

# Managing change under an NEC4 contract



# Presentation agenda

- brief review of section 3 of the NEC4 ECC contract
- consideration of the use of baselines
- new NEC4 updates and how that impacts assessing change
- compensation event programmes and assessing against the last accepted programme

# Section 3

31.2 - Items to be shown on the programme include:

- *starting date/access dates/Completion Date/Key Dates*
  - planned Completion
  - order/timing of *Contractor* operations to Provide the Works
  - order and timing of work of *Client* and Others
  - float
  - time risk allowances
  - health and safety requirements
  - Plant & Materials from *Client*
  - acceptances
  - information from Others
  - other information Scope requires *Contractor* to show
  - statements of how the *Contractor* plans to do the work identifying principal equipment and resources
- programme issued in the form stated in the Scope

## Reasons for not accepting a programme

Under clause 31.3 there are only four reasons not to accept a programme:

- the *Contractor's* plans which it shows are not practicable
- it does not show the information which this contract requires
- it does not represent the *Contractor's* plans realistically or
- it does not comply with the Scope

*Project Manager* has up to two weeks in which to accept or not accept the programme.

If *Project Manager* fails to respond to programme within two weeks, *Contractor* can notify this non-response. Failure to respond within further one week by *Project Manager* will mean that the programme is “deemed accepted”.

# Revised programme (32)

Shows

- the actual progress achieved on each operation and its effect upon the timing of the remaining work
- how the Contractor plans to deal with any delays
- other changes the Contractor proposes to make

How frequent?

- on instruction by *Project Manager*
- when *Contractor* chooses
- interval stated in Contract Data (32.2)

## History lesson: clause 32.1 (ECC3&4)

The *Contractor* shows on each revised programme:

- ~~The effects of implemented compensation events and of notified early warning matters~~

Early warnings can be shown on the programme but should not be impacting planned Completion or Key Dates as they are still matters that only may occur

Non-implemented compensation events should be shown on the programme for events that are known have/will occur, but can only be impacting planned Completion at that point not Completion Date

## 11.2(1) Accepted Programme definition

The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.

## Baselines – contractual versus project controls

- once a new programme is accepted it becomes the new “Accepted Programme” from an NEC contract perspective
- the new Accepted Programme becomes the new “baseline” to assess progress and change against
- from a project controls perspective this would be an issue when managing earned value as resetting the baseline each period will reset CPI/SPI
- this will therefore require a separate management performance baseline to be maintained
- not particularly an issue, except just a fair bit more work to maintain two baselines and have rules on when the “project controls” baseline can be changed e.g. with implemented compensation events, major logic changes



# Systematic input of a CE into a programme

- Contract tells us that the effect of a CE should be measured against the planned Completion as shown on the Accepted Programme (63.5)
- (62.2) requests as part of the CE quote alterations to the Accepted Programme
- (32.1) revised programme to show progress achieved on each operation and its effect on remaining activities
- (32.2) submit a revised programme anytime
- If two weeks since last programme acceptance – there is two weeks worth of progress that may or may not show a different picture once CE added



## Assessing compensation events: which programme do you use?



GLENN HIDE GMH PLANNING

A common question asked by NEC users is, what programme do you use to assess a compensation event and what progress or change (if any) should you first take into account?

Clause 62.2 of the NEC3 Engineering and Construction Contract (ECC) states that, 'If the programme for remaining work is altered by the compensation event, the Contractor includes the alterations to the Accepted Programme in his quotation'. Clause 63.3 also states that, 'A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme'.

What then happens if that accepted programme is several months old and contains logic that is now clearly known to be wrong? Would you really consider that it would be contractually or practically correct blindly to ignore matters that you know have changed by taking the words of that clause so literally?

Unfortunately in my experience some people appear to take that view. They suggest that you assess the compensation event against the last accepted programme without taking into account anything that may have happened since that programme was accepted. In their interpretation, that is what the contract says.

