

Planning Services

Gateway Determination Report

LGA	Bellingen
RPA	Bellingen Shire Council
NAME	Review of permissible land uses in E4 Environmental Living Zone (0 homes, 0 jobs)
NUMBER	PP_2017_BELLI_002_00
LEP TO BE AMENDED	Bellingen LEP 2010
ADDRESS	The proposal applies to all land in the E4 Environmental Living Zone in Bellingen Local Government Area (LGA)
DESCRIPTION	Various
RECEIVED	30 November 2017
FILE NO.	EF17/13513
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to make the following land uses permissible with consent in the E4 Environmental Living Zone in the Bellingen LEP 2010:

- Secondary dwellings;
- Attached dual occupancies;
- Eco-tourist facilities;
- Tourist and visitor accommodation (with the exception of backpackers accommodation, hotel or motel accommodation and serviced apartments);
- Home businesses; and
- Rural industries.

The proposal also seeks to make farm buildings exempt development in the E4 zone.

Site Description

The proposal applies to all land zoned E4 Environmental Living in the Bellingen LGA. The E4 zone applies to the Thora and Kalang Valleys in the Bellingen LGA. These valleys contain significant native vegetation, are sparsely populated and isolated as a result of being accessed by a single road. The land is partly flood prone and bushfire prone.

Summary of Recommendation

It is recommended that the planning proposal proceed subject to conditions for the following reasons:

1. The proposal will facilitate additional land uses in the E4 zone which will provide additional diversity of housing options in the E4 zone which will also enable ageing in place;

2. The proposal will provide opportunities for employment generation and tourist facilities which are expected to have a small but positive impact on the local economy; and
3. The proposal is generally consistent with the strategic planning framework with any inconsistencies being of minor significance.

PROPOSAL

Objectives or Intended Outcomes

The objective of the planning proposal is to enable a wider variety of permissible land uses in the E4 Environmental Living Zone.

Explanation of Provisions

The explanation of provisions adequately describes the proposed changes to the Bellingen LEP 2010. The planning proposal will amend the Bellingen LEP 2010 as follows:

1. Insert the following uses in Item 3 (Permitted with consent) of the land use table for Zone E4 Environmental Living.
 - Dual occupancy (attached)
 - Eco-tourist facility
 - Home business
 - Rural industry
 - Secondary dwelling
 - Tourist & visitor accommodation
2. Insert the following uses in Item 4 (Prohibited) of the land use table for Zone E4 Environmental Living
 - Backpackers accommodation
 - Hotel or motel accommodation
 - Serviced apartments
3. Insert the following item in Schedule 2 Exempt Development.

Farm buildings

Specified development

The construction or installation of a farm building used for the purpose of an agricultural activity and not used for habitable purposes is development specified for this code if it is:

- (a) *constructed or installed on land in Zone E4, and*
- (b) *not constructed or installed on or in a heritage item or a draft heritage item or in an environmentally sensitive area.*

Development standards

- (1) *The standards specified for that development are that the development must:*
 - (a) *be not higher than 7m above ground level (existing), and*
 - (b) *not have an area of more than:*
 - (i) *if it is a stockyard—0.5ha, or*
 - (ii) *if it is any other building—200m² (if situated on a lot of 2ha or more) or 50m² (if situated on a lot of less than 2ha), and*
 - (c) *be located at least 20m from the primary road frontage of the lot and at least 10m from the other lot boundaries, and*
 - (d) *not be constructed or installed within 50m of a dwelling on an adjoining property, and*
 - (e) *be located at least 50m from a waterbody (natural), and*
 - (f) *to the extent it is comprised of metal components—be designed by, and constructed in accordance with the specifications of, a professional engineer, and*

(g) to the extent it is a silo—not be fitted with a motorised fan for aeration or drying purposes.

(2) If the development is a shipping container, there must not be more than 1 shipping container per lot.

