



# CCEPN

Cumbrian Construction &  
Engineering Professional Network

## Extensions of Time Under NEC3 Explained!

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# About Solomons Europe...



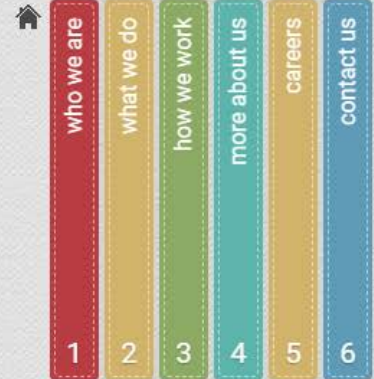
# About Solomons Europe...



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Welcome to the home of Solomons Europe. We are a Chartered Quantity Surveying Practice Specialising in the Process & Energy Sectors.



# Extensions of Time Under NEC3 Explained...



# The elephant in the room....

- Why am I saying 'Extensions of Time' instead of 'Delays to the Completion Date'?
- Capturing the time effects of change as part of a CE:
  - Delays to the Completion Date and
  - Delays to Key Dates and
  - Delays to non-critical activities and
  - Resequencing and
  - Disruption and the true impact of the change and
  - Any other 'alterations to the programme for remaining work'
- Some brief comment on NEC4

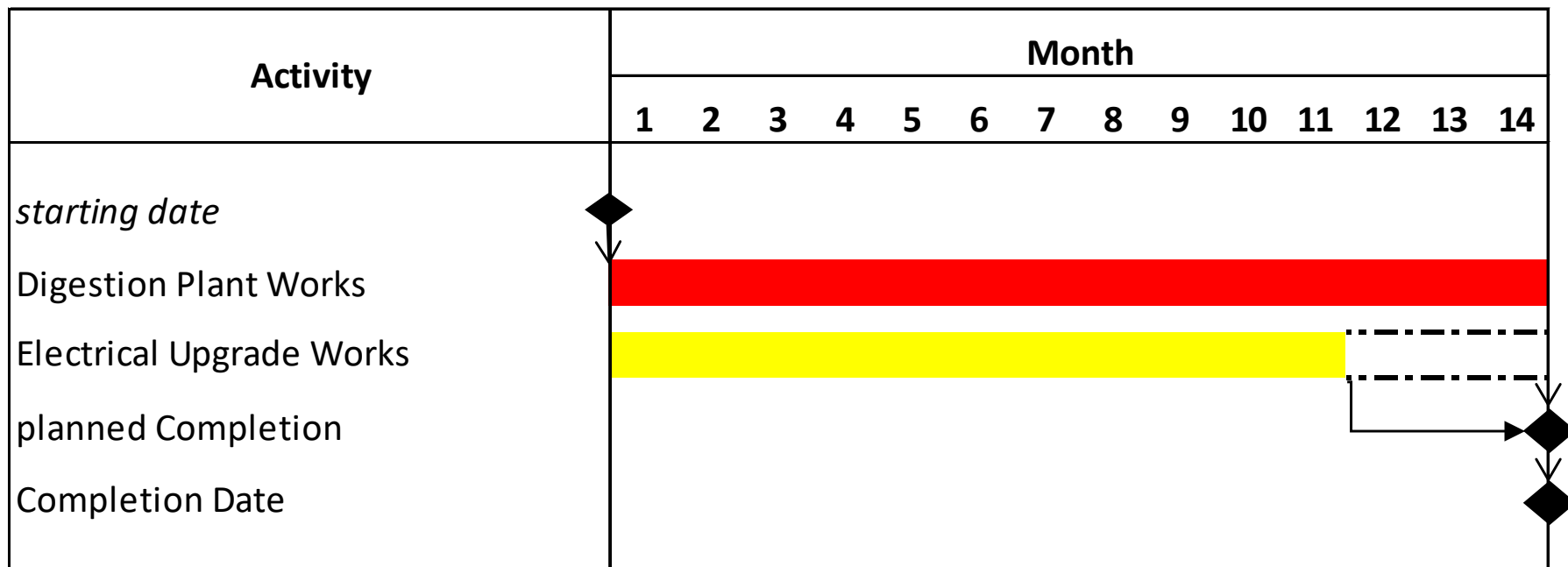
# Background

- All main options of the NEC3 ECC contain the same provisions for assessing delays as part of the compensation event process.
- In practice, it can cause much confusion, not least where it's not uncommon for:
  - There to be no Accepted Programme
  - The Contractor's 'own' activities to slip or change the programme, in addition to compensation events
  - A high volume of compensation events
  - The parties not to agree what level of prolongation costs should be included
  - The parties not to follow the contract properly
  - Both parties to genuinely believe they are right (or feel hard done by)
  - People not to understand it!



