

THE REGULATORY FRAMEWORK FOR EFFECTIVE POST-DISASTER RECONSTRUCTION IN NEW ZEALAND

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Abstract

New Zealand has extensive infrastructure networks and localised, dense urban populations that make it vulnerable to natural disasters. When they occur, the effects can be devastating on the natural and built environment. Organisations therefore need to be well prepared, rather than rely on a reactive recovery process after an event.

As one aspect of a major programme of research in New Zealand, the authors address the recovery issue in terms of how the local legislative and regulatory frameworks either facilitate or hinder reconstruction projects and programmes. If well articulated and implemented, the regulations should not only provide an effective means of reducing and containing vulnerabilities (disaster mitigation), but also a means of facilitating reconstruction projects.

This paper highlights the interrelated reconstruction challenges of allocation of responsibility for coordination, scarcity of resources and the application of legislation and regulations that were written for routine construction rather than post-disaster reconstruction. Examples of reconstruction following recent small scale disasters in New Zealand are presented to support the points raised. The paper concludes that whilst routine construction processes have proved adequate for small-scale disasters, the greater degree of coordination required for programmes of reconstruction following a larger disaster has not been adequately addressed in policy and legislation.

Keywords: Reconstruction; Legislation; Regulation

INTRODUCTION

New Zealand invests heavily in relative terms, in research and development of disaster management plans. Government agencies such as the Ministry of Civil Defence and Emergency Management (MCDEM), Earthquake Commission (EQC), Institute of Geological and Nuclear Sciences Limited (GNS), and Resilient Organisations research programme funded by the Foundations for Research

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Science and Technology, have current research objectives to address pressing disaster management needs. Though disaster management and the need to develop a resilient community capable of recovering from disasters has become topical, focus until recently has been mainly on reduction, readiness and response and Angus (2005) suggests that there is poor understanding of recovery and little consideration is given to the implications of recovery in New Zealand.

In comparison to routine construction, there is little provision in several areas of legislation to cater for post-disaster reconstruction processes. Following a major disaster it is unlikely that coordinating authorities and regulatory bodies would be able to cope with the volume of work due to shortfalls in experienced personnel, thus the coordination and management of a major programme of reconstruction could become cumbersome and inefficient.

THE RECOVERY FRAMEWORK

The MCDEM in New Zealand encourages a holistic approach to the issue of recovery planning and believes this will be most effective if it is integrated with the remaining 3Rs of reduction, readiness and response. The definition of recovery encapsulates the expectations of recovery as “the coordinated efforts and processes to effect the immediate, medium and long-term holistic regeneration of a community following a disaster” (MCDEM 2005)

Recovery requires a concerted approach that will support the foundations of community sustainability and capacity building and which will eventually reduce risks and vulnerabilities to future disasters. Jigyasu, (2004) describes an increase in vulnerability of local communities after the Latur 1993 earthquake in India, where sustainable recovery interventions were poorly planned and implemented. The rational starting point is the setting up of an institutional infrastructure for emergency management, which will formulate public policies for mitigation, response and recovery (Comerio 2004). These recovery policies should then be integrated into other emergency management areas as well as policies of sustainability and community capacity building (Coghlan 2004). New Zealand's recovery planning and management arrangements are contained in the National Civil Defence Emergency Management Strategy (MCDEM 2004). Recovery is delivered through a continuum of central, regional, community and personal structures (Angus 2004).

Management of recovery may involve an element of competition between central, regional and local levels of government for control of the process (Rolfe and Britton, 1995). The MCDEM, together with cluster groups of agencies, coordinate planning at the central level. Regional and Territorial authorities are encouraged to produce group plans that will suit peculiar conditions of their local areas. Other discussion documents produced at the national level like *Focus on Recovery: A holistic framework for recovery*; and *Recovery Planning* both released in 2004, give context to recovery planning while the Civil Defence and Emergency Management Act

(CDEMA) 2002 provides the legislation and the foundations for the New Zealand Civil Defence and Emergency Management (CDEM) environment.

