

X29 Webinar 6th March

Questions from attendees

Question	Answer
<i>Is there much experience of using this as a Z clause in existing contracts?</i>	Clauses covering climate change have been introduced to NEC contracts in the past but not in the same way or as comprehensively as proposed in X29.
<i>did you consider any local environment issues and concerns in drafting this and if this clause should tackle them?</i>	X29 is designed to be entirely flexible as to the climate change issues the client wishes to include in the contract and how it identifies, measures, and benchmarks performance.
<i>Has any consideration been given to the BREEAM framework and how this might support the identification of targets and benchmarks?</i>	
<i>The measurement criteria will often be dictated by what has been passed by government in the development agreement (for public projects) so there is a need for flexibility - and added aspirational targets</i>	
<i>Could a schedule of natural capital elements be drafted to support transparent monitoring of natural capital consumed and created by the works</i>	<p>Local environmental issues could be included as part of the Climate Change Requirements in the Scope and or as targets in the Performance Table.</p> <p>The BREEAM framework could be used to identify, measure and benchmark performance.</p> <p>The Climate Change Requirements, as part of the Scope, can be changed by the instruction of the Project Manager, however the Performance Table can only be changed by the mutual agreement of the Parties or if impacted by a compensation event.</p> <p>A schedule of natural capital elements could be included to support transparent monitoring of natural capital consumed and created by the works.</p>
<i>Sorry may have missed this, but draft terminology currently reflects a purely ECC solution, any intention to incorporate into PSC, DBO, TSC etc as part of a wider uptake. DBO and TSC in particular would suit this model?</i>	The consultative edition of X29 is drafted for the ECC but following the consultation process the intent is produce a version of X29 for NEC4 main contracts and main subcontracts.
<i>Did the panel consider publishing a guidance note as to how the same aims could be achieved using the standard core clauses/ secondary options, rather</i>	This was considered but the view was taken that using existing processes would not deliver the same result and would require amendments to / additional conditions to be included as Z clause for them to work

<p><i>than issuing a standalone Option X29? Eg use of kpi's/ low performance damages etc?</i></p>	<p>effectively. There was also a view that, due to the importance of the issue, a new secondary Option would focus the mind of users when putting contracts together.</p>
<p><i>Can the Climate Change execution Plan be linked to with holding 25% of Price for work done to date if the plan is not received from the Contractor</i></p>	<p>That is not the current approach in X29 but we welcome feedback on this as part of the consultation process. The view was that this would place an undue risk on the contractor and an approach similar to that adopted for the Information Execution Plan in X10 would be followed.</p>
<p><i>Do the Climate Change Requirements have to be (only) in an explicit part of the Scope or can they be littered around the Scope?</i></p>	<p>The intent is for it to a specific section of the Scope but with links to other parts of the Scope. Feedback on the practicality of this approach would be welcome as part of the consultation.</p>
<p><i>If climate change requirements are going to be enshrined in the Scope and will going forward be a key component of construction work, why is it an option? Why not make it a mandatory clause?</i></p>	<p>It was felt that including it as an option, at least initially, was the best approach as not all clients and suppliers may wish to adopt it at first. Depending on its success it may form part of the core clauses in future editions of the contracts.</p>
<p><i>On the basis explained why does performance measurement regime stop at Completion Date when realisation or demonstration of something like net zero carbon in operation/TM54 etc need to be demonstrated in use, which would not be clear until some time after Completion Date? Is the intention that that would be an X17 issue?</i></p>	<p>The clause operates as part of the wider contract and so governs performance up until the Defects Certificate is issued. It is not intended to extend the application of the contract beyond this date.</p>
<p><i>Does or could the clause cover ongoing performance? I.e. energy usage?</i></p>	
<p><i>Recognising that the detail of targets/ incentives etc is to be completed by the parties, presume there is no intention for the contract to address operational targets post completion - this is solely about build phase?</i></p>	
<p><i>These requirement needs to feed right through the procurement process starting at ECI phase and engaging as early as possible, PQQ/SQ/ITT. Climate change requirements to be broken down into mitigation and adaptation.</i></p>	<p>As noted in the presentation climate change requirements should be considered throughout the development, delivery, operation, maintenance and disposal of an asset and the use of the ECC and secondary Option X29 as just a part of this overall asset life cycle.</p>
<p><i>Clearly this approach has to apply across the full lifecycle of the project. There appears to be a focus on the Contractor side of the equation however I am assuming X29 will apply to the PSC form and will be relevant to the feasibility and design phase of the project. Is X29 an enabler for this?</i></p>	<p>The consultative edition of X29 is drafted for the ECC but following the consultation process the intent is produce a version of X29 for all NEC4 main contracts and main subcontracts including the PSC.</p>