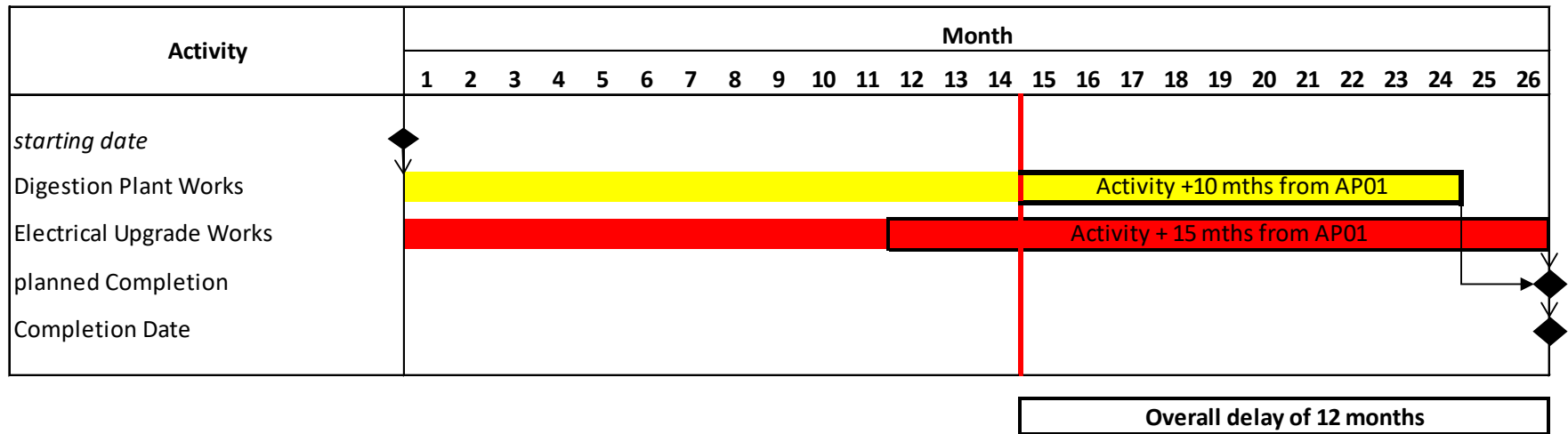
# A war story...

## Accepted Programme 01



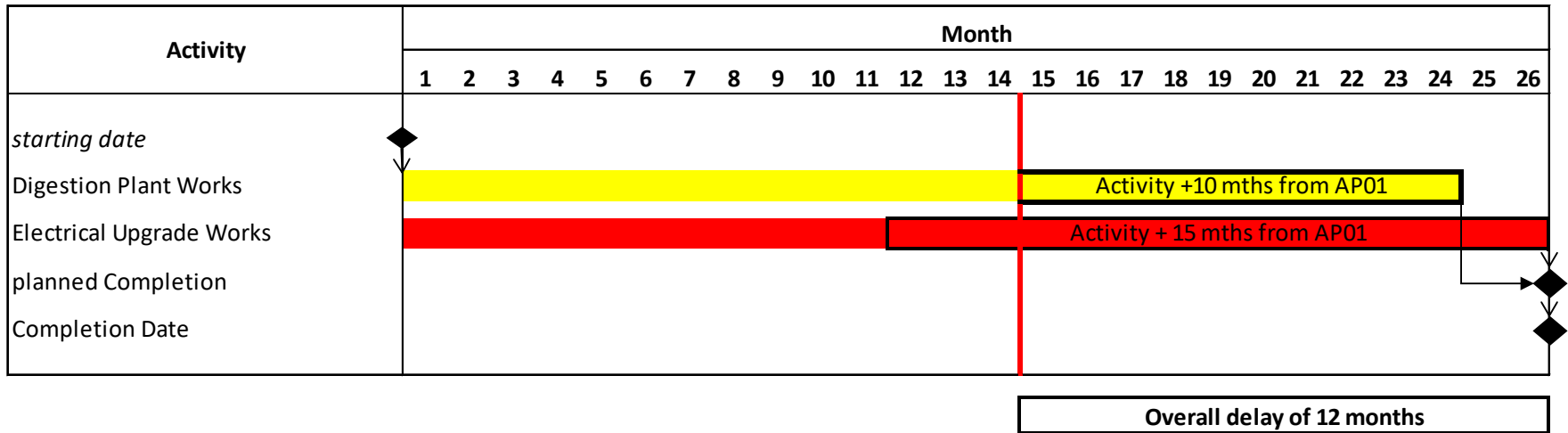
# A war story...