Continued from page 5 >>>

transfer of the ownership of IP from its supply chain. This could be done principles already

### Read the contract as a whole

Whenever I am giving advice about the administration of the contract a simple response is normally, 'just do what the contract says' or 'follow the contract'. For the most part the contract is pretty clear on what should be done and the associated consequence for not doing it. However, there are certain areas in the contract where simply following the precise words of a single sentence or clause in the contract will not give us a concise answer because the contract needs to be read as a whole.

The problem generally comes about when the parties have not been following the contract in the first place. For whatever reason, the programme submission and acceptance process has got out of kilter, either by the contractor not producing compliant programmes, or by the project manager not following the acceptance process in the contract. Following the contract clearly puts both parties in a better place. However, if the parties have got themselves into this situation, then we have to be able to use the contract to try to get back on contractual track.

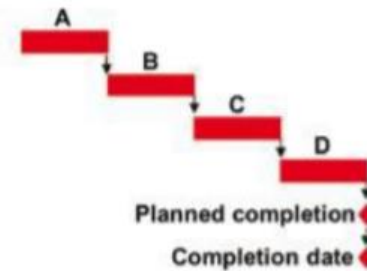
### Non-implemented compensation events

I wrote an article in NEC Users' Group newsletter issue 50 which had a similar type of problem. The ECC says you show the effects of implemented compensation events but it does not expressly mention non-implemented compensation events. By non-implemented compensation events I mean those that are currently being quoted or assessed and in the meantime are being carried out on site (as per quotes requested under clause 61.1).

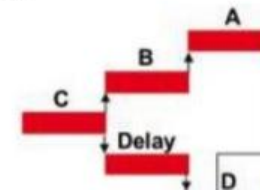
you know for a fact has already changed since it was accepted.

### Some examples

Let us look at a simple example. A contractor shows on the original programme that it plans to do activity A then B then C then D. Each activity is 4 weeks long, making a total programme time of 16 weeks. C is critical to the start of D.



The contractor subsequently decides to do C first, effectively creating 8 weeks float on D. But a compensation event then arises that delays the start of D by 4 weeks, reducing the float to 4 weeks.



ECC PRACTICE NOTE 1  
OCTOBER 2017

# Assessing delays due to compensation events

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This practice note has been prepared for the NEC4 Engineering and Construction Contract, June 2017. The approach set out in this note should be followed on other NEC4 contracts.

The key requirements for assessing delays to Completion Dates and Key Dates due to a compensation event ("CE") under ECC clause 63.5 are to

- determine the effect that the CE has upon planned completions and
- use the Accepted Programme current at the dividing date to do so.

The objective is to assess the effect due only to the CE and not due to other events.

To help determine this, users should firstly recognise the impact of:

- alterations to the Accepted Programme resulting from other CEs occurring prior to the dividing date (refer clause 62.2),
- delays to planned completions resulting from other causes of delay occurring prior to the dividing date and which are not CEs and
- better or worse actual progress for activities that have started or should have started prior to the dividing date.

Once this is done the impact of the CE in question can be determined.

2019 amendments - 63.5 now adds:

The assessment takes into account:

- any delay caused by the compensation event already in the Accepted Programme, and
- events which have happened between the date of the Accepted Programme and the dividing date