<p><i>Should we be stating the the Performance Table can include any targets for anything - eg all the push for 'social value'. The table is not limited to climate change.</i></p>	<p>The Performance Table in X29 is intended to target climate change issues, however there is nothing to stop the client using it to incentivise other aspects of the contractor's performance, particularly in situations where the client was intending to use secondary Options X17 and / or X20.</p>
<p><i>Somewhere in the clause maybe consideration for contractors to consult the latest climate projections and consider those in tenders in the risk assessment process:- https://www.metoffice.gov.uk/research/approach/collaboration/ukcp/index - https://www.ukclimaterisk.org/</i></p>	<p>This will be considered as part the response to the consultation process.</p>
<p><i>Will the exclusion from the cap hinder contractors taking on stretch targets?</i></p>	<p>Limits / caps can be included in the Performance Table and clients should carefully consider the risk exposure they are placing on the Contractor through the Performance Table.</p>
<p><i>If X29 is in the contract. Do you think there will be an element of negotiation in regards to the climate change requirements between client and subcontractor?</i></p>	<p>We assume this question relates to negotiations between the client and the contractor and or between a contractor and a subcontractor. In all cases the amount of negotiations possible will be determined by the procurement process and the rules that this must follow. It would be worth considering, if possible, whether the procurement process could allow for reviewing and where necessary changing the Climate Change Requirements and / or Performance Table if this will provide a better end result.</p>
<p><i>Can a target be offered by the Bidder? Surely yes - suggest 'performance table' (italics) will be hanging from CD2 although part completed by the Client.</i></p>	<p>This approach could be adopted or the client could choose to develop the Performance Table and include it in Contract Data part one.</p>
<p><i>Under Clause X29.11 If the PM accepts the Contractor's proposal & quotation, how are the changes to Scope and Price to be treated if NOT treated as a CE?</i></p>	<p>The clause gives the Project Manager the power to change the Scope, Prices, Performance Table etc. to match the contractor's proposals. This proposal will be a commercial offer and does not have to be assessed as a compensation event, providing more flexibility for a "deal" to be done for the client to use the contractor's good idea.</p>
<p><i>I like the idea of including the performance table in the tender pack. Client organisations will need to accurately assess a Contractor's methodology to achieve the aspirations - As they would any other technical methodology</i></p>	<p>Noted</p>

<p><i>Great plan - but need - robustly measurable targets and- a client willing to PAY for (give benefit to in tender evaluation) for promises re climate change. Will UK government lead on this?</i></p>	<p>That is a question for the UK Government though they have demonstrated their commitment to the issue of climate change as part of the Construction Playbook amongst other initiatives.</p>
<p><i>Can either of you provide a typical requirement that is being requested in contracts? To put all this in a context.</i></p>	<p>There are a variety of approaches to what (if anything) is included within contracts currently in terms of climate-change related requirements. X29 is an opportunity to help enable a more consistent approach.</p> <p>Examples of such requirements include: reducing embedded carbon in construction materials (against a baseline), site vehicles to be low-carbon powered, asset to achieve energy efficiency requirements, certain materials to have a minimum recycled content etc</p>
<p><i>For incentivisation to work over long term projects/ programmes, the carrot loses affect if it is achieved too far in the future. Does the financial incentiviation model allow for targets to be made on a staged basis to keep the Contractor interested and focussed?</i></p>	<p>Yes, the Performance Table determines the date when achievement against a target is measured and this could be at any time during the contract.</p>
<p><i>Will we be needing a Performance Table instead in X12 - if we have 'Climate Change Partners'</i></p>	<p>This issue will be considered as part of the consultation feedback.</p>
<p><i>Contractor's proposals - where these are submitted as part of the tender the evaluating criteria needs careful thought to comply with the Contracts Procurement Regulations. Would we need to procure on the basis of accepting variants?</i></p>	<p>Contractor's proposal in the context of X29 would occur post contract award.</p>
<p><i>How do you think we will be able to use the approach with the Designer? Once a construction contract is let it is too late for a lot of aspects</i></p>	<p>The intent is to draft a version of X29 for the PSC that can be used to incentivise the performance of a design consultant.</p>
<p><i>Do you see the Performance Table in time replacing X17 and X20, like the FMC? Otherwise we would have Climate Requirements Performance Table.</i></p>	<p>This issue will be considered as part of the consultation feedback.</p>
<p><i>By incentivising or disincentivising, it does feel like the climate targets are an option rather than an obligation. I understand the difficulties of quantify the impact of a Contractor not achieving the targets/ baselines but how is this scope rooted into the core contract deliverables?</i></p>	<p>The intent is that the Climate Change Requirements are must achieve levels whereas the Performance Table is aspirational.</p>
<p><i>If climate reduction starts with the early procurement strategy how will X29 work along side X22?</i></p>	<p>The interface of X22 and X29 will be considered as part of the consultation process.</p>
<p><i>How important do you think the role of X22 will be in making best use of X29?</i></p>	

<p><i>The process of producing materials that are environmentally friendly is usually not environmentally friendly itself. Have you considered this issue/challenge when it comes to Climate Change consideration in the construction industry?</i></p>	<p>This is an industry wide challenge and outside the scope of X29.</p>
<p><i>Will X29 make it clear who can or will claim carbon credits or who can or will report on carbon reduction - (no double counting etc)</i></p>	<p>This is a technical issue that will need to be addressed in the Scope.</p>
<p><i>Will lots of different clients setting different levels of target cause problems for the market. Will all local Authorities set similar targets</i></p>	<p>This could be a potential issue and the hope is that local and central government will work together to produce more consistent targets, though this is outside the scope of X29.</p>
<p><i>Performance not met following completion is a defect TM54/IServ allows dynamic modelling in use etc. alignment with GSL/BSRIA Soft Landing model would promote aftercare service. Ultimately in use performance must be demonstrated for all welsh schools projects for example, X29 could support this better before the defects date.</i></p>	<p>Noted</p>
<p><i>Can we also have a copy of the slides?</i> <i>Hi both. Thanks for a useful presentation. Are you able to share the slides afterwards please? Also, where is the consultation clause found? Is there a link in the slides? Apologies if I missed it.</i></p>	<p>A link to the presentation and the secondary Option (including the related guidance note) have been provided on the NEC website.</p>