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Guide to adapting asset delivery documentation to parks and open space maintenance

This guide sets out a checklist of contractual issues to consider and address with the Council's adopted General conditions of contract. Read in conjunction with AUS-SPEC TG 401 *Guide to parks and open space maintenance system and documentation*.

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ASSET DELIVERY – PARKS AND OPEN SPACE MAINTENANCE

1 INTRODUCTION

This guide sets out a checklist of contractual issues to consider and address with the Council’s adopted General conditions of contract. The checklist box at the end of each issue discussed can be used to confirm the action on that issue.

The 18 issues can be addressed in various ways. Select from the following to best suit the organisation and/or address the issue:

- Deletion and replacement of clauses in the General conditions of contract.
- Amendment of clauses in the General conditions of contract.
- Text in *1401 General requirements – parks and open space (Maintenance)*.
- Requirements included as Special conditions of contract with clear annotation that they override any conflicting clauses in the General conditions of contract.

2 ISSUE 1: CONTRACT TERM

The Council needs to determine the contract term in relation the date of acceptance of the tender, any establishment period, and any wind-down period before practical completion.

Consider a one month establishment period at the commencement. Maintenance is undertaken by others and the maintenance diary and Contractor’s infrastructure is established. Any activity with a Maintenance Diary response time less than 10 days at the end of the establishment period is paid for at daywork rates.

Consider a one month wind-down period at the completion of the contract. The Superintendent will establish the maintenance diary and activities not yet compulsory but necessary to reduce outstanding work items such that all outstanding response times are greater than 10 days. These will be considered by the Superintendent for a work order on daywork rates basis.

The actual contract period between these episodes would be typically 24 to 36 months for parks and open space maintenance type contract.

CHECK ISSUE #1	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	Conditions of Contract – General Information	Both AS 2124 and NPWC3 (Annexure)		✓			
	General conditions of contract			✓			

3 ISSUE 2: CONCEPT OF SITE OF WORKS

A contract based on AUS-SPEC applied to parks and recreation areas requires amendment to the concept of site possession and access by others including other contractors, public authorities and the public. A simple clarification is required.

CHECK ISSUE #2	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clauses 27.1 & 27.2 NPWC3 clauses 27.1 & 27.3			✓		
					✓		

4 ISSUE 3: ROUTINE MAINTENANCE DEFINITION

It is necessary to define routine maintenance which is the responsibility of the Contractor and is paid for in the tendered lump sum.

Routine maintenance includes all maintenance activities in the Works as described in the *1401 General requirements – parks and recreation areas (Maintenance)* worksection the Park Maintenance Plan (PMP) and necessary to maintain the performance criteria stated to which the contract lump sum applies.

Work other than routine maintenance includes all maintenance tasks carried out by the Contractor, the costs of which are not included in the contract Lump Sum. Such work shall only be performed as directed and approved by the Superintendent.

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These two definitions need to be included in the General Conditions of Contract.

CHECK ISSUE #3	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 2 NPWC3 clause 2		✓			

5 ISSUE 4: SPECIFICATION DEFINITION

It is necessary to clarify the term specification for the AUS-SPEC documentation due to the inclusion of the PMP documents and the reference to materials specifications and Australian Standards which may be updated during the contract term. The following script is recommended for consideration.

Specification means all specifications for work to be carried out as existing at the date of acceptance of tender and any modification of such specifications thereafter directed or the use of which has been approved by the Superintendent pursuant to their powers under the Contract. The specifications include, but are not limited to, the approved Parks and open space Maintenance Plan (PMP), the *1401 General requirements - parks and open space (Maintenance)* worksection, Australian Standards or other standards and specifications cited in the documents.

CHECK ISSUE #4	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 2 NPWC3 clause 2	✓	✓			

6 ISSUE 5: WORK ORDER DEFINITION

It is necessary that the Work Order is clearly defined in the General conditions of contract in order to clarify its authority and role.

Work Order means a completed form in a format, either provided or approved by the Principal, which indicates work activities to be undertaken by the Contractor where payment is as assigned on the work order. Work orders have a unique serial number assigned by the Principal. The forms only have status as an order when signed by the Superintendent or a duly delegated representative.

CHECK ISSUE #5	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 2 NPWC3 clause 2		✓			

7 ISSUE 6: NATURE OF CONTRACT – COMBINED METHODS OF PAYMENT

The AUS-SPEC contract type requires that the Contractor be paid in two modes as appropriate being lump sum and daywork rates.

