

CEDING MANA, RANGATIRATANGA AND SOVEREIGNTY TO THE CROWN THE DEEDS OF SETTLEMENT OF THE CROWN FOR TE RARAWA, TE AUPŌURI AND NGĀI TAKOTO

Introduction

It is clear from reading the Deeds of Settlement for Te Rarawa, Te Aupōuri and Ngāi Takoto that each one is attempting to have the corporate bodies for those iwi cede the mana, rangatiratanga and sovereignty of their ancestors to the British Crown. In doing so the deeds are attempting to nullify both He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi. He Whakaputanga is the declaration of hapū sovereignty made by those ancestors. Te Tiriti is the treaty entered into by many of those same ancestors and many others and the British Crown in 1840. I have been unable to find any protection in the Deeds for the mana and tino rangatiratanga of the whānau and hapū, or any reference to the claim being taken by Ngāpuhi in this respect, Wai 1040. What is in the Deeds is that the settlements as legislated will be final and will extinguish all listed claims including the overarching and very general Wai 22 and Wai 45 as they relate to Te Rarawa, Te Aupōuri and Ngāi Takoto.

In this article I examine the relevant sections of each of the Deeds of Settlement to demonstrate how they individually and collectively attempt to disenfranchise the whānau and hapū who make up those iwi. An increasing number of whānau, hapū and iwi are now distancing themselves from these deeds and actively opposing them. They cannot be forced to cede the mana and sovereignty they inherited from their ancestors, either by the iwi corporate bodies or by the Crown. I will demonstrate instead that the Deeds show that it is the iwi corporate bodies who inexplicably cede their own mana and sovereignty, reducing themselves to a subservient role as loyal subjects of the British Crown.

The Purpose of the Deeds of Settlement

The Deeds of Settlement for Te Rarawa, Te Aupōuri and Ngāi Takoto, each drafted in the first instance by the Crown and currently available on the Office of Treaty Settlements website, set out the conditions under which all the historical claims of those iwi against the Crown are extinguished. These include all the claims of the whānau and hapū of those iwi, whether they agree or not, and in several cases, the claims of other iwi as well.

Claims are taken against the British Crown where it or its representatives have breached the treaty entered into in 1840 by rangatira of hapū throughout the country and the Crown. Many whānau, hapū and iwi of Te Hiku o Te Ika, including those of Te Rarawa, Te Aupōuri and Ngāi Takoto, took their claims to the Waitangi Tribunal, a judicial body appointed and controlled by the Crown. The claims specify how and where claimants hold and exercise their mana and tino rangatiratanga, including their sovereignty, and the breaches of the

treaty committed by the Crown. The Tribunal inquired into their claims for the period between 1840 and 1865, and upheld them. The Tribunal found that by 1865 almost all of their lands had been illegitimately claimed by the Crown. Furthermore the Tribunal confirmed that, in spite of the Crown's illegitimate claims to the contrary, underlying native title to the ancestral lands of the hapū had not been extinguished. The Tribunal has yet to investigate claims arising from treaty breaches perpetrated throughout Te Hiku o Te Ika after 1865. Many whānau and hapū claims fall within this period but are being extinguished by these deeds.

Hapū enter into settlements with the Crown in order to remove the prejudice caused by the breaches of the treaty and to confirm hapū mana and tino rangatiratanga. The Crown enters into settlements to extinguish all claims against it, to extinguish native title and to legislate its sovereignty over those settling. The Deeds show that, provided whānau and hapū who make up an iwi ratify those deeds in numbers acceptable to the Crown, the Crown's purpose will be achieved. Most of the whānau, hapū and iwi claims will be extinguished without being addressed and the iwi corporate bodies will become advisors to or servants of the Crown. The Deeds also show that few if any of the hapū's purposes will be achieved.

Before detailing how these deeds purport to achieve this, some background information is necessary on the constitutional documents which underpin treaty claims, He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi. The United Nations Declaration on the Rights of Indigenous Peoples is also relevant as it provides a blueprint for the implementation of Te Tiriti o Waitangi.

