

Technical Note 168

Asphalt Warranty and Register of Asphalt Works not Warrantied

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1 Introduction

Department of Transport and Main Roads' MRTS30 *Asphalt Pavements* Technical Specification requires that asphalt meet 12 month surface shape and 24 month performance requirements. Prequalified Asphalt Contractors (PACs) need to warrant that their asphalt will meet these requirements.

It is important to note that, for the departments Transport Infrastructure Contracts (TICs) and Minor Works Contracts, the Principal is responsible for the pavement design and performance of the pavement overall (for example, the warranty provided by the PAC does not cover fatigue or reflection cracking).

2 Terminology

The following terms may appear in documents related to or referenced in this Technical Note and should be taken to have the same meaning/role:

- 'Head Contractor' and 'Principal Contractor'.
- 'Superintendent' and 'Administrator'.

3 Scope

This Technical Note has been produced to explain how the warranty will work for Transport and Main Roads projects that contain asphalt, for the departments Transport Infrastructure Contracts (TICS). A summary of the warranty process is given in Attachment A. There may be differences for other forms of contracts.

The warranty requirements, deed and technical note have been developed for use on Transport and Main Roads projects.

4 When does the warranty come into effect

In most cases the warranty is effective from the date of practical completion for the project. In some cases it may be from the date of practical completion of a separable portion of a project.

In circumstances where asphalt works have reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage, Transport and Main Roads may, but is not obliged to, exercise its discretion to determine that the asphalt works shall be a Separable Portion with its own Date of Practical Completion.

5 Who provides the warranty

The warranty is provided by the (head/primary) PACs for the (asphalt) work they do, irrespective of whether:

- the PAC is the Principal Contractor or a subcontractor to a Principal Contractor, or
- part of the asphalt work is subcontracted by the PAC.

6 How is the warranty secured

The warranty is given effect through the departments asphalt contractor prequalification system and a warranty deed. Provision of the warranty is a precondition of prequalification as an asphalt contractor by Transport and Main Roads.

Transport and Main Roads will also rely on the warranty deed, which will be entered into as a condition of prequalification as an asphalt contractor. This deed covers all asphalt works done by the PAC during their period of prequalification. It is between the Principal (the State of Queensland (acting through the Department of Transport and Main Roads)) and the PAC.

For conforming asphalt there is no direct financial security provided by any Contractor, including PACs, after the end of the defects liability period.

If the warranty is not honoured the prequalification status of the PAC will be impacted.

7 Providing the warranty deed

Transport and Main Roads will provide PACs with a warranty deed that needs to be completed as a condition of prequalification or, in the case of translated asphalt suppliers, ongoing prequalification.

8 Contracts, the warranty and administration of these

The warranty deed sits outside of individual contracts and covers all work done by the PAC during their period of prequalification.

The Principal's Representative for the Contract will generally deal with the Principal Contractor up until the end of the defects liability period. Typically the Administrator would be involved up until this date, but not after it (unless some other arrangement applies in the contract). After the end of the defects liability period the Principal will typically deal directly with the PAC for warranty issues.

It is important to note that if the PAC is a subcontractor, the PAC can approach the Principal's Representative directly about potential warranty issues.

9 Tenders and the warranty

The following information should be provided to tenderers:

- details of any works where the Principal has identified that the provision of a warranty is not required (with details given in Clause 8 of Annexure MRTS30.1)
- the average number of commercial vehicles that are expected to use the pavement each day for the first year of operation
- available pavement condition information (for example rut depths), and
- nominal pavement types (for example from ARMIS or other sources).

Contractors are encouraged to seek clarification from the Principal about the asphalt warranty if needed (for example, for a section of the work). During the tender period this should be as follows:

- The Contractor submits a Request For Information (RFI) to the Principal no later than five working days before the closing date of the tender and with supporting information. (This should include the same information needed to support a submission as outlined in Section 11.)
- The Principal considers the RFI (which may require some further investigation).

- If needed the Principal issues a Notice to Tenderers (e.g. if the details of works where a warranty is not required changes).

