

Network Outcomes Contract Contract Clarification Governance Group Clarification

Reference Number:	NOCC No. 38
Subject Title:	Risk Transfer on deferred renewals
Issue Date:	12 April 2021
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

It has been necessary to significantly reduce the planned 20/21 renewals programme in order to remain within the approved 18-21 NLTP budget.

While there are several references within the NOC contract detailing who carries the risk associated with the ongoing maintenance of any deferred sites, this does not always appear to be well understood or interpreted consistently.

The purpose of this clarification is to summarise and clarify this topic in simple terms with some typical examples.

CONTRACT REFERENCES

There are several references in the NOC contracts relating to this topic which readers should familiarise themselves with. They are not repeated here in full, but the references are set out below.

- Conditions of Contract; Schedule 18 – Contract Risk Profile. Item 7, “Changes to the accumulated annual pavement rehabilitation programme as reconciled against the Contractor’s tendered accumulated Pavement Rehabilitation Baseline Plan.
- Conditions of Contract; Schedule 18 – Contract Risk Profile. Item 8, “Beyond a 10% change to the accumulated annual resurfacing programme as reconciled against the Contractor’s tendered accumulated Resurfacing Baseline Plan”
- Maintenance Specification Clause 2.5.4; Changes to Annual Renewal Investment Levels
- Appendices; Process Map 2.5.4/ 6.1.2 “Management of Annual Rehabilitation Quantity”

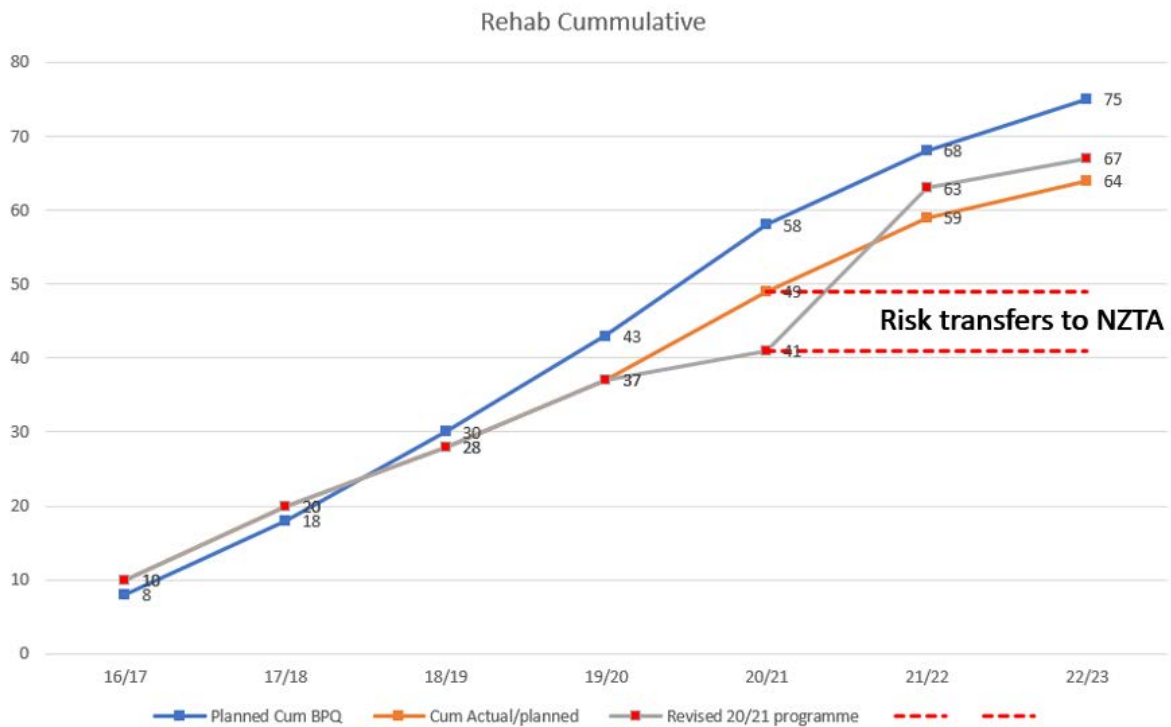
- Appendices; Process Maps 6.1.3 & 6.1.2 “Management of Annual Resurfacing Quantity”
- NOC Clarification #7; BPRQs: Reconciliation to the accumulated annual Pavement Rehabilitation programme (Already contains some plain English explanations of the intent)
- NOC Clarification #24 Rehabilitation Base Preservation Quantities Reconciliation Process

