

Network Outcomes Contract Governance & Management Group Clarification

Reference Number:	NOCC no.11
Subject Title:	Defect Management
Issue Date:	14 October 2016
Clarification Purpose	Clarification is provided to ensure the NOC is being interpreted consistently. The clarification does not remove or supersede the Network Outcomes Contract documentation.

SUBJECT

Section 2.3.3 of the Maintenance specification states that “the contractor shall rectify all defects identified in any compliance report within 12 months, regardless of whether or not compliance with the contract standard is being achieved. The standard of rectification shall be a permanent repair at a minimum, in accordance with best practice or the applicable Principals specification”. Also refer Appendix 2.4, process map 3.6.1, Defect Intervention Options.

Note, a defect is as defined in any OPM Group Table; one or more defects may be required to trigger a non-compliance of the Contract Standard.

While there are a number of questions that surround the application of the 12 month repair requirement, there are three core questions which need to be considered,

1. Are defects only identified during OPM audits?
2. What is meant by a compliance report?
3. Is it necessary to address all defects within a 12 month period?

RESPONSE

Are defects only identified during OPM audits?

Defects are not only identified during the Contractors OPM audits.

Defects are identified during the Contractors routine inspections. Section 2.3.3 Managing defects states “In accordance with Section 3.6.1, Routine Contract Inspections, the Contractor must complete routine inspections at regular intervals. This is so that all defects are identified, programmed and repaired according to the Contract Documents.”

Any defects may be identified by a third party, the Principal or the Contractor (*this gives some latitude for defects that may not require the Principal Intervention Period (PIP) criteria to be raised, albeit not formally through a PIP*). Where the defect is considered to constitute a potential safety hazard, or may adversely reflect on the Principal, or has a detrimental to the asset whole life integrity or is considered offensive, regardless of

whether or not compliance with the contract standard is being achieved, the defect will be raised as a PIP in accordance with MS 2.3.2 and must be rectified within the required PIP response time defined for that OPM.

The Contractor is required to develop and implement a compliance monitoring system to demonstrate that the contract standards are being monitored for each OPM and that defects are being closed out within the 12 month timeframe or within a PIP required response time. The Contractor's compliance monitoring system must be capable of recording all defects identified. Where a defect is identified within an audit section but OPM non-compliance is not triggered the defect must still be recorded. If the total number of defects trigger OPM non-compliance against the contract standard, then all defects for that OPM must still be recorded not just those up to the contract standard.

What is meant by a compliance report?

Both the Quality Management Plan and Maintenance Management Plan require the Contractor to describe;

1. The Contractor's maintenance management system that monitors the management of the Network defect programme and progress of works,
2. How the Contractor will comply with the defect management requirements, along with a proposal for the frequency of the duty of care inspections

The monthly audit is only one type of Compliance Report and cannot be construed as the sole source of defects that need to be addressed within 12 months.

The following are some examples of the compliance reports for the purposes of this clarification:

- a. OPM compliance audit
- b. Defects that are raised by third parties, the Principal or the Contractor and recorded in the customer relations database
- c. PIP or Principal Identified Non Conformance
- d. The Agency's High Speed Data outputs are demonstration of identified defects and compliance,
- e. Outputs from inspections
- f. Principal reviews as outlined in MS 2.6.

Is it necessary to address all defects within a 12 month period?

It is the Principal's intent that all defects identified through the above means are rectified within 12 months. However, the contract allows for a number of OPM exclusions, these include;

- exclusions on current year and year 1 pavement rehabilitation sites,
- Recurring hazards which have formation and pavement risk exclusions.

The Contract has set the implication of not addressing a defect. In the instance where a defect is not justified for exemption and has not been addressed within the 12 months, the Maintenance Contract Manager should address this through the issuing of a Principal non-compliance. The Principal non-compliance will remain in effect each month until such time those defects have been addressed. The Principal's non-compliance applies to the OPM, not the individual defect and as such is separately recorded with a duration which will always be one, that is, a standing Principal Non-compliance (PNC) of 5 and will be recorded independent of, and in addition to that OPM's score for that month.

Three scenarios need to be considered in situations where an OPM exclusion is being sought are within the;

- a) NOC MS s2.3.2, acceptance of these exclusions can occur within the individual contract,
- b) Outside the standard specification documentation, acceptance of these exclusions must first be sought from the NOC GMG and then endorsed by the Network Performance Group (NPG)
- c) Where the NOC MS and Appendices (App) have specified considerations that may prevent adherence to the OPM, eg. Sensitive Vegetation Areas (App 4.5). For example;.

Where exclusion is allowed for within the Contract is the case around culturally sensitive tree(s). As the Principal is committed to protecting and enhancing the natural, cultural and built environment within the road reserve a list of Sensitive Vegetation Areas is provided for in Appendix 4.5 including Table 4.5.2 schedule of protected trees.

A tree is identified as a defect by OPM80, being within the 6m clear zone. The tree does not breach the contract standard (<15% of area per audit section). The tree itself is also not a safety hazard but has not been included in the protected tree register.

Removal of the envelope breach in this case would be appropriate given the trees cultural sensitivity but the contractor would not meet the intent of section 2.3.3 at the end of 12 months.

Where any exclusion is applicable, the Contractor should have a documented process in place for management of these areas to level of service agreed with the MCM. It is the Contractors responsibility to maintain a schedule and ensure schedules are updated on a regular basis and as such may result in changes to how the Contractor delivers the levels of service.

Provided the relevant schedules are kept current the Contractor is then able to reasonably demonstrate why a defect or non-compliance exclusion is applicable.

On this basis the issue identified in respect to OPM 80 can be considered excluded provided the relevant schedule has been updated and accepted by the Agency. To this end the defect or non-compliance can be removed as it has now met the Principal's applicable specification.