Programme 26 (...not accepted)



# A war story...

Programme 26 (...not accepted)



Contractor: *“The electrical delay started before any of our delays, so we want 12 months extension to the Completion Date, full prolongation costs for our site team and alleviation from all Delay Damages”*

Project Manager: *“But the digestion plant only finished 1 month before the Electrical Works? You had lots of delays of your own, our team have been involved supporting you, I think 1 month extension and 11 months Delay Damages is more than fair”*

## A war story...

- Was the Accepted Programme at the time of the CE accurate?
- Was the Contractor going to finish the baseline works by the dates shown on the programme when the CE occurred?
- Was the electrical works really 'one delay' or a series of multiple CEs to be assessed at different times?
- Did the Contractor respond competently and promptly to the CE?
- Does the Contractor recover the costs of all of his site team if the PM agrees to 12 month extension of the Completion Date?
- Does NEC take some account of 'concurrent delay'?

# Back to basics....



## Hard times...

“Now, what I want is Facts. Teach these boys and girls nothing but Facts. Facts alone are wanted in life. Plant nothing else, and root out everything else. You can only form the minds of reasoning animals upon Facts; nothing else will ever be of any service to them.”

— **Charles Dickens, Hard Times**

## The contract in practice...

- In practice requires huge focus on having a regular and current Accepted Programme.
- Most important thing is to have a programme that is NEC compliant, 'one version of the truth' and communicated to all members of the project team.
- Aim for no ambiguity and reduce the potential for debate when assessing change.
- Clause 62.2 requests **alterations to the Accepted Programme** as part of the CE quote
- Clause 63.3 states how changes to the Completion Date are assessed

# A reminder of what Cl 31.2 requires...

- *Starting date, access dates, Key Dates, Completion Date, planned Completion,*
- Order and timing of the *Contractor's* operations to Provide the Works
- Order and timing of work of the Employer or Others as last agreed with them or as in the Works Information
- Dates when *Contractor* plans to meet each Condition stated for Key Dates
- Provisions for float, time risk allowances, health and safety requirements, procedures set out in the contract
- Dates when the *Contractor* will need: access to a part of the Site if later than its *access date*; acceptances; Plant and Materials and other things from the *Employer*
- A Resource statement for each operation detailing Equipment and resources
- Other information the Works Information requires
- Under Option A & C – correlation between Activity Schedule and programme



## Clause 31 practical points...

- How often is a good 'resource statement for each operation detailing Equipment and resources' provided?
- Is the 'Order and timing of work of the Employer or Others as last agreed with them or as in the Works Information' always clear?
- Likewise is it clear the dates 'when the *Contractor* will need: access to a part of the Site if later than its *access date*; acceptances; Plant and Materials and other things from the *Employer*'?
- How might the 3 points above help when it comes to assessing delays?

# What does the contract say?

- Clause 62.2 quotations for compensation events:

*...If the programme for remaining work is altered by the compensation event, the Contractor includes the alterations to the Accepted Programme in his quotation.*

## What does the contract say?

- Clause 63.3 assessing compensation events:

“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”