RESPONSE

While this clarification specifically relates to the current situation in 20/21, the principles and examples outlined below would equally apply in any future years should there be a need to apply further tension to renewal programmes because of fiscal constraints.

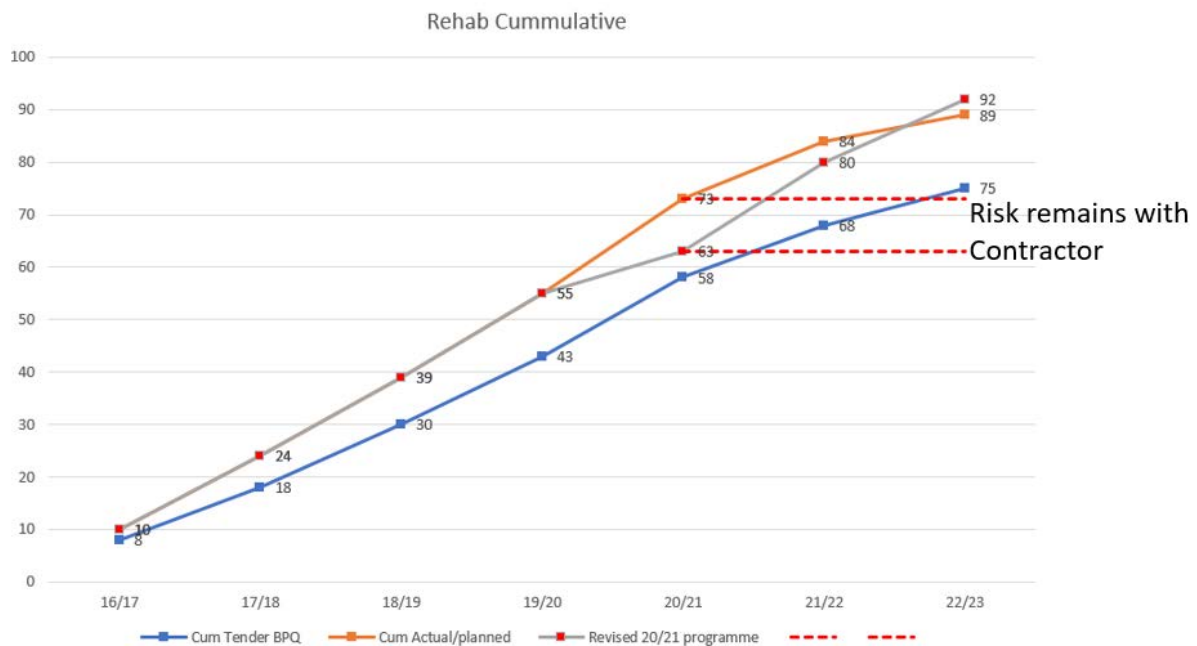
Set out below are some typical scenarios that illustrate when the risk remains with the Contractor, and when there is a risk transfer to the Agency.