Legislation that applies to routine construction provides for the safe development of infrastructure, capital improvements and land use, ensuring preservation and environmental protection, however there appears to be little provision in several areas of legislation to facilitate reconstruction projects. Much existing legislation was not drafted to cope with an emergency situation and was not developed to operate under the conditions that will inevitably prevail in the aftermath of a severe seismic event (Feast, 1995).

Pieces of legislation that make reference to building work include, but are not restricted to the following:

- Building Act 1991 and 2004
- Resource Management Act 1992
- Housing Improvement Regulations 1947
- Historic Places Act 1993

This paper will consider the problems associated with the implementation of some of these pieces of legislation particularly in relation to recovery, so as to gain insight into the appropriateness of the CDEM framework.

THE RECOVERY PROCESS

Recovery is an integral part of the comprehensive emergency management process (Sullivan 2003). It refers to all activities that are carried out immediately after the initial response to a disaster situation. This will usually extend until the community's capacity for self-help has been restored. In other words, the end-state is when the assisted community reaches a level of functioning where it is able to sustain itself in the absence of further external intervention (Sullivan 2003).

The effectiveness of the process will depend on how much planning has been carried out and what contingencies are provided for in preparing for the disaster. It is expected that recovery and reconstruction works will restore the affected community in all aspects of its natural, built, social and economic environment.

The recovery process may present an opportunity for improvement in the functioning of the community, so that risk from future events can be reduced while the community becomes more resilient.

Recovery is an enabling and supportive process, thus the heart of recovery is community participation. Consultation and communication is encouraged especially in identifying community needs and for collective decision making amongst all stakeholders. This way all stakeholders understand the process and their commitment towards agreed objectives is ensured. Typical stakeholders will include:

- Asset owners (may be private or public and the business community)
- Lifeline Agencies
- CDEM groups (national, territorial and local government departments, police, fire brigade, relief and welfare agencies, health and safety personnel etc)
- Insurance companies
- Non-governmental agencies (charities, funding organisations etc.)
- Construction and reinstatement organisations

The recovery process will typically follow a conceptualised model (Figure 1) comprising five key stages (Brunsdon and Smith 2004) which are discussed below.

- Impact Assessment - This is the information gathering stage in the recovery process aimed at gaining knowledge on the impact of the disaster event on individuals, community and the environment. It involves all stakeholders as it is at this stage that the necessary inspections and surveys (needs assessment) are carried out that will form the basis for all reinstatement activities. The needs assessments will include building inspections, insurances, and health and safety assessments.

Success of this stage will depend on the levels of communication, consultation and planning between all stakeholders. The process must lend itself to reviews and updating to take account of new information at later stages.

- Restoration Proposal - This is the stage where decisions are made on whether to repair, replace or abandon affected properties. These decisions are reached based on the input of the impact assessment activities. Realistic proposals for meeting the anticipated recovery task are presented for funding organisations consideration.
- Funding Arrangements – in New Zealand affected parties may have access to two types of funds: funds from private insurance companies and from government. (Residential property owners are insured by the EQC, New Zealand's primary provider of natural disaster insurance. EQC insures against damages caused by earthquake, natural landslips, volcanic eruption, hydrothermal activity, and tsunami). Secondary funding may come from charity organisations and external donor agencies.
- Regulatory Process – design and regulatory approvals are sought for the reinstatement of damaged facilities. Processing of resource consents is usually painstaking and the target of approving authorities is to ensure that considerable level of resilience is incorporated in all developments. New knowledge gained on risk from hazards after the disaster will assist approving authorities to correct former design concepts to mitigate future disaster risk.
- Physical Construction - This is the regeneration stage in the recovery process where every aspect of the community and its environment (natural, built, social

and economic environments) return to normalcy. Experience has shown that it is difficult to return to the pre-event status quo but effort is made to restore the functions of the affected community.