Suggested script is as follows:

The Principal shall pay the Contractor:

- For work for which the Principal accepted a lump sum, the Lump Sum.
- For work for which the Principal accepted Daywork rates, the sum ascertained by multiplying the Daywork rates by the appropriate quantity of each resource or item of work actually carried out under the Contract.

Adjusted by any additions or deductions made pursuant to the Contract.

Unless otherwise stated in the Contract, the Contract shall not be subject to adjustment for rise and fall costs.

CHECK ISSUE #6	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 3 NPWC3 clause 3			✓		

8 ISSUE 7: NATURE OF CONTRACT – WORK ORDER REQUIREMENTS

The following script is suggested to describe the function of Work Orders:

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Work to be performed for payment by pro-rata Lump Sum requires prior approval of the Superintendent by way of Work Order duly signed by the Superintendent or a duly delegated representative.

Work to be performed for payment by Daywork rates requires prior approval of the Superintendent by way of Work Order duly signed by the Superintendent or a duly delegated representative.

Whilst Superintendent’s approval is required when the actual quantity of a section or item of work is greater or less than the quantity shown in the Work Order a revised Work Order is not required unless the variation exceeds 50% of the scheduled quantity.

CHECK ISSUE #7	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clauses 3.3 and 40 NPWC3 clauses 3.3 and 40		✓ ✓ ✓ ✓			

9 ISSUE 8: NATURE OF CONTRACT – DAYWORK RATES

The AUS-SPEC contract format calls upon the use of Daywork rates for work which is not reasonably predictable in nature and quantity so as to be able to be included in the routine maintenance included in the lump sum payment provision. Such work is typically quick response work which is of a nature that is not readily aligned with standard operations due to a different set of resources requirements.

Accordingly a list of projected resources that may be called upon in any combination is defined for the tender documents by the Principal as daywork rates. The Tenderer and Contractor submit agreed rates for these resources.

It is considered reasonable to retain the concept of Daywork as provided for in General conditions of contract. This concept allows a Superintendent the ability to deal with situations requiring resources beyond those included in the Principal’s list at time of tender or where the Contractor refutes the valid application of daywork rates as used in this type of contract.

A simple amendment is recommended to the Daywork clause in conjunction with the inclusion of Daywork rates in the interpretation section.

An appropriate definition for Daywork rates (refer AS 2124 clause 2 and NPWC3) is suggested below:

Daywork rates means the rates provided by the Tenderer and included in the Contract for the resources listed by the Principal in the tender documents and applicable to categories of work determined by the Superintendent not to be suitable for lump sum payment as routine maintenance work.

An explanation of Daywork rates should be included as an addition to description of the nature of contract in the General conditions of contract in AS 2124 clause 3.4 and NPWC3.

The following script is suggested:

Daywork rates

- Work Initiation and approval by the Superintendent.
 - Unless otherwise directed by the Superintendent, the Contractor shall not carry out any work under the Contract under Daywork rates.
 - If the Superintendent directs that any work under the Contract be carried out as Daywork, the Superintendent shall issue or approve a Work Order directing the Contractor to execute such work.
- Moneys payable:
 - If the Superintendent directs that any work under the Contract be carried out under Daywork rates, the Contractor shall execute the work and perform the Contractor’s obligations under the Contract and the Principal shall pay the Contractor for the measured quantity of each item of the resources actually used by the Contractor at the rates set out in the schedule of Daywork rates.
 - The rates in the schedule of Daywork rates shall be the all-inclusive cost of providing the resources under normal or emergency circumstances and shall include but not be limited to overheads, administrative costs, handling costs, site supervision, establishment costs, operating costs, profits, statutory and other charges.
 - Where works are executed under Daywork rates, the Contractor shall record each day in a manner to be approved by the Superintendent, the particulars of all resources used by the Contractor for the execution of the Daywork. Claims for payment for work under the Daywork rates shall include records of

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all time sheets, wages sheets, invoices, receipts and other vouchers that are necessary to support the claim for each activity at each site.

- The Superintendent shall determine the amount to be paid to the Contractor in respect of each claim with regard to the following:
 - o The Schedule of Daywork rates provided in the Contract documents.
 - o The amounts accepted as paid for services, subcontracts and professional fees with a 10% allowance for overheads and profit and all other associated expenses to the Contractor.
 - o The amounts accepted as paid for materials directly contributing to the work with a 10% allowance for overheads and profit and all other associated expenses to the Contractor.

• Quantities:

- For Daywork activities there are no quantities provided by the Principal.