Rehabilitation scenario 1



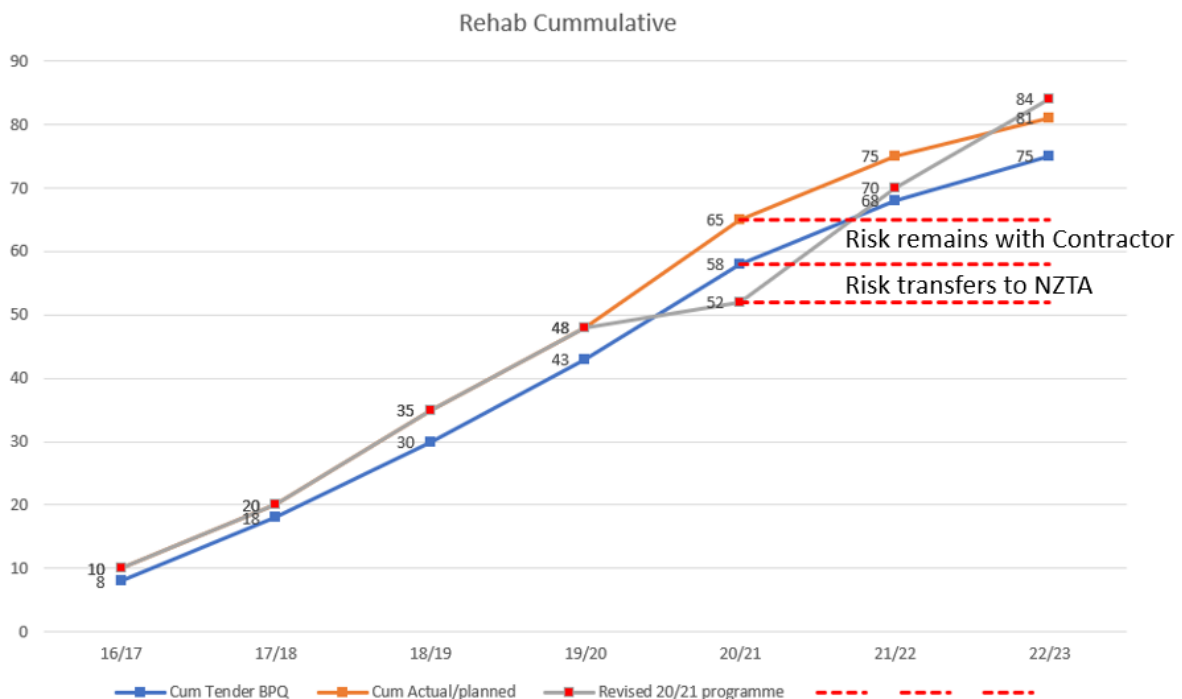
In the above example, the risk (and hence costs associated with maintaining all of the deferred sites to the minimum safety standard) transfers to the Agency. (in this case $49 - 41 = 8$ lane km)