He Whakaputanga o te Rangatiratanga o Nu Tireni – the 1835 declaration of hapū sovereignty

The first constitutional document drawn up for this country was the 1835 **He Whakaputanga o te Rangatiratanga o Nu Tireni**. That document, which was formally acknowledged by the British Crown, is a declaration that mana, including sovereignty, for each part of this country lies solely and completely with the rangatira of the hapū of each of those parts. It also declares that those rangatira will never give over law-making power to any other person/s. Several rangatira of hapū of Te Hiku o te Ika signed He Whakaputanga and the British relied on it as the basis from which to negotiate Te Tiriti o Waitangi.

Te Tiriti o Waitangi – the treaty entered into between hapū and the British Crown

The treaty signed at Waitangi in 1840 is known as **Te Tiriti o Waitangi**. It is written in Māori and it was the only document that was discussed and signed by the rangatira of the hapū of Te Hiku o Te Ika and by the representative of the British Crown. Other than confirming He Whakaputanga and recognising the sovereignty or tino rangatiratanga of the hapū, the main purpose of that treaty is to allow the Queen of England to take responsibility for and to control her lawless Pākehā citizens who had or were coming to this country. It also

guaranteed that in exchange for Māori protection of Pākehā immigrants, Māori would have all the rights and privileges of British citizens.

The English language document that was not signed

An English language document, often referred to as the Treaty of Waitangi, that has been referred to in various government pronouncements and legislation, was not discussed with or agreed to by rangatira of Te Hiku o te Ika, or any other rangatira in the country in 1840. It wasn't signed at Waitangi and it has no legitimate status. That document claims that the rangatira ceded sovereignty and hence ultimate control of themselves, all their lands and all their other resources to the British Crown and all hapū agreed to become subject to Pākehā rule. That did not happen. And because this document was not the one agreed to or signed at Waitangi or in Te Hiku o Te Ika, any attempt to claim power, authority or control based on it is fraudulent. Furthermore, any attempt to now retrospectively legitimise this document is a violation of the treaty that was agreed to.

The United Nations Declaration on the Rights of Indigenous Peoples 2007 (UNDRIP)

The third document that is relevant to the treaty claims process is UNDRIP. Hapū and iwi representatives played an active role in drafting this document over more than twenty years in the United Nations. It sets out what the fundamental human rights of indigenous peoples are and how states must act to ensure those rights are protected and upheld. Many of its 46 articles are directly relevant to the treaty claims process in New Zealand. The New Zealand government signed up to UNDRIP in 2010.

On **He Whakaputanga**, each of the Deeds either misrepresents the 1835 declaration or is effectively silent on it. The deed for Te Aupōuri at paragraph 3.8 mentions “the Declaration of Independence (He Whakaputanga)” being signed by Te Māhia of Te Aupōuri and Te Morenga of Te Rarawa but says nothing about what that document is about. The deed for Ngāi Takoto does not mention He Whakaputanga at all. Te Rarawa's mentions He Whakaputanga but provides an incorrect interpretation of both its purpose and intent.

At paragraph 2.8 the deed for Te Rarawa states “Te Rarawa maintain the intention of He Whakaputanga was to establish a confederacy to lead the iwi in a new relationship with the British Crown.” This is incorrect. He Whakaminenga, the group of rangatira named in He Whakaputanga, was a gathering of rangatira that had been meeting to debate issues for many years before He Whakaputanga was signed. Furthermore, He Whakaputanga is a declaration of mana, which includes sovereignty, of the rangatira of the hapū. Its title in Māori, He Whakaputanga o te Rangatiratanga o Nu Tireni, translates as “a declaration of the ultimate power and authority/sovereignty of New Zealand”. Mana and sovereignty are much more than the notion of ‘independence’ referred to in the English version of this declaration. There is no reference to hapū sovereignty in the deed for Te Rarawa. Further it

states “The signatories...asked the British King for protection against intrusion of others powers.” There is no such statement in He Whakaputanga.

As such, none of the Deeds provides an accurate explanation of He Whakaputanga o te Rangatiratanga o Nu Tireni as the primary constitutional document for this country. Neither do any of them refer to the fact that He Whakaputanga is the declaration that sovereignty of New Zealand will always remain with the rangatira of the hapū. Neither do they mention that the King of England recognised He Whakaputanga and relied on it to enter into Te Tiriti o Waitangi. And, more importantly, there is no reference to Ngāpuhi’s current claim on this, Wai 1040, and no reference to any future discussions between these iwi and the Crown on He Whakaputanga.