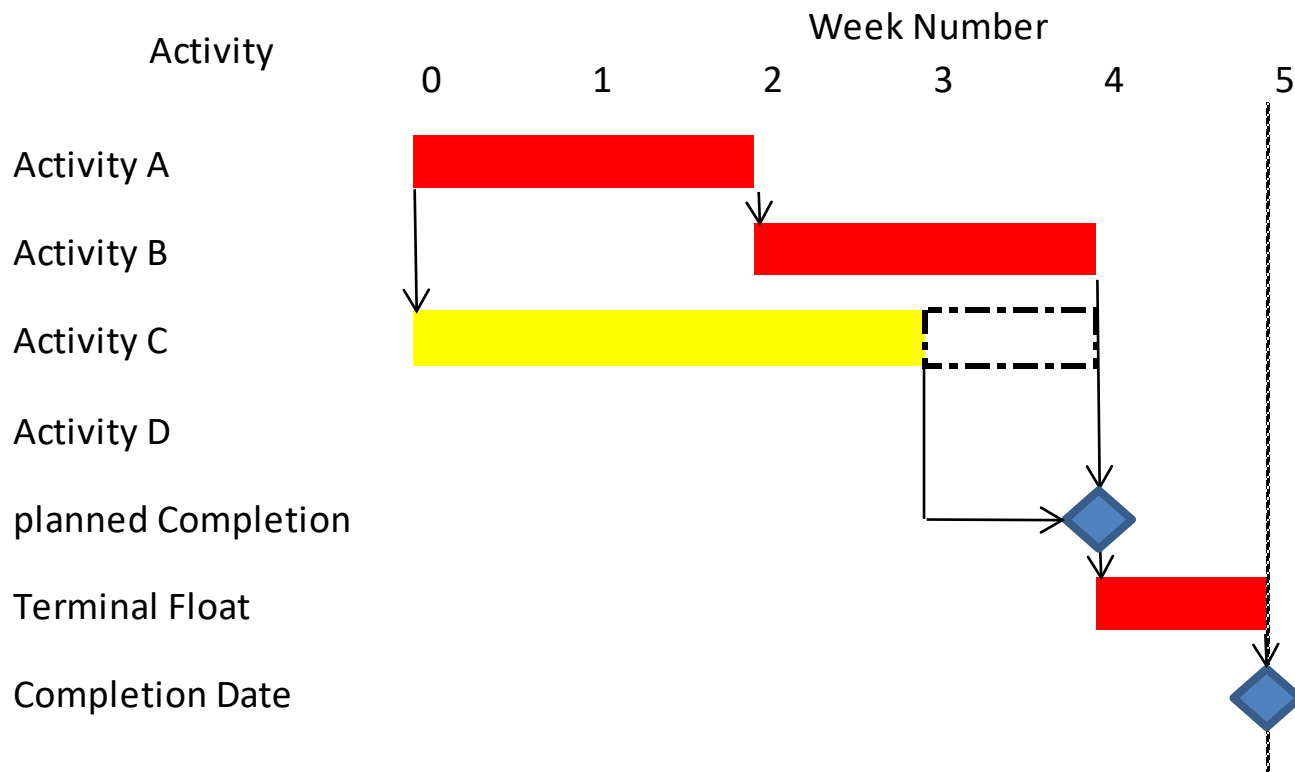
Note: Defined terms and difference between CD and pC

# Who owns the float?

Type	Description	Purpose	Owner
Total Float	Difference between end of an activity and when it will reach critical path	Accommodates: <ul style="list-style-type: none"> <li>- Time effects of compensation events</li> <li>- Lack of progress by Contractor</li> </ul>	Whoever gets there first!
Time Risk Allowance	Added to activities for <i>Contractor's</i> risk	Apply realistic risk allowance to (critical) activities	<i>Contractor</i>
Terminal Float	Difference between planned Completion and Completion Date	Any spare time after Time Risk Allowance has been included	<i>Contractor</i>