In addition the holding of a pre-close meeting to discuss the above information and potential warranty issues is strongly encouraged.

The department's Contract Administration System Form Number CAF003M *Pre-Start Conference Agenda/Minutes* will be amended to include agenda item(s) to discuss warranty issues and processes.

10 Is the PAC required to always provide a warranty?

Where the asphalt works are minor in nature then the warranty would typically not apply. The Principal should identify the areas/works where this is the case in the tender documents and/or at pre-close meetings.

Unless identified in the Contract (see above and Section 9) or otherwise agreed in writing with the Principal's Representative (see Section 11), the PAC is required to provide a warranty for all asphalt works. (It is a precondition of prequalification that PACs warrant all their asphalt unless otherwise agreed.)

Transport and Main Roads recognises the provision of a warranty for some of the performance parameters may not be appropriate in some cases. Where this occurs the details need to be documented (see Section 11).

11 Register of asphalt works not warrantied (the 'Register')

Asphalt works that are not warrantied or warrantied for only some performance parameters need to be included on the department's Register of Asphalt Works not Warrantied ('the Register'). All parties should be seeking to minimise the extent of works on it.

The PAC can submit an application to the Principal's Representative for the asphalt on a job, or sections of asphalt on a job, to be placed on the Register for one or more of the performance parameters. A submission needs to be specific about which performance parameters are proposed for inclusion on the Register. A warranty may still apply for the other performance parameters.

Submissions need to be in writing, provide at least the information included in Attachment B and made to the Principal's Representative through the Administrator. The reasons as to why the warranty is not supplied need to be clearly outlined and justified, and supporting evidence included (for example photographs, test reports). This needs to be done as early as possible and preferably before any asphalt works commence.

PACs need to send submissions to the Administrator with a copy also emailed to the Principal's Representative and: asphaltprequal@tmr.qld.gov.au

The Administrator, in consultation with the Principal's Representative, should consider submissions and may elect to conduct inspections and/or further investigations, ideally before the asphalt works commence.

Where the Principal's Representative agrees a warranty for the asphalt works in question is not appropriate, the Principal's Representative:

- can order work, or have remedial action performed by the Principal Contractor, so that the work is not placed on the Register, or

- forward the full submission, with supporting details, the department's Director (Pavements, Research and Innovation) confirming the decision in writing.

Where the Principal's Representative disagrees with the inclusion of asphalt works on the Register they should advise the PAC of the decision and reasons for it.

The Register will be maintained centrally through the department's Director (Pavements, Research and Innovation), and will be available to departmental staff. PACs will also be able to obtain the details of any works on the Register that are relevant to them from the Director (Pavements, Research and Innovation). The Register will not be publicly available.

12 Consequences for the PAC having projects or parts of projects on the Register

Transport and Main Roads is seeking to continue to do business with PACs who reasonably provide and honour their warranty obligations. The prequalification status of a PAC will be affected where the PAC does not honour their warranty obligations.

The volume of a particular PAC's works on the Register is not necessarily an indication of poor performance by the PAC. (The Principal accepts works onto the Register where it is appropriate.)

13 Warranty disagreements

The warranty deed contains a dispute resolution mechanism if the Principal and the PAC are in disagreement about a warranty claim. Transport and Main Roads' prequalification system also contains an appeal mechanism for disputes about prequalification.

14 New works versus works on existing pavements

Generally Transport and Main Roads would not expect new pavements to be listed on the Register. However in some cases, as outlined above, works may be placed on the Register. Transport and Main Roads expects that this would generally be limited to works on existing pavements (for example overlays, 'mill and fill' works), and only where this can be justified.

15 Will local government authorities or other road owners/managers be adopting Transport and Main Roads system

Transport and Main Roads' asphalt contractor prequalification system has been developed for use on Transport and Main Roads projects. However, some other organisations may elect to require that asphalt contractors tendering for work or supplying products for them be prequalified under the department's system. In these cases the organisations concerned will need to consider how the warranties will be enforced and managed.

