

Planning Services

Gateway Determination Report

LGA	Lake Macquarie
RPA	Lake Macquarie City Council
NAME	Public Recreation and Environmental land review
NUMBER	PP_2017_LAKEM_009_00
LEP TO BE AMENDED	Lake Macquarie LEP 2014
ADDRESS	Various sites across the LGA
DESCRIPTION	Various sites across the LGA
RECEIVED	22 January 2018
FILE NO.	17/013146
QA NUMBER	qA00000
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 (Attachment A) seeks to rezone 20 sites throughout the LGA that have been identified as either no longer required for public recreation purposes (14 sites) or being zoned an inappropriate environmental zoning (6 sites). Attachment B summarises the sites and the proposed changes.

Site Description

The proposal's 20 sites are distributed throughout the LGA and shown on the locality map (Figure 1). Aerial photos and zoning maps included as part of the Planning Proposal identify the surrounding land uses and linkages to existing vegetation and conservation lands. The planning proposal provides further information on each sites characteristics and constraints. Attachment B summarises the sites and provides a brief description.

Summary of Recommendation

The proposal will make changes to the LEP to better reflect the existing uses, land characteristics/constraints and environmental values.

The proposal broadly aligns with the Directions and outcomes of the Hunter Regional Plan 2036, draft Greater Newcastle Metropolitan Plan and Council's Local strategy in relation to enhancing biodiversity conservation in the region and improving environmental corridor linkages. For this reason, and noting the need for further consultation to be undertaken, the need for the proposal is justified and can be supported.