# CE Assessment - Time

**Accepted Programme 30-Jun**



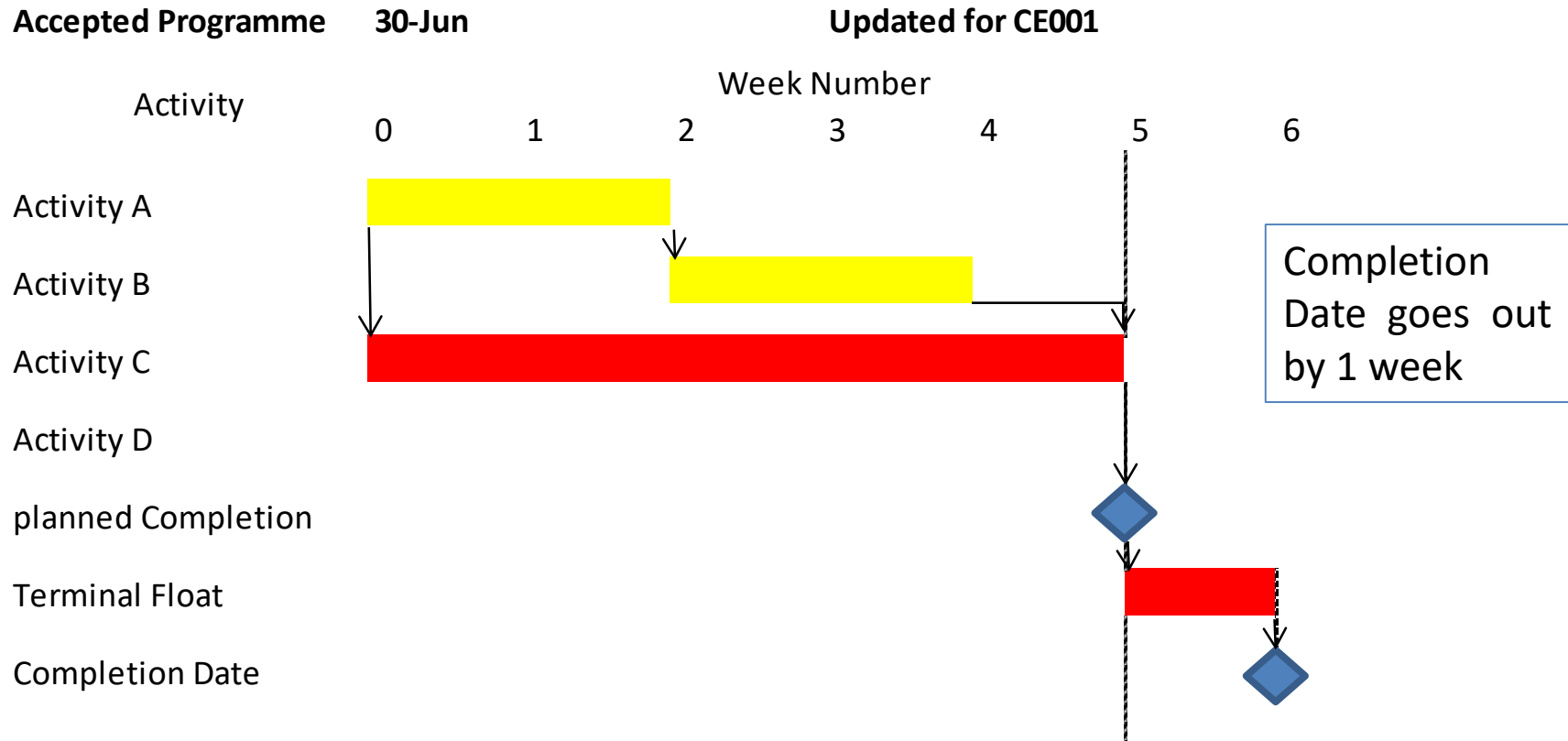
Current Accepted Programme

## CE Assessment - Time

### Time – Example A

- What happens to the Completion Date if the Project Manager instructs CE001 which adds 2 weeks to the duration of Activity C?