Rehabilitation scenario 2



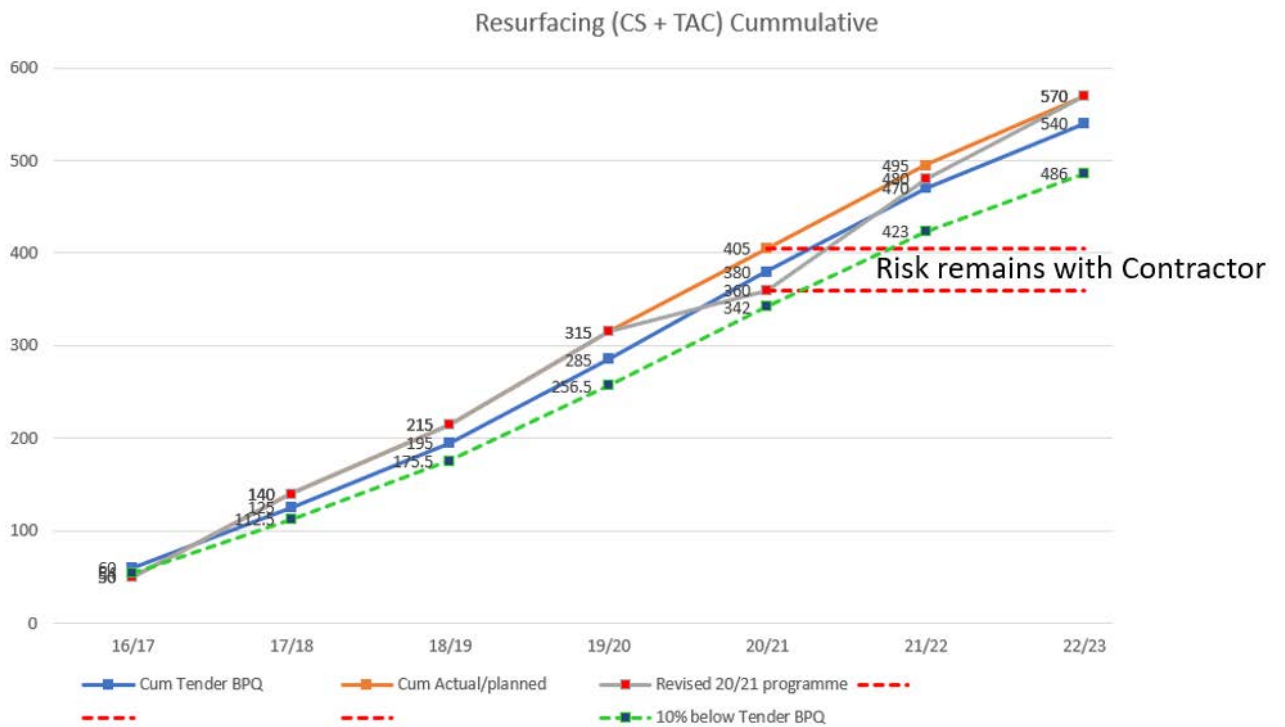
In the above example, the risk (and hence costs associated with maintaining all of the deferred sites to the minimum safety standard) remains with the contractor. (in this case $73 - 63 = 10$ lane km)

Rehabilitation scenario 3



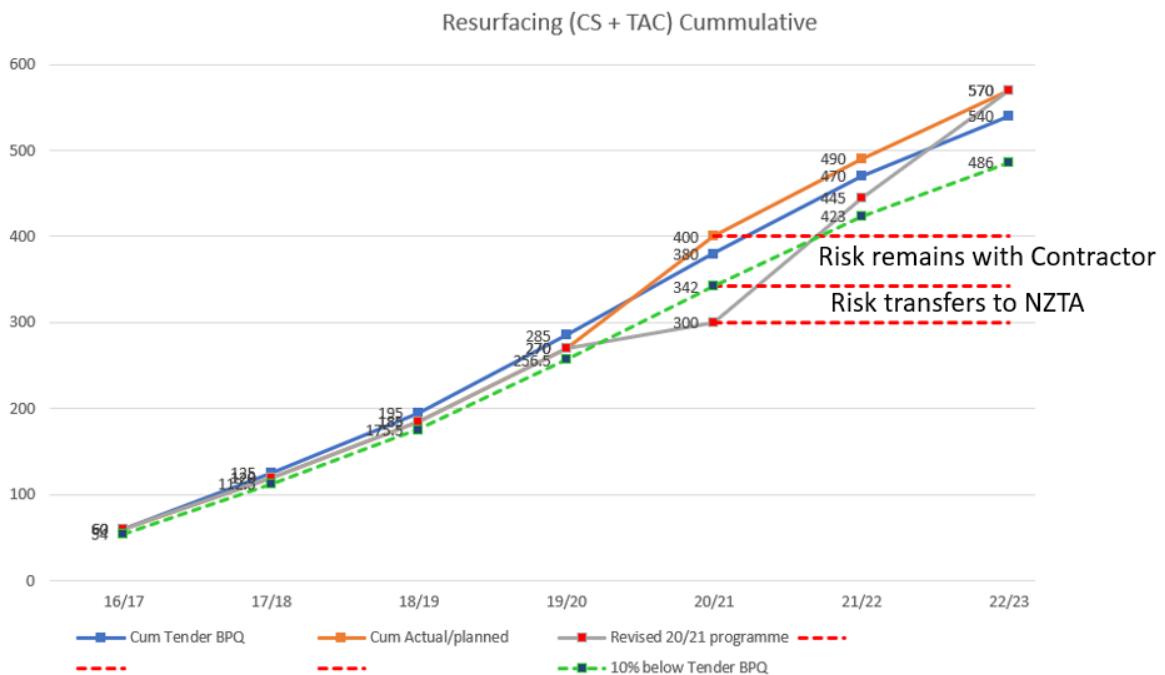
In the above example, the risk (and hence costs associated with maintaining the deferred sites to the minimum safety standard) remains with the Contractor for the sites over and above the BPQ. (in this case $65 - 58 = 7$ lane km) but the risk (and hence costs associated with maintaining the deferred sites to the minimum safety standard) transfers to the Agency for the sites under the BPQ. (in this case $58 - 52 = 6$ lane km)