# Systematic input of a CE into a programme

## Sequence

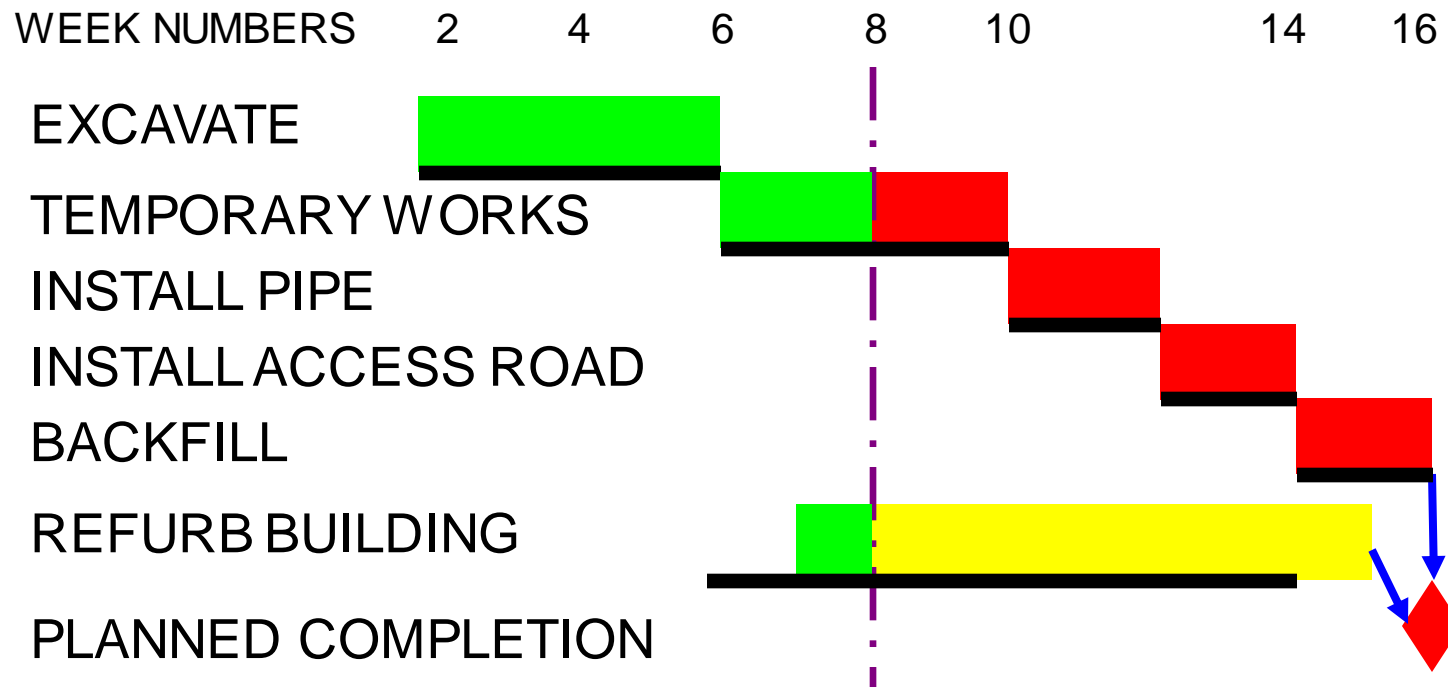
- progress programme with works to date
- reschedule programme and check if any effect to Key Dates or planned Completion. If yes – reschedule to mitigate effect
- rebaseline (interim) programme
- input CE and reschedule programme to assess effect
- save and print a filtered programme demonstrating the effect the CE has had
- if there is a second CE to input at the same time then rebaseline once more and repeat the process to assess any FURTHER effect that the second CE has had

# Systematic input of a CE into a programme



- last accepted programme was week 6 – now week 8
  - CE001 involves 2 weeks additional works to “Refurb Building”
1. progress programme
  2. re-baseline
  3. input CE, add logic links and re-baseline