It is noted that 'home businesses' are already permissible with consent in the E4 zone in the Bellinghen LEP 2010. Council has acknowledged this and that the inclusion of 'home businesses' in the planning proposal is unnecessary. Council has requested that the Gateway determination require that the planning proposal be amended accordingly.

Mapping

The planning proposal does not involve any changes to the mapping in the Bellinghen LEP 2010.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen as a result of the community consultation undertaken by Council as part of its Rural Lands Policy Review. The survey undertaken by Council and community meetings at Kalang and Thora revealed that the majority of land owners in the E4 zone believe that the restricted land uses in the E4 zone are overly onerous and do not enable them to undertake developments which are permissible with consent in other rural zones.

The E4 zone was originally applied to enable Council to limit the number of land uses that are permissible on this constrained land in order to restrict the impacts from additional traffic movements on Darkwood and Kalang Roads and to restrict the number of people that would be isolated in these valleys during flood events.

In its report of its meeting of 27 September 2017 Council notes that its ongoing infrastructure program, funded by a special rate variation, means that the road network should no longer be viewed as a reason for unnecessarily restrictive development controls.

It also notes that the community does not consider flooding isolation to be a significant issue since the community considers itself to be well prepared and resilient. Council notes that ongoing improvements in flood warning systems mean that residents are well informed regarding potential floods and given sufficient time to make appropriate arrangements in advice of any isolating flood event.

The proposal to make secondary dwellings and attached dual occupancies permissible with consent is consistent with other rural land in the LGA and across the region and is considered to be appropriate.

The proposal to permit eco-tourist facilities and some tourist and visitor accommodation in the E4 zone with consent is appropriate. The proposal will continue to prohibit backpackers accommodation, hotel or motel accommodation and serviced apartments in the E4 zone as these forms of tourist and visitor accommodation are not suited to isolated rural locations and are more appropriate in urban areas.

The proposal to make rural industries permissible with consent and farm buildings exempt development will allow these land uses to be developed on land which is currently used for commercial rural and agricultural purposes, consistent with other rural land in the LGA. This proposed amendment is considered to be appropriate.

The proposal is the best means of permitting the above land uses to be developed on the subject land. The proposed land uses cannot be developed unless they are made permissible in the LEP land use table for the E4 zone.

Another option would be to rezone the E4 zoned land to a rural zone however a change of this significance should be informed by either a rural lands strategy or a growth management strategy. Council acknowledges in the Council report of its meeting of 27 September 2017 that other changes to development potential in the E4 zone, such as a change in minimum lot sizes for subdivision, will be considered in the context of its growth management strategy. Council has however sought to proceed with permitting limited additional land uses in the short term to address community concerns.

It is however recommended that the cover letter for the Gateway determination suggest Council may wish to reconsider the appropriateness of the E4 zone through the review of its growth management strategy in light of this planning proposal enabling a wider range of land uses in the E4 zone and the comments in the planning proposal that the constraints of the land relating to road infrastructure and flooding may not be as significant as when the E4 zone was initially proposed.

STRATEGIC ASSESSMENT

State

NSW State Priorities

The proposal is not inconsistent with any of the eighteen State priorities being actioned by the State Government.

Practice Note 09-002 Environment Protection Zones

The practice note indicates that the E4 zone is for land with special environmental or scenic values and accommodates low impact residential development.

The practice note states that permissible land uses should be in keeping with the special conservation values of the land and complement low impact residential development. Land uses that may be suitable (as permitted with consent), depending on location, include, but are not limited to:

- eco-tourism
- home business
- secondary dwellings, e.g. attached to the principal dwelling
- tourist and visitor accommodation.

The practice note indicates that additional uses that are generally unsuitable in the zone include:

- residential accommodation (other than dwelling houses and secondary dwellings)
- rural industry

It is considered that permitting dual occupancies (attached) is not significantly different to permitting secondary dwellings in the E4 zone. Both land uses will facilitate a minor increase in population however the requirement for dual occupancies to be attached and the small size limit for secondary dwellings will limit the attractiveness of these forms of housing in remote areas and therefore is expected to limit their proliferation in the E4 zone.

