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Overcoming the barriers to accurate and reliable programmes under NEC3®

The importance of an accurate and reliable programme

Health and Safety aside, the three most important aspects of any Construction project are time, cost and quality. Specifically in relation to time, and once a Contract is awarded the primary obligation of the Contractor is to carry out the work required to prescribed standards, in a specified time to an agreed completion date. It is therefore necessary for the Contractor to submit regular programme updates.

As the programme is widely considered to be the beating heart of the project and is seen as a critical tool in the successful completion of any construction project, it is a point I was keen to further explore whilst undertaking research for an LLM in Construction Law. I surveyed a number of construction professionals undertaking differing roles within the construction industry. One of the fundamental questions asked within the questionnaire was whether the survey participants considered a reliable and up to date construction programme to be important for the overall success of a construction project. The participants answered with an overwhelming 100%, all considering an updated programme integral to any project. Evidently, construction professionals therefore appreciate the criticality of planning and programming. Supplementing the above, further in depth analysis of the responses identified additional reasons why an updated programme is so integral to the success of a project:-

- It provides a contemporaneous record of progress
- A working and updated programme is vital for effectively managing the progress of the works and the overall end date of the project and gives a clear indication of any problems / delays which have occurred.
- 'Events' are far easier to assess at the time they happen rather than retrospectively at the end of the project. An updated programme gives a clearer picture of the project at any given time and can then be changed to respond to the changing constraints on the project.
- An accurate and current programme is central to good project control. The initial as-planned programme (in almost all cases) quickly becomes irrelevant and useless as a project control tool.
- It gives both parties a clear visual view on how the project is performing and provides an early indication as to whether mitigation measures are required. How else can a project succeed if the programme is not updated regularly?
- If work activities are not properly scheduled and planned in an updated working programme, then there will inevitably be issues with future tasks undertaken.
- The overall success of a project depends upon the ability to plan, coordinate and carry out the work.



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The NEC3[®] proactive approach to programme

If we now consider the NEC3[®] Engineering and Construction Contract (hereafter NEC3[®]) it is somewhat different to other standard forms of Contract in relation to how it deals with time and specifically the programme aspects of a project. Firstly clause 31.1 states:-

If a programme is not identified in the Contract Data, the Contractor submits a first programme to the Project Manager for acceptance within the period stated in the Contract Data.

The NEC3[®] is really laying down a marker here in relation to how it views the importance of a first programme, clearly underpinning the programme as fundamental to the success of a project.

The importance of this initial programme is further emphasised by clause 50.3:-

...If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the Contractor has submitted a first programme to the Project Manager for acceptance showing the information which this contract requires.

This statement clearly shows the further importance that NEC3[®] places on the programme, and unlike with other standard forms of Contract, the importance from a financial view point in getting it accepted.

As construction works start on site, it will become necessary for the Contractor to provide updates to the Client in relation to progress. Again the NEC3[®] is very specific as to when these updates should be provided and what information shall be included within the updates. The frequency of these programme updates are as stated in Contract Data part one and in relation to what information should be submitted on each programme update, this is as detailed in Clause 31.2.

The programme under NEC3[®] is therefore seen as a proactive and far more reaching tool to measure the progress of a project. As can be seen from the details required to be submitted under clause 31.2, the NEC3[®] in my opinion clearly sets out best practice requirements for all of the relevant items to be shown on an updated programme.

The list of items in clause 31.2 would appear to be an onerous list, but are all items that are considered to be integral in having a robust and workable programme. As they are also a contractual requirement, those using NEC3[®] need to be fully conversant with the details. If any one of these contractual obligations are not met, then the programme will not be accepted.

What are the barriers to getting an accurate and reliable programme under NEC3[®]?

A further question posed to my research participants was for them to be asked what they considered the main barriers were to providing the information as listed in clause 31.2. In the first instance over 90% of the participants felt that the requirements of this Clause set out best practice, but also acknowledged that there were hurdles in providing the required information. A number of the key reasons detailed by the participants were:-

- The keeping of contemporaneous records is not always what it should be, and requires a disciplined and organised approach.



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- The amount of time allocated and available to provide the information is often underestimated and under resourced.
- There is genuinely a lack of engagement from others and the client.
- The Programme can be seen as a 'box ticking' exercise and is seen as the Planner's programme, with little or no contribution or ownership from the whole site team.
- Fully conversant and competent Planners are required.
- All parties to the Project need an input and in reality, not all provide the information required.

What was clear from the responses, was that there are perceived barriers to providing the information requested and these barriers seem to evolve around the effective management of the NEC3® and are more to do with how people engage in NEC3® Contracts as opposed to the onerous nature of the clauses.

How can these barriers be overcome?

It is firstly of paramount importance that anyone involved in NEC3® projects need to have a full understanding of all the programme requirements prior to a Contract being entered. This in turn will prevent potential problems and issues occurring during the Contract period. The list of requirements for an Accepted Programme appears to be an onerous one when compared to other standard forms of Contract and as such needs to be fully understood by those undertaking works under NEC3®. As a guide, a number of practical tips that should be considered are as follows:-

- All parties need to engage in the project with their eyes wide open and fully understand what is expected of them.
- Adequate manpower needs to be employed by all parties in order to properly complete all the programme related activities. This isn't just in relation to planners, but is also in relation to the project team as a whole.
- Ensure the employment of experienced individuals to work on the project who are fully conversant with the requirements of NEC3®.
- The Contractor should not underestimate at Tender stage the amount of resource that will be required to operate the requirements of clause 31.2 and should adequately budget for this aspect of the works.
- The Employer also needs to understand what is expected of them when a programme is submitted for acceptance by the Contractor and as above adequately resource for these requirements.
- All parties need to be aware of the implications and ramifications of not accepting a programme and also need to have sufficient knowledge of the NEC3® to be able to justify the non-acceptance of a programme.

At a time when margins remain competitive and resources are continually stretched, the million dollar question is whether companies are willing to dedicate the right resources to a project to overcome these barriers and ensure an accurate and reliable programme is actually the beating heart of the project and not just a flat line on a page.



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