# Systematic input of a CE into a programme



1. Progress programme

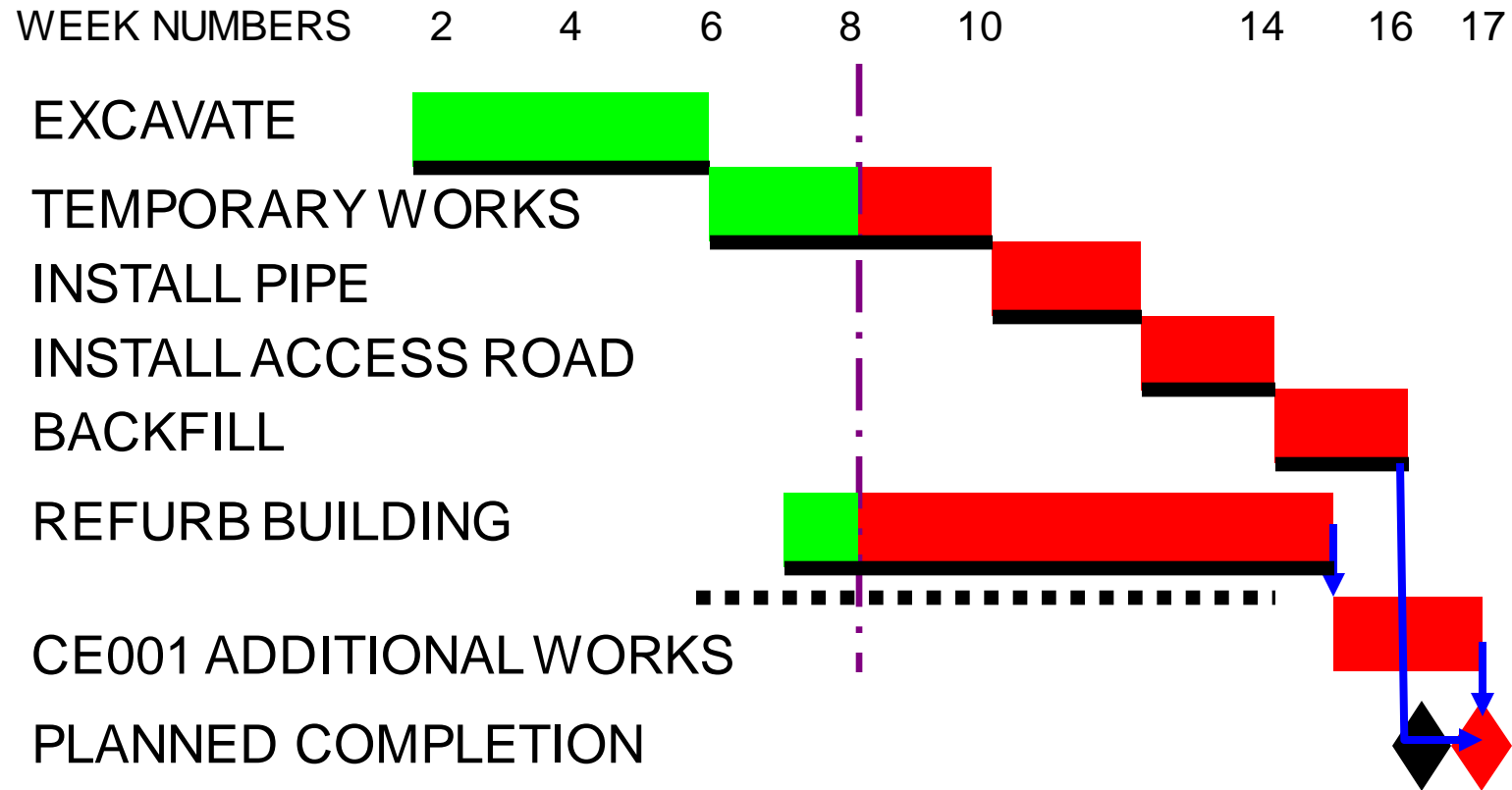
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1. Progress programme
2. Rebaseline (Interim)