On **Te Tiriti o Waitangi**, each of these Deeds speaks of Te Tiriti o Waitangi but always speaks of it in conjunction with the English language Treaty of Waitangi, frequently using the phrase “Te Tiriti o Waitangi/The Treaty of Waitangi” as if they are somehow linked or even the same document. These two documents are very different with different purposes and intents. The only thing they have in common is that they were drafted at about the same time. Only Te Tiriti o Waitangi was signed by the ancestors of Te Rarawa, Te Aupōuri and Ngāi Takoto. The Treaty of Waitangi was a document manufactured by British Crown agents to alienate and disenfranchise Māori. At no point in the history of Te Rarawa, Te Aupōuri and Ngāi Takoto did rangatira of these iwi ever sign this Treaty of Waitangi. As such it should not be mentioned at all in these Deeds of Settlement or in any resulting legislation. Yet the deeds refer to it repeatedly, falsely claiming it as the source of British law and authority in New Zealand.

For example, the deed for Te Rarawa at 1.36 and 2.15, and the deed for Te Aupōuri at 3.8, both refer to signing “Te Tiriti o Waitangi/The Treaty of Waitangi”. Ngāi Takoto’s says at 1.8 that “Awarau...signed the Treaty of Waitangi” and two paragraphs later at 1.10, that Matenga Paerata...signed...Te Tiriti”. Then at 2.12 “Ngāi Takoto rangatira...signed the Treaty of Waitangi...”. Once again, no-one who was at the Hiku o te Ika signings ever signed The Treaty of Waitangi. They only ever signed Te Tiriti o Waitangi.

The deed for Te Rarawa at 2.9 states, “In 1839, the British government authorised Captain William Hobson, ‘to treat with the Aborigines of New Zealand for the recognition of Her Majesty’s sovereign authority over the whole or any part of those islands which they may be willing to place under Her Majesty’s dominion.’” Nowhere does Te Rarawa’s deed say that Hobson never achieved this. Instead the Deed assumes at paragraph 2.11 and then throughout the whole document “the imposition of British law and authority”. For this imposition to have effect, rangatira would have to have ceded their own law and authority and submitted to a foreign law and authority. They did not do this in 1840. And yet some one hundred and seventy two years later it appears that some of their descendants may be doing so. If the corporate body for Te Rarawa is now accepting “the imposition of British law

and authority” under “Her Majesty’s sovereign authority”, as this Deed says it does, then this “settlement” has required them to cede the body’s mana and tino rangatiratanga.

Te Tiriti did not allow for the imposition of anything British on the hapū. British law and authority was for lawless British immigrants, not for hapū. Hapū already had their own law and authority and it had been in place for many centuries. They were not about to replace it with something they knew little or nothing about. And in a country where Māori numbered many hundreds of thousands and Pākehā a mere 2000, there was absolutely no reason to even contemplate it. Yet this paragraph fraudulently asserts that the rangatira of the hapū agreed to subject themselves to British law and authority. To do that they would have to have given up their mana and tino rangatiratanga, including their sovereignty. Such a serious violation of the fundamental principles of hapū existence is both logically and practically impossible. No matter what the few Pākehā who were here in 1840 were hoping for, it did not happen. The deed for Te Rarawa is seriously wrong to imply that it did and to accept the false statement that Te Rarawa ancestors ceded their mana and tino rangatiratanga when in fact they did the opposite and confirmed it.

In respect of the **United Nations Declaration on the Rights of Indigenous Peoples**, all the deeds are completely silent, containing no reference at all to this fundamentally important international declaration. This is because when the iwi corporate bodies tried to insist that it be referenced in the deeds, they each received notification from the government that it would not allow mention of it in the deeds.

This is a matter for the United Nations to address. It monitors the compliance of states who become signatories to international instruments such as UNDRIP. New Zealand, along with the other English-speaking settler states of Canada, Australia and the USA, drew strong criticism from the United Nations for opposing UNDRIP when it was overwhelmingly supported by 143 states in 2007. Once Canada and Australia adopted it and the USA indicated it intended to do so, international pressure effectively shamed New Zealand into doing the same in 2010. Representatives of hapū and iwi will be formally notifying the United Nations Permanent Forum on Indigenous Issues of this violation by a signatory at its meeting in May this year. The New Zealand government will have to account to the United Nations for its refusal to comply with UNDRIP.

