

Angus Council
A92 Upgrading - Dundee to Arbroath

Schedule 4: O&M Requirements

Part 3: Handback

Contents Nos	Page
1. General.....	4-3-2
2. Requirements for Handback	4-3-2
2.1 Initial Inspection	4-3-2
2.2 Renewal Programme	4-3-3
2.3 Second Inspection	4-3-4
2.4 Revised Renewal Programme	4-3-5
2.5 Handback Inspection	4-3-7

Schedule 4: O&M Requirements**Part 3: Handback****1. General**

- 1.1 Upon the Agreement Expiry Date each element of the Project Roads shall comply with the requirements of this Part. In achieving this the Company shall transfer all of the infrastructure within the Project Roads to Angus Council in a safe and serviceable condition appropriate to its remaining design life, together with all of the associated equipment, plant and stock then in use in relation to the operation, maintenance and administration of that infrastructure and all associated technical records and documentation.
- 1.2 Where in this Part 3 of this Schedule there is a requirement upon Angus Council or the Company to give Notice, carry out an inspection or take other action within a set period prior to the Agreement Expiry Date, that requirement shall be deemed not to apply in the event of the Agreement terminating in a manner provided by limb (c) of the definition of "Agreement Expiry Date" provided in terms of Clause 17.1 of the Agreement.
- 1.3 Not less than 24 months before the Agreement Expiry Date the Company shall consult and comply with the reasonable requirements of Angus Council to agree a procedure for the return of the infrastructure, and all associated documentation to Angus Council. These requirements shall ensure that the transfer proceeds smoothly and with minimum disruption to the level of service provided to Users.

2 Requirements for Handback**2.1 Initial Inspection**

The Company shall upon notice (being a minimum of 6 months' notice and served not earlier than 18 months prior to the 27th anniversary of the Scheduled Permit to Use Date or the Permit to Use Date (whichever is the earlier))) from Angus Council attend at an inspection which shall take place at a date to be specified by Angus Council in the Notice, at which the Company and Angus Council shall conduct a joint inspection (the "Initial Inspection") of the pavement of the Project Roads and all Structures forming part of the Project Roads.

a) Structures

Prior to, but within 6 months of the Initial Inspection date, the Company shall carry out a principal inspection (PI) of each Structure within the Project Roads in accordance with Paragraph 5 of Part 2 of this Schedule.

The Company shall carry out all Works identified by the maintenance prioritisation ranking of 2, 3 and 4. These Works shall be detailed within the Renewal Programme.

The Company may be required to carry out certain special inspections as detailed in Paragraph 5.3 d) of Part 2 of this Schedule. Any works identified shall be included within the Renewal Programme.

The Company shall continue to carry out general inspections and the routine maintenance of Structures in accordance with Paragraph 5 Part 2 of this Schedule.

b) Pavements

The Company shall carry out all the tests detailed in Paragraph 4 of Part 2 of this Schedule relating to the structural performance and the surface characteristics of pavements prior to, but within 6 months of the Initial Inspection date. The frequency of testing shall therefore be adjusted to ensure that all lanes and slip roads have been tested by the techniques detailed. The most conservative result with regard to Angus Council's requirements shall be applied.

All Works that are required to ensure that the minimum performance level at Handback, as detailed in Paragraph 4 of Part 2 of this Schedule is met shall be detailed in the Renewal Programme.

The Company shall continue to carry out the schedule of testing for surface characteristics as detailed in Paragraph 4 of Part 2 of this Schedule between the Initial and Second Inspections.

