



REBUILDING NEW ZEALAND: A CASE FOR DISPUTE RESOLUTION BOARDS

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Introduction

- Construction is already prone to disputation.
- With the largest construction boom in a generation, the risk of claims is likely to increase.
- This makes dispute resolution an important consideration.
- In this context, Dispute Resolution Boards (DRBs) should be given wider consideration.

Presentation outline

1. Economic and industry context
2. DRB concept, including advantages/disadvantages
3. When to use DRBs and the Canterbury rebuild

Looming boom: “unprecedented growth”

- End of GFC / relative performance of NZ economy
- Backlog of infrastructure projects
- Significant commercial developments
- Chronic housing shortage
- \$40b Canterbury rebuild
- Seismic upgrading of earthquake-risk buildings
- Repairs to leaky buildings
- Business as usual activity

Forecasts

- Construction activity to peak at **\$32b pa** (2016) – 23% higher than 2007 and 44% higher than 2012
- Annual growth of more than 10% **over 3½ years**
- Auckland: **68% growth** generally and residential building to double within 5 years
- Canterbury: \$4.3b pa (2012) → **\$8.2b pa** (2015)

Sector characteristics

- Lack of scale and capacity: 87% of relevant businesses employ less than ten people
- Not enough skilled workers/machinery
- Fragmented, risk averse, lacking competition
- Widening of tort law

A recipe for increased claims and disputes.

Dispute resolution options

- Litigation/arbitration
- Adjudication
- Expert determination
- Early Neutral Evaluation
- Mediation/Conciliation
- DRBs

The DRB concept

- Board of independent members empowered by contract to keep a 'weather eye' on the project
- Regularly visit the site/receive progress reports
- Address issues before they become disputes
- Advisory opinions
- Formal recommendations (binding or non-binding)

Main Contract Specifications + Tripartite Agreement
(Model terms/guidance: DRBF/DRBA, ICC, ICE)