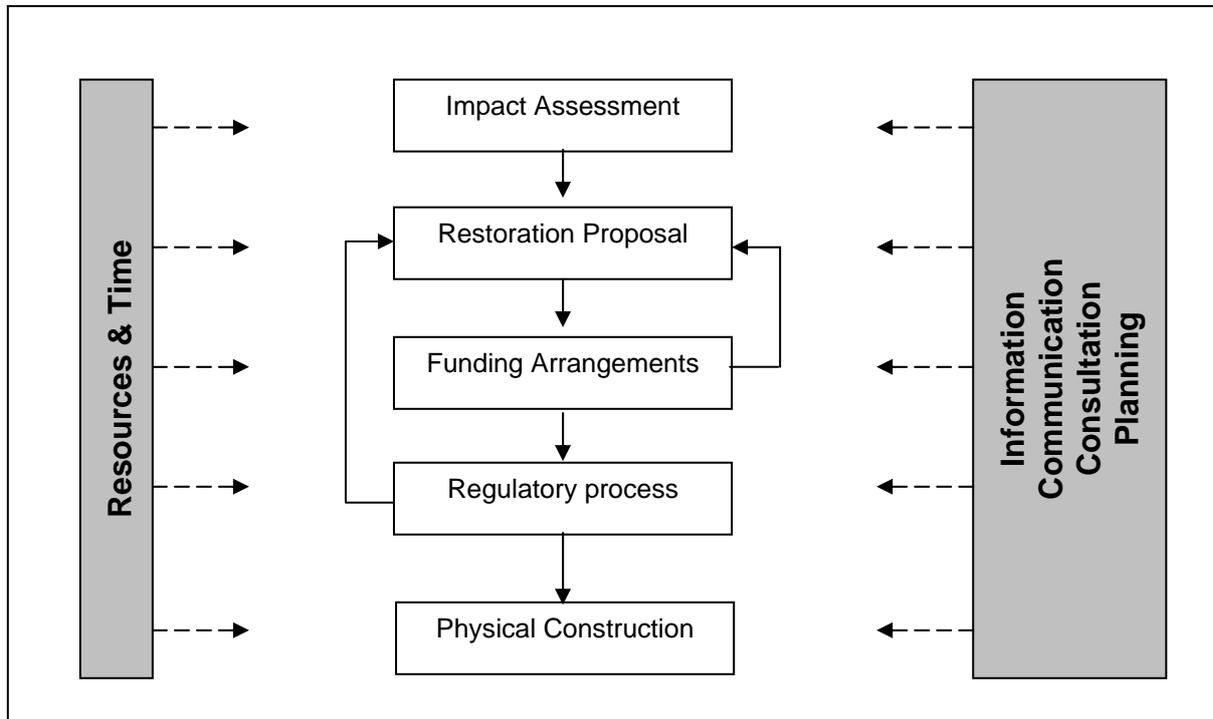


Figure 1: Key Stages in Recovery Process (Brunsdon and Smith 2004)

RECENT NATURAL DISASTERS

In recent years there have been two locally significant disasters due to flooding events, at Manawatu in 2004 and Matata in 2005. The circumstances of these events are described briefly and some lessons learnt are summarised below.

The Manawatu Flood

Flooding in Manawatu was caused by heavy rain and gale force winds from the 14th to 23rd of February 2004. A Regional State of Civil Emergency was declared on 17th February. The flooding caused over 2,000 people to be evacuated from their homes at the height of the event. Many rivers breached their banks and considerable areas of farmland were inundated by silt and floodwaters. There was significant damage to infrastructure with damage to roads, bridges, and railways. In addition, there were telecommunication, power, gas and water supply outages to tens of thousands of people. Remarkably no lives were lost as a direct result of the event.

Recovery costs are estimated at \$160-180million for the rural sector and \$120million for roads and council infrastructure. In addition \$29.5 million and \$3.5 million will be required to stop future flooding of the lower Manawatu and Rangitikei rivers respectively.

The Matata Debris Flow

A debris flow occurred on the 18th of May 2005 when a band of intense rain fell in the catchments behind Matata in the Bay of Plenty region. This triggered floods and several large debris flows.