Unextinguished native/customary title

In respect of unextinguished native title, the Ngāi Takoto deed at paragraph 2.14 states “The Crown took the view that it held radical title to all land in New Zealand”, that is, that no-one could own land in New Zealand except where the Crown said they could. No, that view is simply wrong. Given that sovereignty remained with the hapū and the Crown was delegated a much lesser authority in respect of Pākehā only, it had no basis, legitimate or imagined, to assign itself anything in respect of lands belonging to hapū. Radical title, or underlying

ownership has and always will lie with the hapū. That is clearly set out in He Whakaputanga. As the Waitangi Tribunal rightly pointed out on page 6 of its *Muriwhenua Land Report*, the Crown could not claim radical title because it was already spoken for.

Yet paragraph 2.14 of the Ngāi Takoto deed goes on to say “Crown title was burdened by any customary title, except where that customary title had been extinguished through pre-Treaty transactions.” And at paragraph 3.12 of the Te Aupōuri deed “...the Crown could retain the balance of land...on the basis that the original transaction extinguished customary title.” Once again, no, these statements are simply wrong. The Waitangi Tribunal makes it very clear that the pre-Treaty transactions and the pre-1865 Crown seizures or “purchases” conveyed temporary use rights only. The Tribunal found that neither they nor any land transaction conducted up to 1865 alienated the lands. Instead, at page seven of their *Report* they said “there is lack of clear evidence concerning the extinguishment of native title”.

Is mana and tino rangatiratanga/sovereignty nevertheless retained in practical terms in the Deeds?

The answer to this fundamentally important question in respect of these deeds is a clear “No”. For if the corporate bodies for Te Rarawa, Te Aupōuri and Ngāi Takoto who signed up to these deeds have been able to retain any of their mana and tino rangatiratanga, they would hold clear decision-making authority and power, for example, in respect of the areas covered for the three bodies jointly in the deeds. The main areas covered in each of the three deeds are Te Oneroa-a-Tōhē (Ninety Mile beach), lands administered by the Department of Conservation and government services. Sections covering these matters are the same for each deed.

Te Oneroa-a-Tōhē

There is no doubt that Te Oneroa-a-Tōhē, 72 miles of beach that is of immeasurable importance to the identity and existence of the whānau, hapū and iwi of Te Hiku o Te Ika, is an extensive area over which mana and rangatiratanga must be properly exercised. Given that the Supreme Court found that iwi owned it, then the deeds should set out the full authority and power of the iwi there and stipulate the support role that the Crown may have if it wishes to maintain public access to the beach.

At paragraph 5.13 of the deeds for Te Rarawa and Ngāi Takoto, and 6.13 of the deed for Te Aupōuri, Te Oneroa-a-Tōhē Board is established to, at paragraph 5.15 (6.15 for Te Aupōuri), “provide governance and direction in order to protect and enhance the environmental, economic, social, spiritual and cultural well-being of Te Oneroa-a-Tōhē for present and future generations.” However it is not a stand alone body acting under the authority of the iwi corporate bodies. Instead, at paragraph 5.16 (6.16), it is “deemed to be a joint committee of the Northland Regional Council and the Far North District Council”. At paragraph 5.21.2 (6.21.2) its specific function is to “engage with, seek advice from and

provide advice to the Northland Regional Council, the Far North District Council and other beach management agencies regarding the health and well-being of Te Oneroa-ā-Tōhē”. At paragraph 5.28 (6.28), half its membership is appointed by the iwi corporate bodies, and half by the Northland Regional Council and Far North District Council. At paragraph 5.40 (6.40) the iwi members appoint the chair. At paragraph 5.27 (6.27) rather than being governed by tikanga, “...the procedures of the Board are governed by...the Local Government Act 2002, Local Government Official Information and Meetings Act 1987 and Local Authorities (Members Interests) Act 1968”.

In other words this is a Pākehā board which is a committee of the Far North District Council and the Northland Regional Council and which happens to have a chair and some representatives selected by the iwi corporate bodies as members. So in order to settle their Treaty claims, the corporate bodies for Te Rarawa, Te Aupōuri and Ngāi Takoto have agreed to cede their power, authority and control of their beach, which the Pākehā courts held to be theirs, to the Northland Regional Council and the Far North District Council. They have in return agreed to take an advisory role through a committee of the councils.