## Systematic input of a CE into a programme

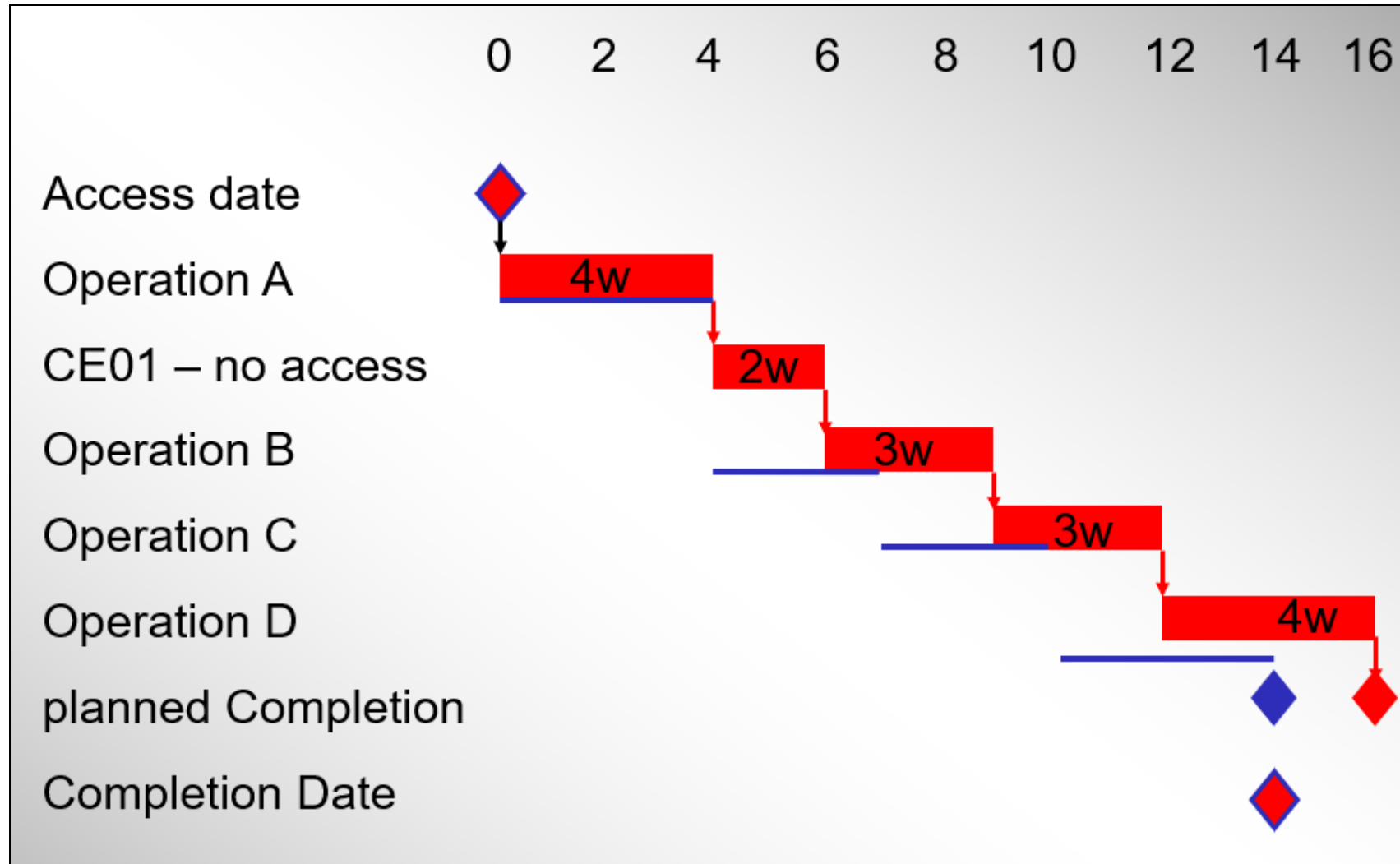


1. Progress programme
2. Rebaseline (interim)
3. Input CE001, add logic links and rebaseline

# Multiple compensation events

- never easy to manage multiple compensation events on a large fast paced project - they have to be assessed as they occur
- again, has to be a common understanding/intent that it is in both Parties interest to keep on top of these
- by agreement lots of small CE's could be assessed as one for cost
- each period assess cumulative effect of that month's compensation events, and ensure that individual programmes/quotations once added together capture the full movement in Completion
- make sure that wherever there is a delay that there are "CE" labelled activities along the critical path that demonstrate the delay being claimed
- however difficult they are to assess now – it will only get worse with time and become more subjective

# Example of a CE programme



# Workshop Summary

- programme is to be used as a real management tool. Nothing clause 31.2 / 32.1 asks for the Contractor should not want to be doing for themselves.
- ensure the rules are set on managing project controls baselines in comparison to the NEC contractual baseline which will always be the last Accepted Programme
- new amendments to NEC4 2019 version clarify the contractual intent of how a compensation event should be assessed i.e. take into account progress and other compensation events since the last Accepted Programme
- all Parties should work together to ensure that there is a regular Accepted Programme so that there should be less subjectivity when assessing the impacts of compensation events

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**THANK YOU**

**Any Questions?**