2.2 Renewal Programme

- a) Within 66 Working Days after the completion of the Initial Inspection, the Company shall provide to Angus Council a report on the condition of the pavement of the Project Roads and the Structures referred to in Paragraph 2.1 of this Part and a notice setting out:
- (i) the Company's proposals as to the O&M Requirements or other Works of renewal, reconstruction, repair or reinstatement (the "Renewal Works") required to be carried out in respect of the Project Roads, pavement and such Structures in order to procure that they will, on the Agreement Expiry Date, satisfy the requirements of this Part;
 - (ii) the Company's proposals as to the programme (the "Renewal Programme") for the carrying out of the Renewal Works over the remainder of the Agreement period; and
 - (iii) the Company's estimate of the cost of carrying out the Renewal Works (the "Renewal Amount").
- b) The proposals referred to in Paragraph 2.2 a)(i) of this Part shall be made:
- (i) on the basis of an assessment of the residual life of the relevant element of the Project Roads in accordance with the provisions of Part 2 of this Schedule; and
 - (ii) on the assumption that the Project Roads will be maintained in accordance with the O&M Requirements for the remainder of the Project Period.
- c) Angus Council may, within 66 Working Days after receipt of the notice from the Company in accordance with Paragraph 2.2 a) of this Part by notice to the Company object to the proposals in respect of any or all of the Renewal Works, the Renewal Programme and the Renewal Amount as set out in the Company's notice. The notice from Angus Council shall give details of the grounds for such objection and shall give Angus Council's proposals in respect of the Renewal Works and Renewal Programme and an estimate of the Renewal Amount.
- d) If no agreement is reached between the Company and Angus Council as to any matter referred to in the report given in accordance with Paragraph 2.2 of

this Part within 44 Working Days, then the Company or Angus Council may refer the matter to the Disputes Resolution Procedure.

- e) Upon agreement or determination in accordance with the Disputes Resolution Procedure of the Renewal Works and the Renewal Programme, the Company shall at its own cost carry out the Renewal Works in accordance with the Renewal Programme.
- f) The agreement of Angus Council to any Renewal Works, Renewal Programme or Renewal Amount, or the participation of Angus Council in any inspection or the complete or partial carrying out of the Renewal Works shall not relieve or absolve the Company from:-
 - (i) its obligation under Paragraph 1.1 of this Part; or
 - (ii) any obligation to conduct any other inspection or perform any other works in accordance with the O&M Requirements.
- g) The Renewal Amount shall be reviewed by Angus Council at the beginning of every Quarter to reflect any reduction in the Renewal Amount attributable to the value of any Renewal Works properly and fully carried out by the Company in the previous Quarter in accordance with the Renewal Programme. Such reviews shall be without prejudice and in addition to any changes in the Renewal Amount as a consequence of the Second Inspection.
- h) For the purposes of calculating the value of any Renewal Works carried out as referred to in paragraph 2.2 g) of this Part, the Company shall give notice to Angus Council within 10 Working Days of the last day of the Quarter preceding that in which the Renewal Amount is to be reviewed stating:
 - (i) the costs incurred by the Company during that preceding Quarter attributable to the Renewal Works carried out in that Quarter with reference to the Renewal Programme;
 - (ii) a breakdown of the cost of each element of Renewal Works carried out accompanied by a certified time copy of each paid invoice relative to each such element.
- i) Angus Council may within 10 Working Days of receipt of the notice referred to in paragraph 2.2 h) of this Part object thereto by counter-notice stating the grounds for such objection and Angus Council's assessment of the proper value of the Renewal Works properly and fully carried out during that preceding Quarter. If agreement is not reached between the Company and Angus Council as to the value of the Renewal Works for any Quarter within 10 Working Days following issue of such counter-notice by Angus Council in terms of this paragraph 2.2 i) of this Part, then the Company or Angus Council may refer the matter to the Disputes Resolution Procedure.
- j) If Angus Council do not issue a counter-notice or upon the value of the Renewal Works being otherwise agreed or determined as referred to in paragraph 2.2 i) of this Part, then the value of the Renewal Works as so notified, agreed or determined shall be that used for calculation of the Monthly Retention during that Quarter in terms of Clause 29.3 of the Agreement.

2.3 Second Inspection

Not less than 20 months prior to the Agreement Expiry Date, the Company and Angus Council shall conduct a joint inspection (the "Second Inspection") of all elements of the Project Roads, including without limitation the pavement and the

Structures referred to in Paragraph 2.1 of this Part (whether or not the Renewal Works in respect of the pavement and such Structures shall have been carried out by the Company).

a) **Structures**

The Structures shall all be subjected to general inspection as shall those Works which had been given a maintenance prioritisation ranking of 1 at the PI carried out as part of the Initial Inspection. In addition the works identified with a maintenance prioritisation of 2, 3 or 4 at the last PI and which had been included as part of the Renewal Programme shall be inspected. Any works which shall be required or are outstanding shall be included as revisions to the Renewal Programme.