Rural Industry is defined as:

the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

(a) agricultural produce industries,

- (b) livestock processing industries,*
- (c) composting facilities and works (including the production of mushroom substrate),*
- (d) sawmill or log processing works,*
- (e) stock and sale yards,*
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

The E4 zoned land in Bellingen LGA contains numerous parcels of land used for rural and agricultural purposes. As previously discussed the E4 zone was used to limit land uses in this zone due to the isolated, flood prone and bushfire prone nature of the valleys. However, given rural and agricultural land uses exist within this area, it is considered that making rural industries permissible with consent is appropriate. It will still be necessary for rural industries to obtain development consent and therefore flooding, bushfire and road constraints can be addressed at development application stage.

Regional / District

North Coast Regional Plan 2036

The proposal is consistent with the directions and actions of the North Coast Regional Plan 2036 (NCRP).

The proposal will facilitate increased housing diversity and choice as a result of permitting secondary dwellings and attached dual occupancies in the E4 zone. In doing so it is consistent with action 23.2 as it will include housing options which respond to changing housing needs, household and demographic changes and enables increased opportunities for ageing in place. This component of the proposal is also consistent with action 24.2 as it will facilitate additional rural housing outside of the coastal strip as the E4 zone in Bellingen LGA is not located within the coastal strip.

The proposal to make rural industries permissible with consent and farm buildings exempt development is consistent with action 12.1 to promote expansion of food and fibre production through flexible planning provisions.

The proposal to make eco-tourist facilities and some tourist and visitor accommodation permissible with consent is consistent with actions 8.2 and 11.4 to encourage tourist land uses that complement the agricultural sector in hinterland locations.

Local

The Bellingen Shire Growth Management Strategy (the 'Strategy') was adopted in 2007. The Strategy does not contain any specific provisions relating to E4 zoned land. The Strategy does however recognise that dual occupancies are appropriate on rural land. The proposal to enable either attached dual occupancies or secondary dwellings with development consent in the E4 zone is considered to be consistent with the Strategy.

The Strategy also acknowledges that rural tourism can have a positive impact on the economic development of rural areas and should be encouraged. The proposal to allow eco-tourist facilities and some tourist and visitor accommodation with consent is therefore consistent with the Strategy.

Bellingen LEP 2010

The objectives of the E4 zone in Bellingen LEP 2010 include the following:

- *To restrict the cumulative impact of traffic generating development upon the local road systems.*

- *To restrict population numbers in areas isolated during flooding events.*

The proposal remains consistent with these objectives despite permitting additional traffic and population generating land uses in the E4 zone as these additional land uses are expected to be of small scale, will require development consent and are not expected to have a significant impact on traffic generation or population increase.

The land use table for the E4 zone remains relatively restrictive compared to other rural zones however Council should consider the relevance of these objectives in light of its infrastructure program and the outcome of its consultation with the State Emergency Service in relation to flooding.

Section 117(2) Ministerial Directions

The following Section 117 Directions are relevant to the planning proposal: 1.5 Rural Land, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, 6.3 Site Specific Provisions.

The proposal is considered to be inconsistent with directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection as discussed below.

Direction 1.5 Rural Lands is relevant to the planning proposal. The direction provides that where a planning proposal affects land within an existing rural or environmental protection zone it must be consistent with the Rural Planning Principles in State Environmental Planning Policy (Rural Lands) 2008.

The discussion on the consistency of the proposal with the Rural Planning Principles is contained in the following section of this report. It is considered that the proposal is not inconsistent with the Rural Planning Principles and therefore the proposal is consistent with the direction.

Direction 2.1 Environmental Protection Zones is relevant to the planning proposal. The direction provides that where a planning proposal applies to land within an environmental protection zone it must not reduce the environmental protection standards applying to the land.

The proposal seeks to enable additional land uses with consent in the E4 zone and allow farm buildings to be developed without consent in the E4 zone.