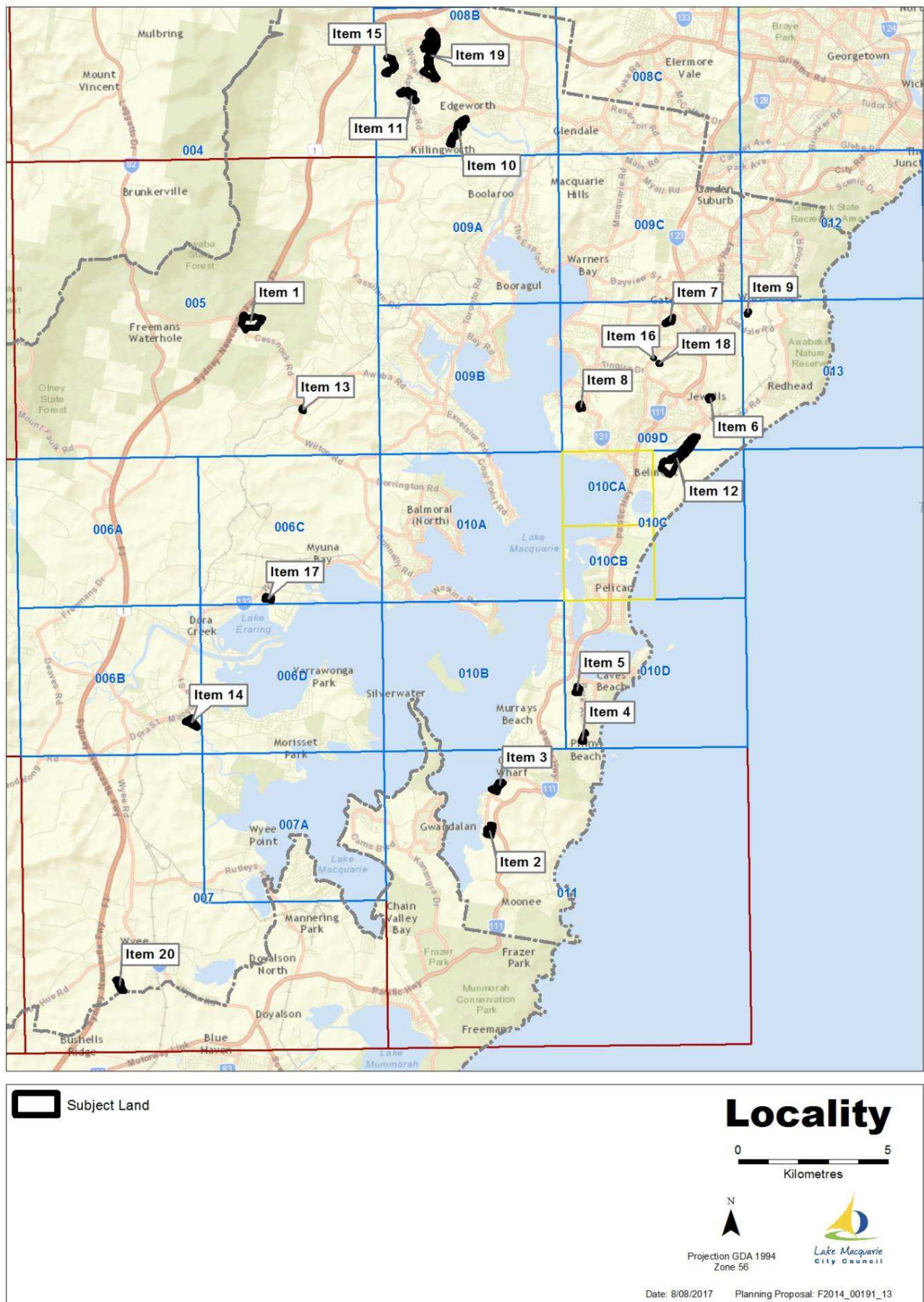


Figure 1: Locality Map for 20 sites

PROPOSAL

Objectives or Intended Outcomes

The Planning Proposal seeks to amend the zoning of 14 sites that have historically been zoned for RE1 Public Recreation. Council's assessment has identified that the land is unsuitable for recreational needs. Council intends to rezone the sites to reflect the lands environmental significance (12 sites) or a combination of environmental and development zonings to reflect the partial development of 2 sites (site 2 and 19). Attachment B summarises the sites and proposed changes.

The proposal also seeks to amend 6 sites with environmental zoning. Of these sites, 3 (sites 16, 18, 20) have been identified by Council as needing to be more appropriately zoned an alternative development zone to reflect the lack of environmental values and/or existing development of the sites. The other 3 sites (sites 1, 12 and 17) are proposed to be zoned a higher order environmental zone to better reflect the environmental significance of the land and its constraints. Attachment B summarises the sites and proposed changes.

The Planning Proposal clearly identifies the sites and their proposed changes. The objectives are clear and do not require amendment prior to community consultation.

Explanation of Provisions

The Proposal will not make any changes to provisions within the Lake Macquarie LEP 2014 but will make various mapping changes. These include; zoning, lot size, height of buildings and land reservation acquisition maps for the various sites.

The proposal does not seek to reclassify any of the Council owned land.

The explanation of provisions is clear and does not require amendment prior to community consultation.

Mapping

The proposal includes maps for each site, including current and proposed land zoning, lot size, height of buildings, land reservation acquisition maps.

The submitted maps are suitable for public exhibition and include aerial photos outlining the extent of vegetation of the sites and the surrounding urban context.

NEED FOR THE PLANNING PROPOSAL

The proposed amendments follow a review of land identified as having conservation significance on the Green Systems Map in Council's Lifestyle 2030 Strategy. Council advises that the proposal is supported by a recreation needs study that aligns with Council's Section 94 plans and identifies superfluous land not required for public recreation.

The proposal will make changes to the LEP to better reflect the existing uses, land characteristics/constraints and environmental values. Where relevant this will enable sites with existing uses to continue on these sites and will not sterilise them from future development activities.

The studies, desktop assessment, aerial photos and environmental data have been used to consider the appropriateness of the current and proposed zone, and some preliminary consultation has occurred with landholders including Government organisations who own several of the sites.

STRATEGIC ASSESSMENT

State

The Proposal is of a minor nature in relation to the state planning system and has been considered and assessed against the SEPP's and 117 Directions.

The Department's 2009 LEP Practice Note (PN 09-002) on Environmental Protection Zones applies to this proposal. It provides details on the characteristics of Environmental Conservation land including E2, E3 & E4 which has provided guidance in the assessment of the proposed E2 zoned land:

"E2 Environmental Conservation This zone is for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides the highest level of protection, management and restoration for such lands whilst allowing uses compatible with those values.

It is anticipated that many councils will generally have limited areas displaying the characteristics suitable for the application of the E2 zone. Areas where a broader range of uses is required (whilst retaining environmental protection) may be more appropriately zoned E3 Environmental Management."

Council advises that it has applied this approach to ensure that the correct 'E' Zone has been used to reflect the environmental quality of the land, hence retaining the integrity of the planning system.