Resurfacing scenario 1



In the above example, the risk (and hence costs associated with maintaining all of the deferred sites to the minimum safety standard) remains with the contractor. (in this case $405 - 360 = 45$ lane km) It is a requirement that the Contractor still completes pre-resurfacing repairs that they would normally have done.

Resurfacing scenario 2



In the above example, the risk (and hence costs associated with maintaining the deferred sites to the minimum safety standard) remains with the contractor ONLY for the sites that are above the 10% threshold below the BPQ. (in this case $400 - 342 = 58$ lane km)

The risk (and hence costs associated with maintaining the deferred sites to the minimum safety standard) transfers to the Agency for the sites under the 10% (below) BPO threshold. (in this case 342-300=42 lane km)

As part of the Lump Sum, the Contractor shall schedule and complete all necessary pre-reseal repairs that would have been undertaken if the resurfacing had been completed as planned.

On deferred sites where a risk transfer occurs, in addition to the above, the Agency and Contractor shall jointly agree any other required surfacing repairs (and any other Site-specific needs) that are required to be undertaken in order to hold this road length to a Agency-approved minimum asset and safety condition.

Until such time as a resurfacing or pavement rehabilitation renewal has been completed, any new defects that occur on the Site shall be identified by the Contractor, submitted to the Agency for approval then repaired by the Contractor, and payment made by the Agency. (Includes any non-routine Pavement and surfacing repairs such as potholes)

FURTHER POINTS OF CLARIFICATION

There are several caveats in the unlikely situation where Baseline Plan investment levels have not been applied to the Network owing to incorrect justification, or if the reactive maintenance levels have not justified the need for each individual renewal project. Should this be the case, any risk that may otherwise have transferred to the Agency, will remain with the Contractor.

Any risk transfer to the Agency is to be applied to the year 1 highest priority non-funded sites.

Programmed sites that the contractor failed to deliver in the prior year and were subsequently "carried over" into the 20/21 programme, must be deducted from the length of any risk transfers to the Agency.

Care should be taken to ensure "Non-BPO" renewals (ie sites the Agency has formally agreed will not draw on the contractors BPO) are not being counted in historical cumulative quantity calculations, as this would disadvantage the Contractor.

It is important to check that you draw on the BPO figures submitted with the Contractors tender submission (it is not uncommon for these figures to be incorrectly stated or have been "re-distributed" over time in the likes of AP submissions)

The process for agreeing Principal risk repairs and approval is well defined in section 2.5.4 of the Maintenance Specification.

All decisions and agreements regarding the transfer or sharing of risk on any sites must be recorded in the Contract Risk Register.

QUERIES

If anyone has any queries or needs assistance to resolve any complications from this, they should contact their local Asset Investment Advisor.