# CE Assessment - Time



## CE Assessment - Time

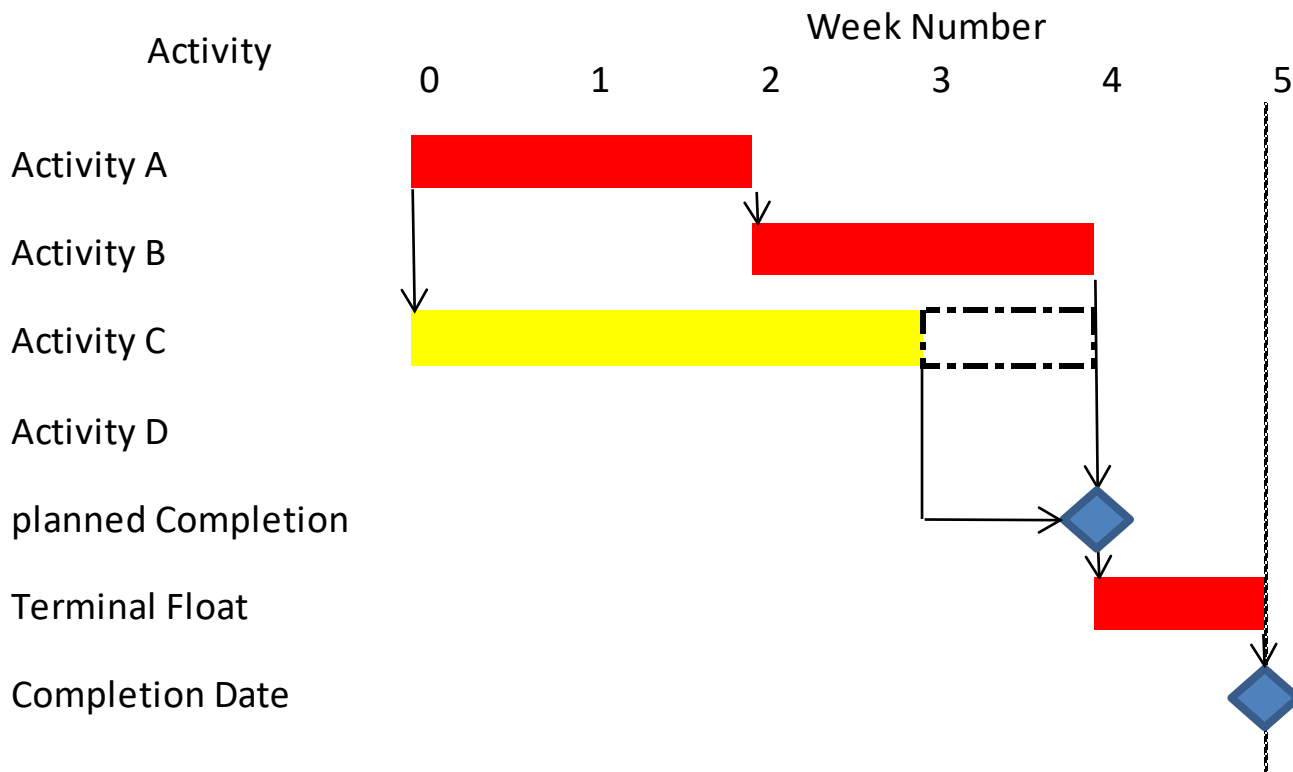
### Assessment – Time – Example B

- What happens to the Completion Date if the Project Manager instructs CE001 which adds only 1 week to the duration of Activity C?