CHECK ISSUE #8	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 41 NPWC3 clause 40.3 AS 2124 clauses 2 & 3.4 NPWC3 clauses 2 & 3.4		✓ ✓	✓ ✓		

10 ISSUE 9: SUBCONTRACT CONDITIONS

It is essential that the Principal retains consistent control over the contract conditions and the quality of work, whether executed by the Contractor or a Subcontractor.

The following script is recommended for addition to the section of General conditions of contract addressing Contractor’s responsibility:

The Contractor shall enter into contracts with all Subcontractors upon terms and conditions consistent with those in the Contract and specifically the Park and open space Maintenance Plan and the Superintendent reserves the right to require submission of satisfactory evidence thereof.

CHECK ISSUE #9	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 9.3 NPWC3 clause 9.3		✓ ✓			

11 ISSUE 10: PROTECTION OF PERSONS AND PROPERTY – PROVISION FOR TRAFFIC

It is recommended that specific reference to the general requirements for adherence to Australian Standards for traffic management is required in a contract based on parks and recreation area maintenance. Inclusion in the General conditions of contract is considered to clarify that non-compliance is basis for default and cannot be misconstrued to be a technical breach.

Additional script to AS 2124 and NPWC3 is suggested as follows:

The Contractor shall avoid obstruction or damage to roadways and footpaths, drains and water-courses and public utility and other services on or adjacent to the site which are visible or the location of which can be ascertained by the Contractor from the appropriate authority or from the Contract and shall have any obstruction removed immediately and at the Contractor’s cost shall have made good all damage caused by the Contractor, the Contractor’s employees, agents or subcontractors or the employees of any such agents or subcontractors. In the event of the Contractor’s failure to do so, the Principal may have the remedial work carried out and the cost incurred shall be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal pursuant to clause 46.

The Contractor shall prevent nuisance to the owners, tenants or occupiers of properties adjacent to the site and to the public generally, in accordance with the Park Maintenance Plan and the requirements of Council and Statutory Authorities.

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CHECK ISSUE #10	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 13			✓		

12 ISSUE 11: POSSESSION OF SITE

There are qualifications on the Contractor’s access to the site which do not apply to traditional contracts. Additionally the definition of what constitutes ‘the site’ requires clarification beyond that provided in traditional General conditions of contract.

Standard clauses may be amended to include the following script:

The Site consists of the whole of the parks and recreation areas covered by the Contract unless otherwise stipulated elsewhere in the Contract documents.

The Contractor, its employees, agents or subcontractors shall have access to any portion of the Site to carry out work conforming to the Contract requirements.

The temporary closure of any portion of the Site by the Contractor for the purpose of carrying out work shall be governed by the Superintendent and in certain times may be prohibited by the Superintendent.

Should any delay take place in giving the Contractor such access to the Site or any direction from the Superintendent restricting or revoking access to the Site to particular days and/or times, such delay, restriction or revocation of access shall not be deemed to constitute a breach of contract.

The Contractor shall at all times respect the Principal’s right to provide possession of the Site for other Contractors to undertake separate works or services, or other parties to undertake activities sanctioned by the Principal. Under such circumstances, the Contractor shall liaise with the Superintendent to program works to eliminate or minimise interference with other works, services or activities.

CHECK ISSUE #11	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 15 NPWC3 clause 15			✓ ✓		

13 ISSUE 12: OPERATIONAL PLANT

It is necessary that all plant utilised meet the requirements of all state laws including registration and third party personal insurance NPWC3 provides for this requirement.

The following script is recommended:

All Operational Plant on site shall comply with the requirement in relation thereto of the relevant laws in operation in the State or Territory in which the Work under the Contract is being carried out.

CHECK ISSUE #12	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of Contract	AS 2124 clause 27 NPWC3 clause 27			✓ ✓		

14 ISSUE 13: QUALITY ASSURANCE

It is necessary to recognise the Contractor’s responsibility to execute the Contract under a system of quality assurance.

The following script is suggested:

The Contractor shall be responsible for the quality assurance of the Work and work processes under the Contract in conformance with the submitted and accepted Parks and open space Maintenance Plan.

CHECK ISSUE #13	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of Contract	AS 2124 clause 29		✓			

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15 ISSUE 14: WORKING HOURS

It is necessary to provide for abnormal circumstances in this type of contract. The following script is suggested:

Unless otherwise documented in the Contract or as directed by the Superintendent, the Contractor shall perform his obligations under the Contract at any time of any day.