The proposal to permit secondary dwellings, attached dual occupancies, eco-tourist facilities, some tourist and visitor accommodation and rural industries with consent in the E4 zone will not reduce the environmental protection applying to the land. The proposal will still require development consent for these land uses and therefore any potential impacts can be mitigated at development application stage.

The proposal to make farm buildings exempt development is not expected to reduce the environmental protection standards of the E4 zone. Clause 3.1(5) of the Bellingen LEP 2010 provides that development cannot be exempt development if it requires clearing that would otherwise require a permit or approval. The development standards for exempt farm sheds also limit their location to more than 50m from a watercourse. Where clearing is required or the proposed farm building does not meet the development standards, the

proponent will still be required to submit a development application. Where a development application is submitted the provisions of clauses 7.4 Water and 7.5 Biodiversity will apply to the proposal.

The proposal is therefore considered to be consistent with the direction.

Direction 2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions which facilitate the conservation of heritage and Aboriginal cultural heritage significance.

The proposal will permit additional land uses with consent and enable some farm buildings to be developed as exempt development.

While the proposal does not specifically facilitate the protection of matters of heritage significance from exempt development land uses, it does not reduce the protection afforded by the current planning framework and does in some instances, enable consideration of impacts on heritage significance at development application stage. The proposal is therefore considered to be inconsistent with the direction however the inconsistency is considered to be justified as being of minor significance. Nevertheless, it is recommended that the Council consult with the Local Aboriginal Land Council so that any potential issues related to Aboriginal cultural heritage can be addressed if necessary.

Direction 4.3 Flood Prone Land is relevant to the planning proposal. The direction provides that a planning proposal must not contain provisions which permit a significant increase in the development of flood prone land.

The proposal seeks to make secondary dwellings, attached dual occupancies, eco-tourist facilities, some tourist and visitor accommodation and rural industries permissible with consent on land zoned E4. The E4 zoned land includes land which is flood prone. Council has adopted flood studies that nominate a 1% AEP and its development control plan (DCP) provisions limit development on flood prone land. The consideration of these proposed additional land uses at development application stage will mitigate any potential adverse flooding impacts.

Council also notes that the community considers itself to be well prepared and resilient in relation to flooding and the resulting isolation. Council notes that ongoing improvements in flood warning systems mean that residents are well informed regarding potential floods and given sufficient time to make appropriate arrangements in advance of any isolating flood event. Nevertheless, Council intends to consult with the NSW State Emergency Services (SES) to obtain its advice on the appropriateness of the proposed additional land uses on land which may be isolated in the event of a flood.

The proposal to make farm buildings exempt development may result in some farm buildings being located on flood prone land however these buildings are not habitable buildings and will not result in an increased population isolated in a flood event.

The proposal is considered to be inconsistent with the terms of the direction. While the inconsistency is considered to be of minor significance it is recommended that Council obtain the advice of the SES and the Office of Environment and Heritage before justification to the inconsistency is agreed to.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. The E4 zoned land includes land which is bushfire prone. The direction provides that the RPA must

consult with the Commissioner of the NSW Rural Fire Service, and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 5.10 Implementation of Regional Plans is relevant to the planning proposal. The direction provides that a planning proposal must be consistent with the North Coast Regional Plan 2036.

The consistency of the proposal with the North Coast Regional Plan is discussed previously in this report. It is considered that the proposal is consistent with North Coast Regional Plan.

The proposal is otherwise consistent with all other Section 117 directions.

State Environmental Planning Policies

While many SEPPs apply to the subject land, only the following SEPPs are relevant to the proposal.

SEPP 44 Koala Habitat Protection – the E4 zoned land contains vegetation which would be considered to be preferred koala habitat. The proposal is not inconsistent with SEPP 44 as it enables some additional land uses with development consent. The development application process would therefore require consideration of any potential impact on preferred koala habitat and may, if the habitat is confirmed as core koala habitat, require a koala plan of management to be prepared.