The highly erosive debris flows cleaned out the valley bottoms and destabilised the slopes along the channel, causing secondary landslides. The debris flows were structurally damaging to all buildings and bridges in their paths and at several locations the associated debris floods also were structurally damaging.

In response to the Matata disaster a Civil Defence Emergency was declared on 18th May 2005 and this remained in place until the end of May. Total government valuation including land value and capital value of properties affected along the flood path hazard was estimated to be \$9,740,000 for unsafe buildings and \$2,937,000 for buildings subject to restricted use (WDC Recovery Report Nr. 06).

Reconstruction following the floods

Reconstruction was carried out through collaboration between CDEM agencies, local authorities, utility companies and insurance companies during recovery in the two cases.

For the Manawatu-Wanganui region recovery was coordinated through the regional council's new CDEM Group arrangements under the provisions of the Civil Defence Emergency Management Act (CDEM Act) 2002. For the other territorial authorities the event was managed through their Civil Defence Act 1983 arrangements. The CDEM Act provides a structure appropriate for dealing with events such as the floods and did not introduce any structures or procedures that hindered authorities in dealing with the event. In Matata the state of emergency was extended to allow work to be completed on critical road access routes but still only lasted two weeks.

The roading authorities did not diverge from normal legislation and regulations and building consents were sought and granted as usual. Road users were consulted and kept updated on reconstruction issues.

A source of frustration for utility companies in the Manawatu flood event according to AELG (2005) was the time taken to develop an understanding with the Regional Council about emergency actions that would cover all situations under the Resource Management Act, rather than require a formal process for each activity. A particular

issue arose when the Regional Council initially required that slip material should be disposed of in a designated landfill; subsequently they allowed a more pragmatic approach which meant that slip material could be moved and redeposited locally.

The road funding authority, Transfund, should ideally become involved as early as possible following a disaster since Transfund has direct access to government funds. However this was not the case following the Manawatu floods and it is likely that more could have been done to secure certainty over funding in the early stages of recovery which would have helped with the physical works prioritisation process.

Recovery at Matata relied heavily on Central Government funding since the local council had a small number of rate payers and insufficient funds to cover the recovery costs itself. Funding took some time to come through whilst government requested and were awaiting details of the costs. This frustrated the local population.

Overall there was little difference between the normal building process and the reconstruction process, due to the fact that the disasters were of a relatively small scale. The parties normally involved during routine construction projects were also involved during the reconstruction and using existing relationships eased the process. During the initial recovery stage local contractors volunteered their time, but this needed careful management. National scale contractors were a valuable source of resources, since they were able to use their networks to mobilise resources from the whole country.

CHALLENGES FOR LARGER SCALE DISASTERS

Coordination of reconstruction

Whilst relying on routine processes proved adequate in many ways for these small-scale disasters, a higher level of coordination and management would be needed for programmes of reconstruction following a larger disaster. CDEM agencies are provided with certain powers under the CDEM Act to direct reconstruction, however, these powers can only be exercised in a declared emergency situation. When a declaration is lifted, the designated Recovery Manager has no statutory power to direct resources for recovery. If they were to direct activities using powers under the Act the agency would become responsible for the oversight and management of those activities; since CDEM agencies do not generally have the resources and skills for these tasks, they are reluctant to take on such responsibility (AELG, 2005). Clearly there is still a need for coordination once a state of emergency ceases, and the responsibility for this is generally taken up by local authorities and insurance companies.

EQC provides statutory funds to cover losses incurred by individual property owners as a result of natural disasters. This arrangement is clearly inefficient in a large-scale disaster and it has been suggested by Page (2005) for example, that bulk reconstruction contracts should be awarded by the EQC so as to relieve house

owners from sourcing and managing the process. The EQC trialled a coordinated response to the Te Anau earthquake of 2003, using a large single contractor to coordinate and manage the recovery works on its behalf. The relatively small scale damage of this particular event did not allow definitive conclusions to be drawn on the benefits of such a coordinated approach, but coordination was clearly an improvement on the situation where individual property owners competed for the services of a limited number of building contractors.

