

Insights

NEC SECONDARY OPTION X29 (CLIMATE CHANGE)

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SUMMARY

There has been growing demand in the industry for standard form contract publishers to address the climate impact of construction projects and so today marks the launch of the hotly anticipated NEC secondary option clause X29 (Climate Change) (in consultation form). In this BCLP Insight, Kim Roberts takes a look at the new drafting.

The new X29 introduces a number of concepts, a few of which are set out below:

- X29 introduces the idea that there is a specific set of climate requirements in the contract. It makes provision for the “Climate Change Requirements” supplemented by the “Climate Change Execution Plan”. Together these documents identify and map out the parties’ climate change requirements notably including a requirement for the parties to collaborate with all those who will contribute to meeting the Climate Change Requirements.
- The parties are required to raise an early warning as soon as they become aware of a matter which may adversely affect the Climate Change Requirements.
- The Climate Change Execution Plan will be treated in a very similar way to the Accepted Programme, namely that this is to be a live document that is updated, commented on and agreed through the life of the project (and not something prepared on day one and left in the drawer).
- The contractor’s performance against the Climate Change Requirements is measured against a Performance Table which sets out the targets the contractor is to achieve and adjusts payments up or down depending on performance against the target. Any payments made or deducted in accordance with the Performance Table are an excluded matter for the purposes of secondary Option X18 (Limit of Liability).
- X29 further introduces the ability for the project manager to adjust the Performance Table as a result of a compensation event.

- There is also now the ability for the contractor to propose a change to the Scope in order to reduce the impact of, creation, operation or maintenance of the works on matters which may impact climate change. The project manager is to consider such a change and the detailed quotation related to the same in the period for reply.

As ever with such matters, the devil will be in the detail of what climate requirements are included in the Scope. However, it is encouraging to see that the targets clients and contractors have been including in contracts for some time will now have teeth. X29 encourages us all to treat climate targets as something to be monitored and that may well evolve through the life of the project and to try to incentivise contractors to stick to them like any of the KPIs.

It will be interesting to see how X29 operates in practice. Often it's not possible to say exactly how one might achieve net-zero on a project; and whether X29 does what it intends or not is no bad thing if in the meantime it gets parties really engaging on this crucial issue.

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