The Company may be required to carry out certain special inspections as detailed in Paragraph 5.3 d) of Part 2 of this Schedule. Any works identified shall be included as a revision to the Renewal Programme.

The Company shall continue to carry out the routine maintenance of Structures in accordance with section 5 of Part 2 of this Schedule between the Second Inspection and the Agreement Expiry Date.

b) **Pavements**

The Company shall carry out all the tests detailed in Paragraph 4 of Part 2 of this Schedule relating to the structural performance and the surface characteristics of pavements as part of the Second Inspection.

All Works which are required to ensure that the minimum performance level is met at Handback, as detailed in Paragraph 4 of Part 2 of this Schedule, shall be included as revisions to the Renewal Programme.

c) **Other Elements**

All other elements within the Project Roads shall be subjected to the detailed inspection requirements as detailed in Paragraph 2 of Part 2 of this Schedule as part of the Second Inspection.

All Works which are identified by the inspections shall be included within the Renewal Programme.

The Company shall continue to carry out safety inspections between the Second Inspection and the Agreement Expiry Date.

2.4 Revised Renewal Programme

a) Within 44 Working Days after the completion of the Second Inspection, the Company shall provide to Angus Council a report on the condition of the Project Roads and a notice setting out:-

- (i) the Company's proposals as to any revisions or additions to the Renewal Works of this Part required in order to procure that all elements of the Project Roads will, on the Agreement Expiry Date, satisfy the requirements of this Part;
- (ii) the Company's proposals as to any revisions to the Renewal Programme as a consequence of such revisions or additions to the Renewal Works; and

- (iii) the Company's estimate of any changes in the Renewal Amount as a consequence of such revisions or additions to the Renewal Works.
- b) The proposals referred to in Paragraph 2.4 a)(i) of this Part shall be made, inter alia, on the basis set out in Paragraph 2.2 b) of this Part
- c) Angus Council may, within 20 Working Days of receipt of the notice from the Company in accordance with Paragraph 2.4 a) of this Part, by notice to the Company object to any or all of the Renewal Works, the revised Renewal Programme and the Renewal Amount as set out in the Company's notice. The notice from Angus Council shall give details of the grounds for such objection and shall give Angus Council's proposals in respect of such matters.
- d) If no agreement is reached between the Company and Angus Council as to any matter referred to in the notice given in accordance with Paragraph 2.4 c) of this Part within 20 Working Days, then either the Company or Angus Council may refer the matter to the Disputes Resolution Procedure.
- e) Upon agreement or determination in accordance with the Disputes Resolution Procedure of any revision or addition to the Renewal Works or the Renewal Programme, the Company shall at its own cost carry out the Renewal Works (as so revised or added to) in accordance with the Renewal Programme (as so revised). The Company shall procure at its own cost that the Renewal Works (as so revised or added to) are carried out notwithstanding that the actual cost of the Renewal Works may be higher than the Renewal Amount (as changed in accordance with this Paragraph 2.4 of this Part).
- f) The Renewal Works proposed pursuant to Paragraph 2.4 a)(i) of this Part shall include the following:
- (i) Not Used.
 - (ii) Not Used.
 - (iii) Not Used.
 - (iv) Not Used.
 - (v) Not Used.
 - (vi) Not Used.
 - (vii) Not Used.
 - (viii) all work necessary to ensure the elements listed below have a minimum residual life at the Agreement Expiry Date as follows:

i)	Metal housing for road studs	5 years
ii)	Metal parts and sign faces of all traffic signs	5 years
iii)	Safety fences/barriers	5 years
iv)	Pavement (based on Deflectograph surveys as detailed in HD 29 (DMRB 7.3.2))	5 years
v)	Cycletrack and footways	5 years

