, you may need to consult a qualified surveyor.

A general guide is that the darker/thicker lines are the boundaries of the lot. The boundaries are usually the walls or some other structural part of the building. Some lines may be paler, thinner, grey, dotted or dashed. These lines may define walls or parts of a building that are not a boundary structure.

Some plans show square meterage for the inside and the balcony areas or garages, plus the total of the lot's square meterage. This might also be handy to determine what parts of the building are part of the owner's lot if the lines are not clear, particularly on older plans.

As you would expect, property inside the boundaries of an owner's lot is not usually part of common property. There are exceptions to this rule in the case of utility infrastructure. Under [Section 20](#) of the *Body Corporate and Community Management Act*, utility infrastructure that services more than one lot (apart from certain water meters), is included in the scheme's common property, even if it is located within the boundaries of a lot.

Additional body corporate maintenance responsibilities

In addition to being responsible for maintaining common property, [Section 180](#) of the Standard Module requires a body corporate for a scheme registered under a BFP to maintain:

- Railings, parapets and balustrades on the boundary of a lot and common property
- Doors, windows, and fittings in a wall separating a lot and common property
- Roofing structures and membranes providing protection
- Foundation structures
- Supporting frameworks such as load-bearing walls

The obligation applies, regardless of whether these elements are part of the common property of the scheme.



Exceptions

The final step to confirm whether the body corporate is responsible for particular maintenance work is to check the regulations to ensure there are no exceptions to the usual principles.

[Section 180](#) of the Standard Module contains a limited number of exceptions to clarify that, despite the body corporate's usual maintenance obligations, it is not responsible for maintaining:

- Fixtures or fittings installed by an occupier of a lot for their own benefit, or
- A hot-water system, washing machine, clothes dryer, solar panels, air conditioning system, television antenna or other device or supplying utility services – if they only relate to supply of services to one owner's lot.

Common questions around responsibility for maintenance

These are some examples of particular elements of a building and the responsibilities for maintenance.

Exterior walls

As stated above, boundaries are the centre of the walls. When there is common property on the other side of the wall, with no exclusive use area, the outside half of the wall is common property. The body corporate is generally responsible for painting, maintaining rendering, cladding or otherwise maintaining the exterior surface of the walls.

An owner is usually responsible for painting (or other non-structural maintenance) of walls inside a balcony located within the boundaries of their lot.

Roof

A roof is a structural part of the building. Adjudicators have found that a roofing structure is not utility infrastructure. Usually a roofing structure and the associated roofing membrane is located above the ceiling boundary and is part of common property.

Occasionally, a roofing structure is located within the boundaries of the lot and therefore not part of common property. The body corporate must still maintain roofing structures in a structurally sound condition, even if they are not common property.

Roofing membranes providing protection for lots and common property that are located inside the lot boundaries are in most cases the body corporate's responsibility to maintain. A typical example of this is a roofing membrane on a balcony or patio floor, that forms the roof of a lot or common property below.

Foundations


Foundations are usually under the ground floor boundary structure. If so, they are most likely common property and the body corporate's responsibility. However, even if foundations are within the boundaries of a lot, the legislation provides the body corporate is still responsible for maintaining them in a structurally sound condition.

Soffits and eaves

Soffits and eaves are usually outside the boundaries of the lot so in most cases, are the body corporate's responsibility to maintain.

Windows and doors

The body corporate is responsible for maintaining doors, windows and their associated fittings if they are located in a boundary wall between the lot and common property. This applies to original doors, windows and fittings



installed by the builder. An owner's improvement (e.g. an upgrade or change) to a door or window is normally their responsibility to maintain.

Doors or windows located in a non-boundary wall remain the owner's responsibility. In the plan example above, you will see the line showing the wall leading to the balcony is thinner, meaning it is not a boundary wall. In most cases, any doors or windows in that part of the wall are the owner's responsibility.

Balconies and balustrades

Balconies have various elements, some of which are body corporate responsibility and some which are the owner's responsibility.