16 Does the new prequalification system cover all road surfacings

No. Presently it covers asphalt work done by PACs. Transport and Main Roads may look to develop further specialist categories or separate registration systems in the future (for example for sprayed sealing). However this will be after the department's asphalt contractor prequalification system has been fully implemented and is operating successfully, and ultimately will depend on government priorities.

17 Transport and Main Roads prequalification system

Transport and Main Roads asphalt contractor prequalification system is part of the departments *Transport Infrastructure Project Delivery System Manual* Volume 3 (Prequalification System) with Appendix C to Volume 3A containing most of the information and requirements. It comprises the following documents:

- *Transport Infrastructure Project Delivery System Manual* Volume 3 (Prequalification System)
- Application Form – Asphalt Prequalification
- Performance Report – Asphalt Prequalification
- Performance Report Scoring – Asphalt Prequalification (guide), and
- Warranty Deed (when published).

All these documents can be downloaded for free at: <http://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/TIPDS.aspx>

18 Prequalification as an asphalt contractor

For Transport and Main Roads works that included the July 2015 or later version of MRTS30 *Asphalt Pavements*, it is a requirement that the asphalt be manufactured and placed by a PAC prequalified to at least the category nominated in the contract. PACs are prequalified to one of the four categories summarised in Table 1 (over page). (Refer to Appendix C to Volume 3A of Transport and Main Roads *Transport Infrastructure Project Delivery System Manual* Volume 3 (Prequalification System) for all requirements and details.)

It is a precondition of prequalification of the department that PACs warrant that the asphalt meets the surface shape and performance requirements given in MRTS30 *Asphalt Pavements*.

19 How much does it cost to apply for prequalification?

Presently there is no cost to apply for prequalification.

20 How will applications to be a PAC be assessed?

Assessments will include a desktop assessment and may include site, plant or field assessments. The department will assess applicants against the requirements of Transport and Main Roads *Transport Infrastructure Project Delivery System Manual* Volume 3 (Prequalification System).

21 Inquiries

Inquiries about this document need to be emailed to: asphaltprequal@tmr.qld.gov.au

Table 1 – Summary of Transport and Main Roads PAC categories

* Aspect	A1	A2	A3	A4
Paving	Can pave			
Manufacture	Not able to manufacture - need to source asphalt from an A3 or A4 PAC. Nonetheless fully responsible for asphalt and its performance.		Yes	
Permitted mixes	Dense graded asphalt	Dense and open graded asphalt	All types	
Maximum project size (tonnes of asphalt)	≤ 200	≤ 2000	No limit	
Certification of management systems (quality, environmental and safety)	Written confirmation from an independent auditor that the management systems are based on AS/NZS ISO 9001, 14001 and 4801, and has been implemented within the organisation OR Third party certified to AS/NZS ISO 9001, 14001 and 4801.		Third party certified to AS/NZS ISO 9001, 14001 and 4810	
Capability	Capability increases from A1 (lowest) to A4 (highest)			
Warranty deed	Required. Responsible for all aspects/performance			
Financial level	As per tender. Required for Principal Contractor.			

* Refer also to any conditions of prequalification a PAC may have which impact on their prequalification status (for example, A3 with a condition of manufacture only).

Attachment A – Summary of recommended asphalt warranty process (excluding latent defects)

Time	Who			Comments / Notes
	Principal Contractor	(Primary/Lead) PAC	Principal	
Before tender	–	–	<p>Identify works where an asphalt warranty does not apply. Include these details in Clause 8 of Annexure MRTS30.1.</p> <p>Place these works on the Register.</p> <p>Gather the available information about pavement condition, nominal pavement types and traffic.</p>	<p>The Principal's Representative needs to email the details to: asphaltprequal@tmr.qld.gov.au</p>
During tender period	<p>Seek clarification from the Principal about the asphalt warranty if needed by submitting a Request For Information (RFI) to the Principal.</p> <p>Such RFIs need to be submitted, with supporting information, no later than five working days before the closing date of the tender.</p>	<p>Liaise and work with the Principal Contractor if/as needed to clarify the asphalt warranty requirements.</p>	<p>Provide available information about pavement condition, nominal pavement types and traffic.</p> <p>If needed/justified issue a Notice To Tenderers (NTT) to clarify the asphalt warranty requirements for the contract.</p> <p>Include sections of relevant works on the Register.</p>	<p>The Principal may decide that some sections/works are not subject to a warranty.</p> <p>The Principal is to be involved in warranty decisions.</p>