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| vi) | Drainage: Piped (based on video surveys) | 10 years |
| | Filter Material | 5 years |
| | Detention Ponds | 10 years |
| | Swales | 10 years |
| vii) | Kerbs | 10 years |
| viii) | Bus Shelters | 10 years |
| ix) | Litter Bins | 5 years |
- (ix) Not Used.
- (x) Structures shall be designed for 120 years construction life. However various components associated with the structures require to be treated individually.
- Bridge Bearings shall have a residual life of 10 years
 - Bridge Deck Waterproofing shall have a residual life of 10 years
 - Protective paintwork systems to steel beams shall have a residual life of 10 years
 - Weathering Steel shall be painted within the last 60 months of the Project Period unless Angus Council agree that the weathering steel has a residual life of 10 years if it remains unpainted.
 - Metal Parapets
 - Galvanised parapets shall be replaced within the last 60 months of the Project Period unless Angus Council agree that the parapets have a residual life of 10 years
 - Painted parapets shall have a residual life of 10 years

2.5 Handback Inspection

- a) Not later than 20 Working Days after the Agreement Expiry Date, the Company and Angus Council shall conduct a joint inspection of the Project Roads (the "Handback Inspection"). Such inspection shall assess each item identified as Renewal Works in the current Renewal Programme.
- b) Within 66 Working Days after the completion of the Handback Inspection, Angus Council shall either:
- (i) issue to the Company a Handback Certificate; or
 - (ii) notify the Company in writing of its decision not to issue the Handback Certificate and state the reason for such decision.
- c) Angus Council may refuse to issue the Handback Certificate where:
- (i) the Company shall have failed to complete all of the Renewal Works; or
 - (ii) the Project Roads for any other reason do not comply with the requirements of this Part in all respects.

- d) Any notice given by Angus Council in accordance with Paragraph 2.5 b)(ii) of this Part shall set out each respect in which the Renewal Works have not been completed or in which the Project Roads do not comply with the requirements of this Part and shall state Angus Council's estimate of the cost of completing such Renewal Works to ensure that the Project Roads comply in all respects with the requirements of this Part.
- e) The Company may, within 20 Working Days after receipt of a notice given in accordance with Paragraph 2.5 b)(ii) of this Part, by notice to Angus Council object to any matter set out in Angus Council's notice. The notice from the Company shall give details of the grounds for such objection and shall give the Company's proposals in respect of such matters.
- f) If no agreement is reached between the Company and Angus Council as to any matter referred to in the notice given in accordance with Paragraph 2.5 e) of this Part within 44 Working Days, then either the Company or Angus Council may refer the matter to the Disputes Resolution Procedure for determination, as the case may be:
- (i) whether the Renewal Works have been completed ;
 - (ii) whether the Project Roads comply in all respects with the requirements of this Part; and
 - (iii) of the estimated cost of ensuring that such Renewal Works are completed and that the Project Roads comply in all respects with the requirements of this Part.
- g) Where it is agreed or determined in accordance with the Disputes Resolution Procedure that the Company has not completed the Renewal Works or that the Project Roads do not comply in all respects with the requirements of this Part, then without prejudice to any other right or remedy of Angus Council the Company shall, where the aggregate of the Monthly Retention deducted by Angus Council in accordance with Clause 29 of the Agreement and held by Angus Council is insufficient, pay to Angus Council an amount equal to the difference between the estimated cost of completing such Renewal Works to ensure that the Project Roads comply in all respects with the requirements of this Part, as agreed or determined in accordance with Paragraph 2.5 f) of this Part and the aggregate of such Monthly Retentions (the "Handback Amount"). Such payment shall be made not later than 10 Working Days after such estimated cost has been agreed or determined in accordance with this Paragraph 2.5 of this Part.
- h) Where it is subsequently agreed or determined in accordance with the Disputes Resolution Procedure that the aggregate of the Monthly Retention deducted by Angus Council in accordance with Clause 29 of the Agreement and held by Angus Council exceeds the Renewal Amount, Angus Council shall pay to the Company, within 20 Working Days of such agreement or determination, the amount of such excess.