The proposal to make farm buildings exempt development is not considered to be inconsistent with the objectives of SEPP 44 as clause 3.1(5) of the Bellingen LEP 2010 provides that:

- (5) To be exempt development, the development must:*
- (b) not involve the removal, pruning or other clearing of vegetation that requires a permit, development consent or other approval unless it is undertaken in accordance with a permit, development consent or other approval.*

The clearing which requires a permit is determined by SEPP (Vegetation in Non-Rural Areas) 2017. Where clearing for a farm shed requires approval a development application will be required which will enable consideration of any potential impacts on identified koala habitat.

The proposal is not considered to be inconsistent with SEPP 44.

SEPP 55 Remediation of Land – SEPP 55 requires investigations into the potential contamination of land before it is rezoned. The proposal does not seek to rezone land and will make additional land uses permissible with consent. Any potential contamination can be assessed at development application stage.

The proposal to make farm buildings exempt development is not inconsistent with the objectives of SEPP 55 as farm buildings are not habitable buildings and are unlikely to increase the potential of exposure of residents to contaminants on the land.

The proposal is not considered to be inconsistent with SEPP 55.

SEPP (Rural Lands) 2008 – The Rural Lands SEPP includes rural planning principles which must be considered when a proposal affects land in an existing environmental protection zone.

The proposal is considered to be consistent with the Rural Planning Principles for the following reasons:

- The proposal promotes opportunities for potential productive and sustainable economic activities on rural land by enabling eco-tourist facilities, home businesses, rural industries and some tourist and visitor accommodation to be developed with consent in the E4 zone;
- It recognises the social and economic benefits of rural land by enabling eco-tourism land uses to be developed which will take advantage of the natural environment;
- The proposal balances the social, economic and environmental interests of the community as it enables limited employment generating and residential land uses in response to community concern about the currently restrictive nature of the E4 zone while retaining a level of restriction appropriate to the flooding, bushfire, access, and biodiversity constraints of the land;
- The proposal enables a minor increase in the density of rural housing in the E4 zone by enabling secondary dwellings and attached dual occupancies to be developed with consent. This approach is consistent with other rural land in the region. The requirement for the dual occupancies to be attached and the size limit on secondary dwellings means that there is not likely to be a significant increase in population across the subject land. The impacts on services and infrastructure can be considered with the development applications which will be required for these land uses; and
- The proposal is not inconsistent with the North Coast Regional Plan 2036.

SEPP (Exempt and Complying Development Codes) 2008 – The proposal is not inconsistent with the Codes SEPP. The Codes SEPP does not permit farm buildings to be exempt development on land zoned E4. The Codes SEPP only allows farm buildings as exempt development in zones RU1, RU2, RU3, RU4 or RU6. The development standards for the exempt farm buildings in the E4 zone proposed by the planning proposal are identical to those development standards for exempt farm buildings in the Codes SEPP.

SITE SPECIFIC ASSESSMENT

Social

In general, the potential social impacts arising from permitting additional land uses in the E4 zone can be addressed at development application stage. New eco-tourist facilities, tourist and visitor accommodation, and rural industries are expected to be limited in number and the potential social impacts will be dependent on the location and scale of the proposed developments.

The proposal to permit attached dual occupancies and secondary dwellings with consent in the E4 zone is expected to have a slight positive impact by enabling a diversity of housing options for residents in the area. The modest increase in population that will arise from the additional forms of housing may contribute positively to the communities in the area.

It is considered that the requirement for dual occupancies to be attached and the small size limit that applies to secondary dwellings is expected to have a limiting impact on the take up of these forms of housing. Therefore, it is not expected to have a negative impact as a result of a significant increase in population in an area where community services and infrastructure are limited.

Environmental

The proposal to permit secondary dwellings, attached dual occupancies, eco-tourist facilities, some tourist and visitor accommodation and rural industries with consent in the E4 zone is not expected to have a negative environmental impact. The proposal will still require development consent for these land uses and therefore any potential impacts can be mitigated at development application stage.