A balcony at the floor level of a lot is in most cases the boundary structure between the lot, and the one below. The top half of the balcony's slab is above the centre of the boundary structure and therefore within the owner's lot. An owner must maintain their lot in good condition, so tiles and other non-structural components (like painting walls within the balcony), in most cases, are the owner's responsibility to maintain in good condition.

The balustrades or railings of the balcony that are on the boundary of the lot, are generally the body corporate's responsibility. The body corporate is also responsible for keeping the slab in a structurally sound condition.

Roofing membranes and tiles

There have been many disputes about who is responsible for tiles laid over a roofing membrane. The following information should assist to clarify the issue.

[Section 180](#) of the Standard Module provides the body corporate is usually responsible for a roofing membrane on a balcony, if it is a roofing structure providing protection for lots and common property. In some circumstances, the body corporate may have to cover all or some of the cost of lifting and replacing tiles to carry out the maintenance of the roofing membrane below the tiles.

For example, in [Rutherglen \[2008\] QBCCMCmr 377 \(14 October 2008\)](#), the adjudicator said:


The balcony tiles are covered by a different provision. Maintenance of the tiles falls under the general rule that the applicant must maintain her own lot (Standard Module, 170(2)) [now [Section 211](#) of the Standard Module]. If the balcony tiles are in good condition and the body corporate needs to remove those tiles to repair the waterproofing membrane then the body corporate should also repair or replace tiles that need to be removed to rectify the membrane. However, if the tiles are not in good condition then it would be appropriate for the body corporate to seek some apportionment as a result of the body corporate replacing old tiles with new tiles.

In [Galileo Tower- \[2015\] QBCCMCmr 581 \(10 December 2015\)](#) the adjudicator found:

[62] Normally an owner is responsible for tiles on their balcony. However, to the extent that it was necessary (as presumably would usually be the case) to remove the tiles to enable the waterproofing work that the Body Corporate is responsible for, the Body Corporate would be responsible for replacing the tiles. If only part of a tiled area needs to be removed to undertake work, replacement of all tiles in the area may be necessary if it is not feasible to match the tiles that have been removed. Any Body Corporate responsibility to replace tiles would arguably only be for tiles that are the same or the modern equivalent of the tiles that are removed, or tiles of an equivalent value to that. If an owner wanted different tiles, they would be responsible for any cost above the tiles that the Body Corporate is responsible for.

Inside the boundaries

In most circumstances, the structural maintenance of original interior load bearing walls and framework remains the body corporate's responsibility.



The non-structural maintenance of interior walls such as painting, plasterboard/gyprock or skirting boards, is normally the owner's responsibility. Fixtures and fittings such as floor coverings, cupboards and benches, toilets, shower screens or vanities are commonly the owner's responsibility.

A common question is about cracks appearing in the ceiling or walls. Maintenance of superficial cracks is typically the owner's responsibility. However, if the body corporate has failed to maintain the building in a structurally sound condition and that is the cause of the cracking, the body corporate might then be responsible to repair the cracks inside the boundaries of the lot.

Waterproofing membranes located inside the lot boundaries, usually in wet areas like the kitchen, laundry or bathroom, are generally the owner's responsibility to maintain. This type of membrane is normally not a roofing membrane.

An adjudicator stated in order [The Dalgety \(Apartments\) \[2020\] QBCCMCmr 118 \(6 March 2020\)](#):

[45] The waterproofing in the bathroom of a lot will be wholly within the boundaries of that lot and will not be common property. A body corporate is responsible for maintaining roofing membranes that are not common property but that provide protection for lots or common property. However, I do not consider waterproofing within the bathroom of a lot can rationally be categorised as a roofing membrane.

This article clarifies the main issues surrounding maintenance in a BFP. As shown by the adjudicators' orders, some maintenance issues need to be determined by the body corporate for their scheme's individual situation. This means making reasonable decisions in the circumstances applying to the specific maintenance issue and its scheme.



Webinar registration

Use the links below to register for the applicable webinar for your scheme.

- Standard format plan maintenance - 2pm Tuesday 17 August
- Building format plan maintenance - 2pm Tuesday 24 August

Standard Format Plan Webinar

Building Format Plan Webinar

Body Corporate and Community Management

www.qld.gov.au/bodycorporate

1800 060 119

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