Lands Currently administered by the Department of Conservation

Sections 7 of the deeds for Te Rarawa and Te Aupōuri and section 6 of the deed for Ngāi Takoto set out the role these iwi corporate bodies will play in respect of their lands currently administered by the Department of Conservation. Although the deeds acknowledge at paragraph 7.4 (6.4) that all the iwi bodies have insisted that all these lands be vested in them pursuant to the findings of the Waitangi Tribunal, the deeds make it clear that that will not happen. Instead title to the lands will be confirmed as being owned by the Crown instead of the whānau and hapū. In other words Te Rarawa, Te Aupōuri and Ngāi Takoto corporate bodies are gifting these lands to the Crown – and for no recompense. And in exchange for those lands they will be able to participate in yet another government appointed advisory committee to the New Zealand Conservation Authority (which in turn advises the Minister of Conservation) called Te Hiku o Te Ika Conservation Board. The Board will have no decision-making powers in respect of these lands.

At paragraph 7.14 (6.14) the role of the Board is that of a Conservation Board, that is, to advise and make recommendations to the Department of Conservation and the New Zealand Conservation Authority. Paragraphs 7.17 (6.17) set out that while the iwi corporate bodies nominate half (one member each) of the Board’s members, it is the Minister of Conservation who will appoint all the members of the Board, including the chair and half of the Board which he alone will nominate. However at paragraphs 7.18.2 (6.18.2) the Minister will not appoint those nominated by iwi unless he/she approves of them. At paragraphs 7.19 and 7.20 (6.19 and 6.20) the Minister can also remove iwi nominated members he/she has appointed if she/he is concerned about the member. At paragraphs 7.21 (6.21), if iwi are concerned about an iwi-nominated member, they can only request that the Minister

remove them. The Minister (usually as advised by Department of Conservation staff) decides who remains and who is removed.

At paragraphs 7.25 and 7.26 (6.25 and 6.26) the Board acts and makes decisions not according to tikanga but, instead, according to the Conservation Act and Pākehā law.

At paragraphs 7.26 to 7.72 (6.26 to 7.72) the Board's tasks in respect of "Te Hiku o te Ika Conservation Management Strategy" are set out. Essentially the Department of Conservation drafts the Conservation Management Strategy in accordance with the Conservation Act, setting out how it considers all the lands it administers should be managed. It consults with the Board first and then the Board advises the Department on the draft plan. At paragraph 7.49 (6.49) it is the New Zealand Conservation Authority that approves the Strategy, not the Board. As such the iwi corporate bodies have no decision-making powers in respect of their lands administered by the Department. All the Deeds allow them to do is to provide advice to the Department of Conservation.

At paragraphs 7.63 to 7.93 (6.63 to 6.93) are details of a decision-making framework within which the Department may choose to include advice from the iwi corporate bodies. However in the final analysis it is the Department that makes all the decisions. At paragraphs 7.95 to 7.105 (6.95 to 6.105) details for a jointly agreed plan for customary take of flora and fauna are set out. However at paragraph 7.103 (6.103) the Director-General of Conservation may unilaterally suspend the plan if he is not satisfied with it.

In respect of wāhi tapu on these lands, including Te Rerenga Wairua, paragraphs 7.106 to 7.128 (6.106 to 6.128) set out that rather than the iwi corporate body having exclusive power and authority over the sacred sites of whānau and hapū, all decisions must have the agreement of DoC.

Thus the forty pages of the deeds taken up with describing the role that the corporate bodies of Te Aupōuri, Te Rarawa and Ngāi Takoto will have in respect of lands administered by the Department of Conservation can be summarised as gifting all those whānau, hapū and iwi lands to the Crown, and, in the final analysis, confirming the status quo; that is, that all decision-making rests with the Director-General (as advised by the staff of the Kaitiāia office of the Department of Conservation) and the Minister of Conservation. Iwi corporate bodies will be permitted to provide more advice than officials have allowed them to give in the past but neither the Department nor the Minister is bound to heed any of that advice. There is little difference between that and the existing situation. Whānau and hapū who are not part of the corporate iwi body and have not ceded their mana and rangatiratanga will not accede to their land being gifted without their authority and will continue to repossess it as and how they see fit.