Regional / District

The proposal is consistent with Direction 14 of the Hunter Regional Plan in relation to the protecting and connecting natural areas, specifically action 14.4 of the Implementation plan:

"Protect biodiversity by maintaining and, where possible, enhancing the existing protection of high environmental value areas; implementing appropriate measures to conserve validated high environmental value areas; developing local strategies to avoid and minimise the impacts of development on areas of high environmental value and biodiversity corridors; and identifying offsets or other mitigation measures for unavoidable impacts."

The proposal is consistent with and assists in implementing the Draft Greater Newcastle Metropolitan Plan which identifies three strategies to achieve the outcome of "Enhance environment, amenity and resilience for quality of life", being:

- 2.3 – Enhance the Blue and Green Grid and the urban tree canopy;
- 2.4 – Protect rural amenity outside urban areas; and
- 2.5 – Improve resilience to natural hazards and climate change.

The proposal is also consistent with the Lower Hunter Regional Conservation Plan as it increases the level of protection for vegetation of conservation significance.

Local

The proposal is consistent with Council's Lifestyle 2030 Strategy and its associated Green Systems Corridor Map and specific outcomes within the strategy. Council has provided an assessment against the relevant Directions and outcomes of the local strategy 'Lifestyle 2030', being:

A city responsive to the environment seeks to ensure biodiversity connectivity and conservation areas are identified, protected and enhanced with the major elements shown schematically on the Green Systems Corridor Maps and the Urban Structure Maps.

A well designed adaptable and liveable city.

Section 117(2) Ministerial Directions

The Planning Proposal is considered generally consistent with the relevant Directions. Further discussion is provided on the following specific Directions where the proposal is either inconsistent or further work is required before consistency may be determined:

2.1 – Environmental Protection Zones. The proposal is considered consistent with this Direction for the sites being rezoned from RE1 Public Recreation to E2 Environmental Conservation.

The proposal also includes land being rezoned from the E2 Environmental Conservation zone to another zone as outlined under:

- Item 16 rezones land currently zoned E2 to RE1 public recreation
- Item 18 rezones land currently zoned E2 to E4 Environmental Living
- Item 20 rezones land currently zoned E2 to RU2 Rural Landscape

The proposal is considered inconsistent with this direction for the above items as it reduces the environmental protection standards that apply to the land. However OEH has provided advice which supports the approach and which is summarised as:

the proposal results in an increase in environmental protection for the majority of the sites. For Items 16 and 18, OEH understands that the condition of the land is not consistent with the current environmental zone and agrees to the environmental zoning being changed to the suggested lower protection level. OEH has considered Items 1 and 19 carefully as these sites have been dedicated to conservation in perpetuity as offsets for developments which already have development approval, OEH agrees to the change in zone to E2 for these lots (see **Attachment F1**).

Given OEH's agreement to the proposed approach, the Secretary can be satisfied that the inconsistency is of minor significance.

2.3 Heritage Conservation. The Butterfly Caves (Item 19) is not currently identified in Schedule 5 (Environmental Heritage) of Council's LEP. The sites conservation is protected under the National Parks and Wildlife Act 1974. While the proposal may be considered inconsistent with this direction as it does not specifically list the place as of heritage significance, the identification of aboriginal sites in LEPs is not mandatory due to the sensitivity of identifying their location. The site is being protected through its proposed zoning to E2 Environmental Conservation. OEH agrees to the E2 zone proposal and has advised that consultation with the Butterfly Cave Aboriginal Consultative Committee will be required.

Council should seek approval for this inconsistency with item 19 post exhibition of the proposal and this consultation.

3.1 Residential Zones. Item 19 is considered inconsistent with this direction as it reduces the consumption of land for housing and associated urban development on the urban fringe and does not make efficient use of existing infrastructure and services. Although the land is currently zoned for residential purposes it has been identified for environmental protection as a condition of the biodiversity offset package associated with the development.

The Secretary can be satisfied that the inconsistency is justified by a study (biodiversity offset package) that gives consideration to the objective of the direction.

4.2 Mine subsidence and unstable land. The proposal includes several sites identified as being in a mine subsidence area. Most of these sites are in Council ownership and will be zoned E2. The proposal is inconsistent with this direction for Item 2, as the relevant planning authority has not consulted with the Subsidence Advisory NSW. This needs to occur before consistency with this direction can be determined.