The Contractor shall be deemed to have included in its rates and prices all additional costs that may be incurred because of the following:

- Working hour restrictions as documented in the Contract.
- Working hour restrictions imposed by Statutory Authorities other than the Principal, including the State Police Force, even if these restrictions have been imposed by the Authorities after the date of acceptance of tender.
- Conforming with any requirements under the Contract in relation to working hours, including but not limited to night work, noise, and traffic management.
- Work carried out outside the ordinary days or hours of work fixed by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgement or order of any competent court, board, commission or industrial tribunal, or by any relevant industrial agreement that is in force in the relevant State.

Where no working hour restriction is documented in a Work Order, the Contractor shall execute the work conforming to the provisions of the Contract at the rates set out in the schedule of Daywork rates as standard rates.

Where a working hour restriction outside award recognised working hours is documented in a Work Order, the rates in the schedule of Daywork rates applicable to the work shall be those rates entered as applicable to governing industrial agreement, e.g. shift work rates, 1.5 payment rates or 2.0 payment rates.

CHECK ISSUE #14	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 32 NPWC3 clause 32	✓	✓			

16 ISSUE 15: WORKS PROGRAMMES AND RELATED ISSUES

It is necessary to amend General conditions of contract to reflect the long term ongoing nature of the park and recreation area maintenance contract.

Key issues to be addressed are as follows:

- Eliminate reference to construction program and refer to regular submission of programs at fortnightly intervals.
- Extensions to contract response times can only be made when inclement weather is logged for more than 75% of the period, and then only with Superintendent’s specific approval on the basis that execution was impractical even if resources were made available.
- Liquidated damages should only be applicable after practical completion of the contract.

CHECK ISSUE #15	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clauses 33, 35.5, 35.6, 37 NPWC3 clauses 33, 35.4, 35.5, 37			✓ ✓		

17 ISSUE 16: TIMES FOR COMMENCEMENT AND COMPLETION

Consideration should be given to amendment of the General conditions of contract to recognise three periods which are described in the *1401 General requirements – parks and open space (Maintenance)* worksection, as follows:

- Establishment period.
- Maintenance period.

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- Wind-down period.

The requirements for each period should be set by the Council to suit the parks and recreation area condition (refer Issue #1).

The duration and relation to the contract term should be included in an Annexure to the General conditions of contract.

CHECK ISSUE #16	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 35	✓	✓			
		NPWC3 clause 35	✓	✓			

18 ISSUE 17: VARIATIONS

The clause on variations in the General conditions of contract will need review (typically clause 40).

The clause should provide for:

- Increase in the number of parks and recreation areas during the Contract period.
- Increase in the scope of nominated Daywork rates as tendered.

Typically there may be agreement on quantum changes to the Lump Sum components of the Contract and introduction of additional categories of Daywork rates for resources. There may also be provision for the traditional application of calculated payment for Daywork determined by the Superintendent. (Refer to NPWC3 clause 41 or AS 2124.)

CHECK ISSUE #17	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 clause 40			✓		
		NPWC3 clause 40			✓		

19 ISSUE 18: WORK ORDER

Due to the contractual nature of the Work order referred to in the *1401 General requirements - parks and recreation areas (Maintenance)* worksection and the PMP, it is recommended that the nature and status of the Work order be recognised in the General conditions of contract.

A suggested script is as follows:

Where it is deemed necessary by the Superintendent that additional unscheduled work other than scheduled work payable under lump sum be carried out by the Contractor, the Superintendent will issue or approve a Work Order directing the Contractor to carry out that work. A Work order may be prepared by the Contractor or the Superintendent but must be approved by the Superintendent before commencement of work.

The Work order approved by the Superintendent shall include:

- The location, nature and extent of the Work.
- The estimated quantity of each item of Work.
- A direction to execute the Work for payment on a pro rata basis of the extensions for lump sum activities given in the Bill of quantities or Daywork rates if the Superintendent and the Contractor determine this is appropriate, or fail to agree on the applicability of the pro rata basis.
- Notice that the Superintendent has determined rates under the clause for Daywork in the event that rates provided in the Schedule of Daywork Rates are not accepted as applicable by both the Superintendent and the Contractor.
- Any restrictions to the working hours applicable to the Work.
- The required date of completion of the Work.
- Any other information and direction which the Superintendent deems necessary for the completion of the instructed work.

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CHECK ISSUE #18	Relevant document section	Reference clause	Action (tick)			Draft by (initials)	Check by (initials)
			Delete	Add	Amend		
	General conditions of contract	AS 2124 (add clause number) NPWC3 (add clause number)		✓ ✓			