Government Services

For many decades now, government services purportedly delivered to benefit whānau and hapū have been a dismal failure. There have been numerous calls since the early 1980s for government to transfer their ever-diminishing contributions towards whānau and hapū welfare to Māori so that we can help ourselves. Government departments and their ministers have always staunchly refused to transfer anything other than totally inadequate token gestures despite overwhelming and irrefutable evidence that government controlled social services perpetuate and exacerbate the dire circumstances that so many whānau and hapū find themselves in. The Deeds of Settlement for Te Aupōuri, Te Rarawa and Ngāi Takoto, in an attempt to address this situation, end up not only perpetuating it but allowing blame for the systemic malfunction in government service departments to be shared by the corporate bodies for those iwi.

Sections 8 of the deeds for Te Rarawa and Te Aupōuri and section 7 of Ngāi Takoto's deed set out how the corporate bodies for the iwi will provide advice to the following government departments:

Ministry of Social Development; Ministry of Education/Tertiary Education Commission; Ministry of Justice; Ministry of Economic Development; Department of Labour; Department of Internal Affairs; Te Puni Kōkiri; Department of Building and Housing; Statistics New Zealand.

Advice will be provided by staff of the iwi corporate bodies and government officials to meetings to be held between the iwi corporate bodies and various local, regional and national government officials for each of these government departments. There will be several meetings for each department each year. Advice will take the form of written reports and papers presented in the meetings. The meetings and reporting will be monitored and controlled by the Ministry of Social Development. Despite the huge effort and time iwi corporate bodies will put into this process, final decision-making on all matters remains with Ministers, not with the iwi corporate bodies.

These sections of the deeds effectively set up a large bureaucracy within each of the iwi corporate bodies which mirror government service departments. This aspect of these corporate bodies, by its sheer size, will almost certainly dominate the operations of those bodies. However it is not clear in the deeds whether any resources and on-going funding will be provided by the Crown to set up and maintain this bureaucracy or whether the iwi corporate bodies must find that themselves, effectively working voluntarily for government departments. Whatever the source of that funding, it is clear that the Crown envisages taking control of the three iwi corporate bodies by transforming them into government service agencies controlled by the Ministry of Social Development.

Conclusion

Constant references throughout the deeds to British Crown supremacy and dominance over the corporate bodies of Te Rarawa, Te Aupōuri and Ngāi Takoto amounts to an incomprehensible denial of the mana and rangatiratanga of those same corporate entities. Thus it appears that some of the descendants of the ancestors who signed Te Tiriti to confirm that mana and tino rangatiratanga have now agreed to cede it to the British Crown. And in doing so they purport to gift huge tracts of land belonging to whānau and hapū to the Crown. The iwi corporate bodies are not mana whenua of those lands and have no authority whatsoever to give away lands that are not theirs.

Assurances provided in ratification hui and in press releases that Wai 1040 will address this are not borne out in the Deeds. They are not conditional on the outcome of Wai 1040. Instead they signal that the settlements as legislated are final in respect of all claims listed including the very broad and all encompassing Wai 22 and Wai 45 as they apply to Te Rarawa, Te Aupōuri and Ngāi Takoto.

The Deeds effectively reduce the iwi corporate bodies to something less than mere tenants on their ancestors' lands and servants to government bureaucrats, subject to the whim and will of the British Crown as represented in her Pākehā parliament in New Zealand. The report of the Waitangi Tribunal for Muriwhenua confirmed that while British immigrants have always sought to achieve this, it is a gross breach of Te Tiriti o Waitangi. It is also illegal until such time as legislation permitting it is enacted. The legislation that will be drawn up using these deeds will ensure that this illegal and disgraceful behaviour on the part of the Crown will be covered by a veneer of legality. Conditions imposed throughout the deeds confirm that this is the Crown's intent. However it is also clear from a number of hui convened recently throughout Te Hiku o Te Ika that there are many whānau and hapū of these iwi who have refused to cede lands and their mana and tino rangatiratanga and are vehemently opposed to the Deeds of Settlement. As such they cannot be bound by the resultant legislation or by the iwi corporate bodies. However they will be bound to fight both.

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