4.4 Planning for bushfire protection. The proposal includes several sites identified as being bushfire prone. Consultation is required with Rural Fire Service.

6.2 - Reserving Land for Public Purposes. This direction applies to the PP as it proposes to rezone a combined area of 74 ha of RE1 Public recreation to the following zones:

Zone Change	Total Area (HA)
RE1 to E2	68.9
RE1 and E3 to E2	5.4

While the amount of public recreation land being rezoned is not significant in terms of the amount of land already zoned for this purpose in the nearby localities, each individual item is assessed against this Direction in Attachment B.

Council has provided evidence that the land is not suitable for public recreation and that the majority of the sites will remain in public ownership but be zoned for Environmental Conservation purposes.

It is recommended that the Secretary of the Department approves the proposal to alter the zonings of land for public purposes for items owned by Council or where the owner has agreed. Consistency or otherwise with this direction in relation to other sites will be determined following further consultation.

State Environmental Planning Policies

The Planning Proposal is considered generally consistent with the relevant SEPP's, including:

SEPP 14 – Coastal Wetlands.

SEPP 19 – Bushland in Urban Areas

SEPP 44 – Koala Habitat Protection. The removal of conservation zone status only occurs for sites with existing lawful urban development.

SEPP 55 – Remediation of Land. This SEPP only applies to sites in the Proposal that have already been developed and is considered consistent as these issues can be addressed in a future DA.

SEPP 71 – Coastal Protection

In addition, Council has used the Department's draft (2009) Local Development Contributions Guidelines and draft (2010) Recreation and Open Space Planning Guidelines for Local Government to assist in the recreation review.

SITE SPECIFIC ASSESSMENT

Social

The proposal will result in little change to the way the land is currently used and will be used in the future. The most significant change (3000 sqm approx) is associated with a rezoning from RE1 Public Recreation zone to R2 residential zone to enable access to an urban future land release at Nords Wharf (Item 2).

For the items in private ownership, the following summary identifies the relevant issues.

- Item 17, there may be impacts on dwelling entitlements for each lot as a result, hence the planning proposal should provide further details in this regard.
- Item 18 there may be some land value gain as the zones changes from E2 to E4 reflecting the existing dwelling on the site

The social impacts are considered to be relatively minor. Consultation with the relevant landowners needs to occur through the planning proposal process.

Environmental

Rezoning the land to environmental zones consistent with its environmental values/ constraints and intended future use is supported.

The Department's 2009 LEP Practice Note (PN 09-002) on Environmental Protection Zones provides details on the characteristics of Environmental Conservation land including E2, E3 & E4 which has provided guidance in the assessment of the proposed E2 zoned land. The planning proposal is considered consistent with this Practice Note.

Economic

There are no known economic and infrastructure impacts associated with this proposal as the existing level of development can continue to be undertaken on the land.

For privately owned land there may be some land value change as a result of the proposal and for Item 18 there may be some gain as the zones changes from E2 to E4 reflecting the existing dwelling on the site.

There are two items (Item 15 and 19) that will be removed from the LEP for acquisition which will remove a financial liability on Council. Item 15 is unsuitable for recreation purposes and is owned by the Hunter Development Corporation who advised that they do not object to the proposal (**Attachment F2**), and item 19 is a biodiversity offset site.

CONSULTATION

Community

Council propose a 28 day exhibition which is considered appropriate.

Targeted consultation is required to ensure land owners fully understand the implications of the proposal.

Agencies

Council has advised that it has already consulted with the following agencies, copies of advice is included (Attachment F1 and F2):

Roads and Maritime Services – as a land owner of public roads within Item 1 (Ryhope Paper Subdivision). RMS advised that it raised no objection to the proposal as it considers there will be no significant impact on the nearby state road network. They identified that part of Wakefield Road is included in the proposal. Council should clarify if it is the intention to include the whole of these lots, or just part.

Hunter Development Corporation - as a land owner within Items 11 and 15 (Holmesville) raised no objection to the proposed zoning changes.