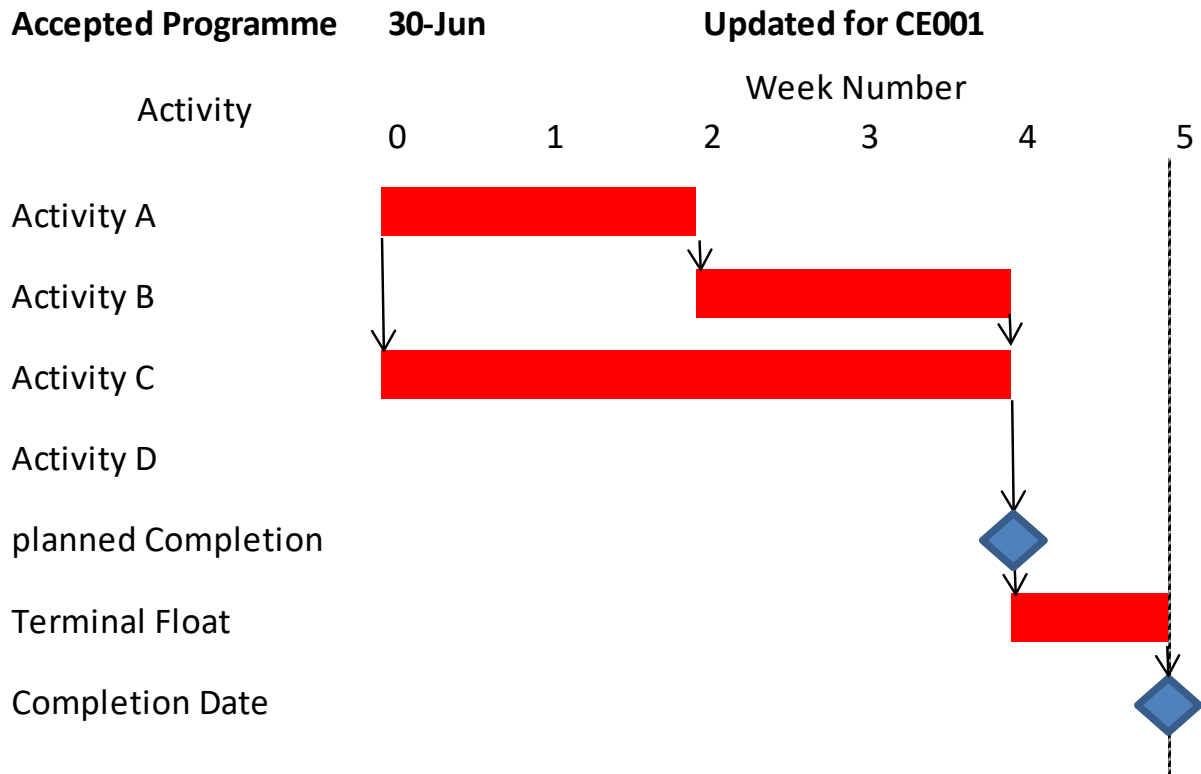
# CE Assessment - Time

**Accepted Programme 30-Jun**



Current  
Accepted  
Programme

# CE Assessment - Time



No change to the Completion Date!

# How do you do it in practice?

- Identify the last Accepted Programme at the date the event occurs [Note: NEC4\* and the dividing date]
- Update the last Accepted Programme for progress to the date the event occurs
- Impact and alter the Accepted Programme to include the effect of the CE
- Identify any relevant mitigation measures and/or risk allowances
- Record the steps taken and impact at each stage. Explain what you've done!
- Can the QS understand it?

\*NEC have published a Practice Note for [NEC4](#)

## What if the Contractor is already late?

- Follow established practice to update the Accepted Programme.
- If the Contractor is already 'late', planned Completion will be driven by the Contractor's own activities, hence CE will/may not (fully) impact on planned Completion.
- What if you don't agree what the truth is or you don't think the answer looks right?

How can you prove what happened at a point in time?

QA records? Test records? Photographs? MoMs? Diaries?  
Emails? Subcontractor correspondence?



## What about concurrent delay?

- NEC approach is effectively whatever comes first
- Update Accepted Programme for progress
- Impact the compensation event
- See what happens to planned Completion!



## What about concurrent delay?

- *City Inns, Malmaison*, Delay and Disruption Protocol – what about all of that?
- Just follow the contract!
- NEC3 aligns to the 2<sup>nd</sup> Edition of the Delay and Disruption Protocol and general precedent cases in English law
- Does that mean prolongation costs are ‘all or nothing’?

## CE Assessment - Prices

- Changes to the Prices based on **the effect of the compensation event** on actual Defined Cost for work done and forecast Defined Cost for work not yet done (63.1)
- Defined Cost definition depends on main Option but is generally based upon amounts calculated in accordance with the Schedule of Cost Components or Shorter Schedule of Cost Components.
- Assessment includes cost and time risk allowances (63.6)
- The key is to consider (and demonstrate) what changes to Defined Cost are likely **as a consequence of the CE** (the 'but for' test)