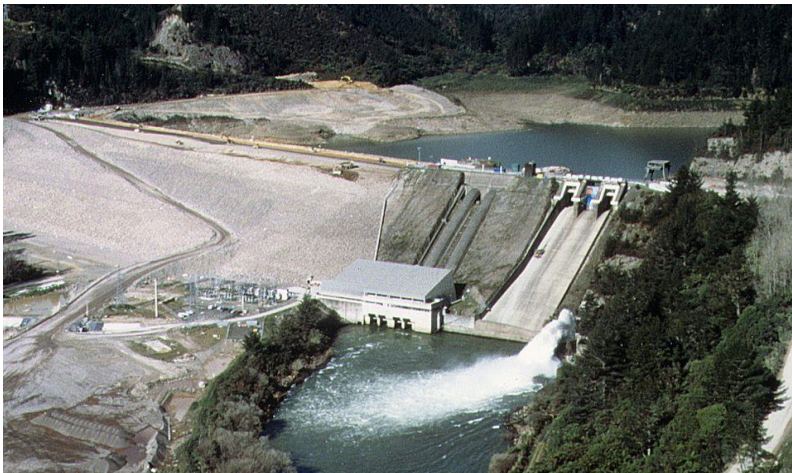
A brief history



Boundary Dam



Eisenhower Tunnel

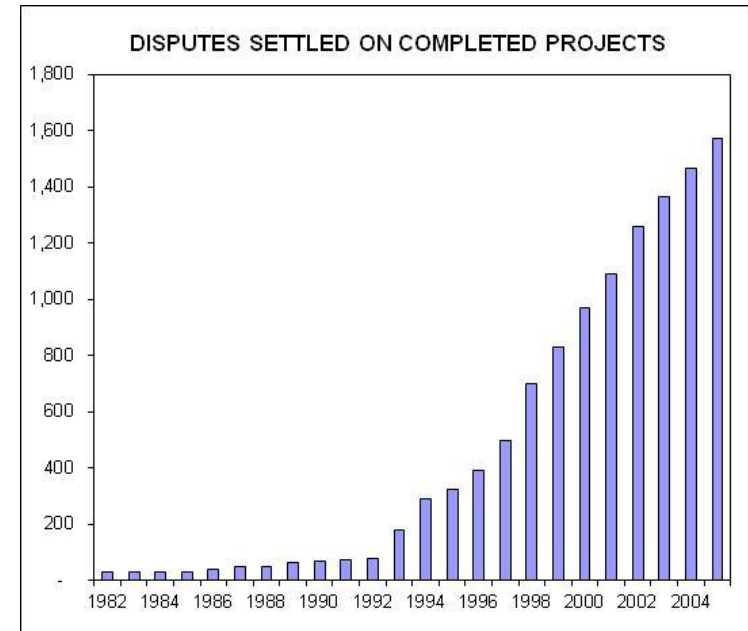
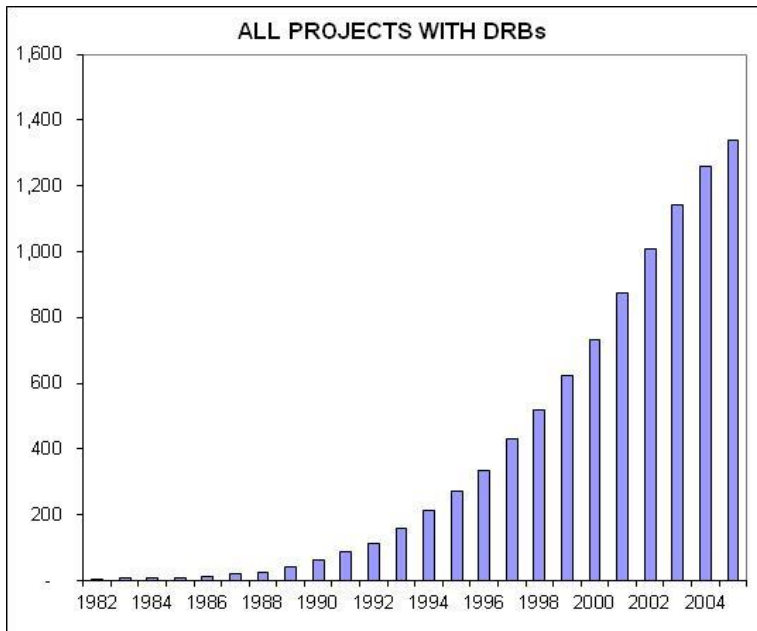


Matahina Dam



Christchurch Ocean Outfall

DRB statistics



- 1,860 disputes heard by DRBs, of which 52 (or 2.8%) were referred to arbitration/litigation
- **97% of DRB decisions accepted**

Source: DRBF

Why are DRBs successful?

Dispute avoidance, as well as resolution.

- Familiarity with project/parties
- Regular meetings/site visits
- Technical expertise
- Deals with 'live' issues
- Discourages positional conduct
- No lawyers
- Flexible

Disadvantages and other considerations

- Cost:
 - Two parts:
 - Establishing (parties bear their own)
 - Operating (50:50)
 - 0.05% - 0.26% of construction costs (*DRBF*)
 - Mini-DRBs for smaller projects (say \$5m - \$25m)
- Potential ineffectiveness of DRBs
- Construction Contracts Act adjudications

Using DRBs and the Canterbury rebuild

- **Public projects** – suggest:
 - Default option: >\$50m
 - Consider: \$5m - \$50m (1 or 3 person board)
- **Private projects** – off-the-shelf mini-DRB scheme:
 - Pre-approved DRB candidates
 - Tailored model provisions
 - Fixed fee for scheduled visits/reading

Conclusion

- DRBs not a panacea; supplementary to arbitration.
- Should be given more consideration as New Zealand enters a significant construction boom.
- Canterbury is arguably crying out for a tailored dispute resolution solution: Mini-DRB scheme