Department of Industry

- advised that they have no objection to the rezoning of item 12 and that care and control of the Belmont State Wetlands Park is with the Belmont State Wetlands Park Trust.
- objected to the proposal to rezone 2 Campview Road, Morisset (Item 14). They believe that the rezoning may restrict the multiple use of the crown land, noting that an unresolved Aboriginal Land Claim exists over the site. The aboriginal land claim has now been finalised and the land is to be transferred to ownership by the LALC. Council had unsuccessfully attempted to consult with the Birabin LALC during the preparation of the planning proposal, further consultation is required.

Belmont State Wetlands Park Trust was consulted (Item 12) and no response was received. Council propose to re-consult with them during exhibition.

NSW Fire and Rescue – advised that have no issues with the proposed rezoning of Item 16 (Tingira Heights Fire Station).

Office of Environment and Heritage – was consulted regarding biodiversity offset sites (Items 1 and 19). They advised that the proposed zoning changes will not impact on the ability to recognise the sites as offsets. OEH also supported the increase in environmental protection proposed for the majority of the sites and noted that items 16 and 18 are not consistent with the current environmental zone and agreed to the proposed zone changes.

Hunter Water Corporation (as a land and asset owner) has not been consulted to date for item 10 (Barnsley), and they also own an infrastructure asset in item 13 (Awaba).

TIMEFRAME

No suggested timeframe was included in the planning proposal.

It is considered that an 18 month timeframe will be appropriate and realistic for this proposal given the number the properties involved and further consultation required.

DELEGATION

Council has requested the use of plan making delegations which is supported.

CONCLUSION

The preparation of the planning proposal is supported to proceed with appropriate conditions.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Be satisfied that any inconsistency with the following Section 117 Directions for the following sites are of minor significance for the reasons outlined within the report:

- 2.1 Environmental Protection Zones,

- Site 16 – Tingira Heights Fire Station

- Site 18 – Eagles Nest Close, Belmont North

- Site 20 – 428 Bushells Ridge Road, Wyee

- 3.1 Residential Zones

- Site 19 – Apple Tree Grove Estate, West Wallsend

- 6.2 Reserving Land for Public Purposes, the rezoning of land for public purposes in relation to the following sites is considered justified;

- Site 2 – Government Road, Nords Wharf

- Site 3 – Crangan Bay Drive, Cams Wharf

- Site 4 – 31 Copper Valley Close, Caves Beach

- Site 5 – Caves Beach Sports Complex, Park Avenue, Caves Beach

- Site 6 – 6 Jody Close, Jewells

- Site 7 – 42 Sturt Street, Tingira Heights

- Site 8 – 14 Redondo Road, Valentine

- Site 9 – 18 Teran Close, Whitebridge

2. Note that the consistency with Section 117 Directions 4.2 Planning for Bushfire Protection, and 4.4 Mine subsidence and unstable land is unresolved and further consultation is required.
3. Note in relation to direction 6.2 Reserving Land for Public Purposes for sites 10, 13, 14 and 19 further consultation is required before the rezoning of land for public purposes can be supported

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

1. Update the planning proposal:
 - (a) Incorporate all agency and land owner consultation.
 - (b) Item 1 to confirm if part of Wakefield Road is to be included in the proposal.
 - (c) Item 17 to provide details regarding any implications for future dwelling entitlements.
2. The planning proposal should be made available for community consultation for a minimum of 28 days. Targeted consultation is necessary with all land owners to ensure the implications of the proposal are clearly understood.
3. Consultation is required with the following public authorities:
 - Subsidence Advisory NSW (S.117 Direction 4.2) – item 2 Nords Wharf)
 - NSW Rural Fire Service (S.117 Direction 4.4) for:
 - item 2 Nords Wharf;
 - item 16 Tingira Heights;
 - item 17 Eraring; and
 - item 18 Belmont North

Council is to further consult with the following authorities in relation to 117 Direction 6.2 Reserving Land for Public Purposes:

- the Department of Industry and Biraban Local Aboriginal Land Council in relation to the Item 14 at 2 Campview Road, Morisset.
 - Butterfly Cave Aboriginal Consultative Committee for Item 19 (West Wallsend/Cameron Park) that includes the Butterfly Caves.
 - Hunter Water Corporation in relation to items 10 (Edgeworth/Barnsley) and 13 (Awaba).
4. The timeframe for completing the LEP is to be 18 months from the date of the Gateway determination.
5. Given the nature of the planning proposal including Council owned land, no delegations will be given to Council.

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