Time	Who			Comments / Notes
	Principal Contractor	(Primary/Lead) PAC	Principal	
Pre-start meeting / prior to start of works	Discuss/agree asphalt related items in the department's CAF003M <i>Pre-Start Conference Agenda/Minutes</i> (from <i>Contract Administration System</i> (CAS)) form.	If the PAC decides it is necessary, make submission(s) to the Principal for asphalt works to be placed on the Register.	<p>Discuss/agree asphalt related items in the departments CAF003M <i>Pre-Start Conference Agenda/Minutes</i> (from <i>Contract Administration System</i> (CAS)) form.</p> <p>Arrange and hold a pre-start meeting with the PAC before asphalt works commence if the PAC is not part of the overall pre-start meeting.</p> <p>Assess applications for asphalt works to be placed on the Register.</p> <p>Include relevant sections on the Register.</p>	<p>There may be circumstances on a project where it is not reasonably foreseeable that a warranty could not be offered (for example in an area to be 'milled and filled' in one work period). The management of these decisions needs to be discussed and agreed before the works start.</p> <p>The Principal is to be involved in warranty decisions.</p>
Construction	Responsible for asphalt meeting Transport and Main Roads requirements. This includes it meeting the department's shape and performance requirements until the end of the defect liability period.	If the PAC decides it is necessary, make submission(s) to the Principal for asphalt works to be placed on the Register.	<p>Include relevant sections on the Register.</p>	<p>Use the Pre-Start Conference Minutes to guide the works and how warranty related decisions will be made.</p> <p>The Principal is to be involved in warranty decisions.</p>

Time	Who			Comments / Notes
	Principal Contractor	(Primary/Lead) PAC	Principal	
Start of warranty (generally the Date of Practical Completion)	Responsible for asphalt meeting Transport and Main Roads requirements. This includes it meeting the shape and performance requirements in MRTS30 <i>Asphalt Pavements</i> until the end of the defect liability period.	Start of warranty period.	Generally deal with the Principal Contractor to resolve warranty issues.	The Principal will generally approach the Principal Contractor for warranty issues during the defect liability period. The Principal is to be involved in warranty decisions. There are 12 month surface shape and 24 month performance requirements that need to be met.
End of defect liability period	Responsible for asphalt meeting Transport and Main Roads requirements. Responsibility for asphalt meeting warranty rests solely with the PAC from this point.	Responsibility for warranty continues.	Ensure an asphalt contractor performance report for the PAC is completed by the Administrator.	The warranty deed contains a dispute resolution mechanism if Transport and Main Roads and the PAC are in disagreement about a warranty claim.
Balance of warranty period	As per contract.	Responsibility for warranty continues.	Complete an asphalt contractor performance report at end of the period, or at other times as is appropriate.	For the balance of the warranty period investigation, testing and/or assessment of asphalt should generally occur only when there is a potential warranty issue. Generally the cost of this will be borne by the PAC if the asphalt is found to not meet the warranty requirements and by Transport and Main Roads otherwise. The warranty deed contains a dispute resolution mechanism if Transport and Main Roads and the PAC are in disagreement about a warranty claim.

Attachment B – Proforma for Register of Asphalt Works not Warranted

Contract No.	Administrator (Organisation and Name)	Road		Location of Affected Lot(s)				Lot Details		Dates		Performance Parameter(s) not warranted	Justification (attach supporting information with documents named meaningfully and referenced in this column)
		No.	Name	Chainage datum (for example, gazettal)	Start and end chainages (km)	Transverse location (for example, lane offset)	Layer(s)	Numbers (manufacture and construction)	Quantities (tonnes)	Of Construction	Of Practical Completion		
												For example rutting	For example existing rut depths, photographs, results of proof rolling DCP test results and/or other test results.