MCDEM Director's Guidelines (2005) proposes a management structure for coordinating recovery and it recommends the setting up of various task groups to achieve recovery objectives. Under the 'Built Environment Task Group' are sub-task groups for various parts of the built environment. For example, the 'Residential Housing Subtask Group' would be responsible to:

'repair, reconstruct or relocate buildings – obtaining fast-track building and other consents, sufficient builders and materials, coordinating skilled trades and their work standards'

This is a very challenging responsibility for the task force to take on and does not appear to concur with what has happened in practice following recent disasters.

Reconstruction resources

The processing of building consents at the early stages of reconstruction and recovery after an event has been identified as a potential bottleneck. Access to normal resource levels will be unlikely and inevitably there will be shortages of qualified people to handle impact assessments and consent processing. A more flexible approach to the standard consent process would be necessary to expedite the process and help cope with the high volume of consent applications after a major disaster.

In terms of overall human resources Page (2004) suggests that the construction industry could cope effectively with a medium sized disaster if the base work load was at an average level, but a large scale disaster coinciding with a high base load could require up to 180,000 additional construction industry workers (this is based on an event causing \$10billion worth of damage in the Wellington region and with a base work load 7% higher than current levels). Hopkins, (2004) in a similar study estimates a combined resource requirement for reinstatement to be about \$7.73 billion. The National Civil Defence Emergency Management Plan, due to come into force in July 2006, acknowledges New Zealand may need to mobilise all nationally available resources because it has finite capacity and capability for response and recovery.

Hazard and risk assessment

The need for a focussed assessment of potential hazards after an event cannot be overemphasised as it will enable the determination of risk levels and put in place the mechanism for avoiding any increase in those risks by limiting future developments in those areas.

The new Building Act (2004) requires that Territorial Authorities must not grant building consents on land subjected to natural hazards unless they can be protected from the hazard and, where waivers are granted, it requires that notices be placed on the land to indicate the risk of natural hazards they are exposed to. Implementing this Act will have far reaching implications on insurance claims as the Earthquake Commission Act indicates that the EQC is not liable to settle any claim where there is an identified large risk. Current revisions to the mapping of vulnerable natural disaster zones may prevent existing properties from being compensated at all.

The CDEM Act is the only piece of legislation that requires specific identification of hazards by councils. However, the scope of this identification is limited to the hazards already identified through the Resource Management Act (RMA) process and for which building works have been undertaken in hazard zones. Hazard identification can only be inferred from other pieces of legislation such as the Building Act and RMA where in the course of discharging council duties, information concerning natural hazards is deemed collected.

The implication of council's inability to gather information on hazards is that development control outside recognised hazard zones are limited, thus the provisions of the various acts concerning land use cannot be effectively applied. For the incident at Matata, the extents of the flood and debris flow were outside known hazard zones.

CONCLUSION

The task of reconstruction after a major event can be an onerous challenge. It requires deliberate and coordinated efforts of all stakeholders for effective and efficient recovery of the affected community. The paper has shown that the issues surrounding the implementation of the pieces of legislation concerning reconstruction after a major disaster are complex and interrelated. Though the existing regulatory framework seems to point to the right direction, more issues have to be addressed in practice.

Legislation cannot be used for purposes other than those for which it is intended and there appears to be little provision in several areas of legislation for post-disaster situations. These policies need to be revised before hand as hasty revisions during the course of reconstruction works do not provide the best solution to major disaster problems.

Should the routine regulatory and legislative processes be followed after a major disaster it is unlikely that regulatory bodies would be able to cope with the volume of work.

The conflicts in the interpretation of the different pieces of legislation need to be harmonised, whilst the roles and responsibilities of the various CDEM agencies and other stakeholders need to be made clear. The apparent division between those who, in practice, take responsibility for reconstruction and those who set policy and legislation create barriers that need to be overcome. Failing this, implementation of reconstruction works will be cumbersome in the event of a major disaster.

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