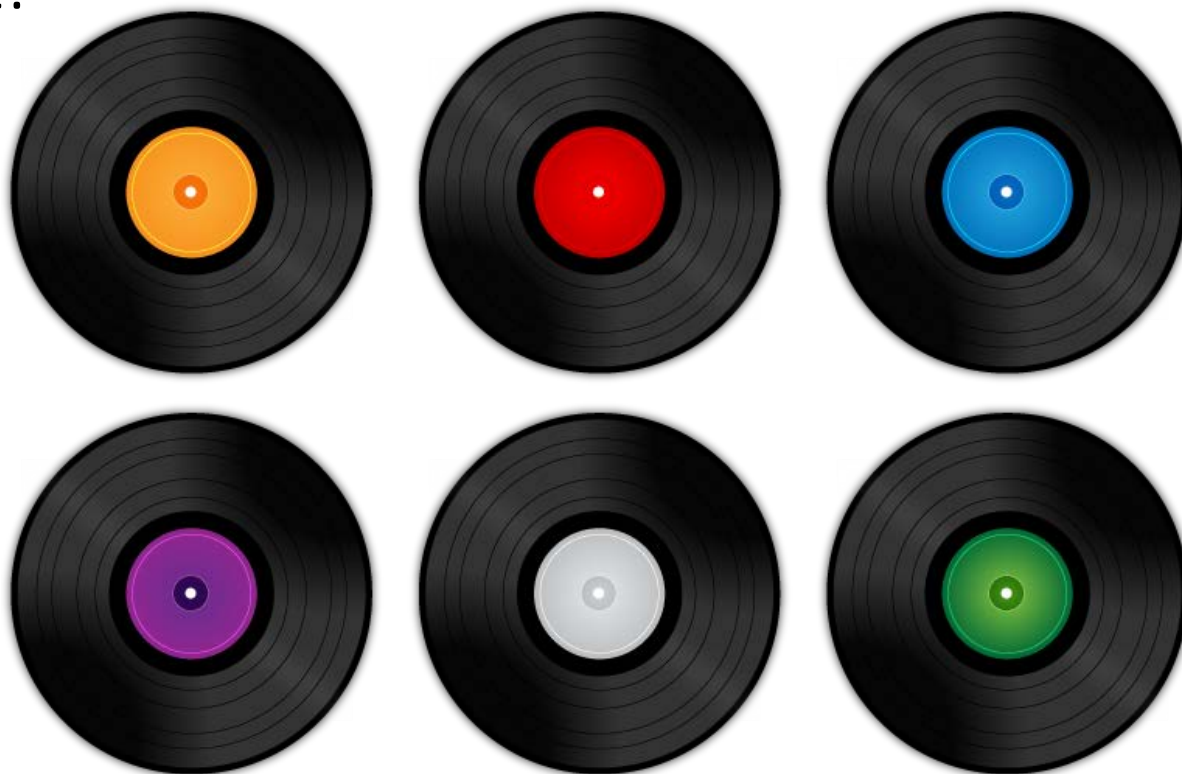


## What can you price as prolongation costs?

- Anything where the Defined Cost will change as a consequence of the compensation event! (As long as it's in the SCC or SSCC).
- Demonstrate why Defined Cost will change; additional time on site? Additional resources? Open book?
- What about disruption? If resources will be 'disrupted', need to make an assessment and demonstrate it.
- What about loss or profit or unabsorbed overhead?

How can you prove what Defined Cost will increase because of a delay?

People & Equipment on site at time of delay? Who will be prolonged? What will they be doing? What cost records have you got?



## What if you haven't followed the contract?

- If programmes haven't been accepted, were they for reasons that would impact the assessment of the CE or not?
- Can the parties agree a programme to use as a starting point for the analysis?
- Try and look at the facts and understand what might have been driving planned Completion.
- Contemporaneous programmes can be good for 'common sense' understanding of what happened through the duration.
- Proper records demonstrate your position – not just an emotional story of 'he said, she said'!



# Example: Understanding delays...

Ref	Prog. Date	Critical Path Description	planned Completion	Movement between updates	Cumulative Movement to planned Completion	Reasons for Delay	Evidence
1	01-Jan-17	A1080 - Excavate to Formation	30/06/2017	0	0	NA	NA
		A1090 - Concrete Blinding					
2	01-Feb-17	A1090 - Concrete Blinding	10/07/2017	10	10	Late change in Base Layout by Civil Designer	CEN001, Site Diaries, Design Meeting Minutes 15th Jan 17, Site Photographs
		A1100 - Formwork to Bases					
3	01-Mar-17	A1100 - Formwork to Bases	25/07/2017	15	25	Late change in Base Layout by Civil Designer & Adverse Weather	CEN001, EWN003, CEN002, Site Diaries, Weekly Meeting Minutes 6th Feb Site
		A1110 - Reinforcement					

# To Conclude....

- Programmes are not just bars on a page!
- It's the job of the whole project team to understand and assess changes in the programme.
- Assess **all alterations and impacts** as well as just critical delays
- Notify events properly, keep good records to demonstrate the **facts and the effect (or likely effect) of the CE.**
- Don't allow EOT/Delay Analysis to become a dark art months (or years) after events have happened.
- **Follow the contract!**
- **Who won in the war story?**

Any further questions?

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# Start Up of the Year Award





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We thought our 20th Anniversary year was the perfect time to 'Pay Forward' the trust and faith placed in us all those years ago



£1000 Prize money and up to £5000 loan fund over 3 years



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BEBCB Applications to be received by 27th July



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