The proposal to make farm buildings exempt development is not expected to have a negative environmental impact. Clause 3.1(5) of the Bellingen LEP 2010 provides that development cannot be exempt development if it requires clearing that would otherwise require a permit or approval. The development standards for exempt farm sheds also limit their location to more than 50m from a watercourse. Where clearing is required or the proposed farm building does not meet the development standards, the proponent will still be required to submit a development application.

Where a development application is submitted the provisions of clauses 7.4 Water and 7.5 Biodiversity of the Bellingen LEP 2010 will apply to the proposal.

While the environmental impacts from the proposal are expected to be minor in nature and able to be addressed at development application stage, it is considered appropriate that Council consult with the Office of Environment and Heritage as some of the E4 zoned land adjoins national parks.

Economic

The proposal is expected to have a positive impact on the economy of the Bellingen LGA. The proposal will enable the development of rural industries and tourist developments on land zoned E4 which have the potential to generate employment opportunities in the LGA.

Infrastructure

The proposal will not require the provision or funding of state infrastructure. The increased development potential that will arise as a result of the proposed additional permitted uses in the E4 zone is not expected to generate a significant demand for infrastructure. By making additional land uses permissible with consent, Council will be able to levy contributions to assist in the upgrade of road infrastructure which services the subject land where such land uses are likely to result in an increase in traffic movements on local roads.

The expected population increase resulting from the permissibility of secondary dwellings or attached dual occupancies is not expected to be significant and will not generate an unreasonable demand for additional community services or facilities.

CONSULTATION

Community

Council has identified that the planning proposal is not a low impact proposal and has nominated a 28 day community consultation period. Given that the proposal applies to large areas of the LGA and consultation may occur over the summer holiday period it is considered that a 28 day community consultation period is appropriate.

Agencies

Council has indicated that it intends to consult with the following State agencies:

1. NSW State Emergency Service;
2. NSW Department of Primary Industries - Water; and
3. NSW Rural Fire Service.

It is considered that consultation with these agencies is appropriate though the following agencies/organisations should also be consulted.

1. NSW Office of Environment and Heritage; and
2. Local Aboriginal Land Council.

TIMEFRAME

The planning proposal includes a project timeline which estimates completion of the planning proposal within six (6) months of the issue of the Gateway determination, expiring in May 2018. Given the need for Council to consult with State agencies and the community, and possible delays caused by the summer holiday period, it is suggested that a nine (9) month time frame would be appropriate.

DELEGATION

Council has requested delegation to finalise the planning proposal. An Evaluation Criteria for the Delegation of Plan Making Functions has been provided. The proposal is considered to be of local significance since it permits limited additional land uses in the E4 zone in accordance with previous community input. The proposal does not seek to reclassify land. It is recommended that an authorisation to exercise delegation be issued to Council in this instance.

CONCLUSION

It is recommended that the planning proposal proceed subject to conditions for the following reasons:

1. The proposal will facilitate additional land uses in the E4 zone which will provide additional diversity of housing options in the E4 zone which will also enable ageing in place;
2. The proposal will provide opportunities for employment generation and tourist facilities which are expected to have a small but positive impact on the local economy; and
3. The proposal is generally consistent with the strategic planning framework with any inconsistencies being of minor significance.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree that the inconsistency with Section 117 Direction 2.3 Heritage Conservation is justified in accordance with the terms of the direction; and
2. Note that the consistency with Section 117 Directions 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection are unresolved and will require justification once consultation with State agencies has been completed.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal is to be amended as follows:
 - (a) The references to permitting 'home businesses' with consent is to be removed as 'home businesses' are already permissible with consent in the E4 zone;
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 1. NSW State Emergency Service;

2. NSW Department of Primary Industries - Water;
 3. NSW Rural Fire Service;
 4. NSW Office of Environment and Heritage; and
 5. Local Aboriginal Land Council.
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.

T Prentice. 12/12/17

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12-12-2017

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