



# VALUATION IN COMPULSORY ACQUISITION

CLAYTON UTZ

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# TODAY'S AGENDA

- ▶ Role of an expert
- ▶ Role of a valuer
- ▶ Recent (and not so recent) cases
- ▶ Tips

# ROLE OF AN EXPERT

## Duty to the court

- **Paramount** and **overriding** duty.
- Core obligation is to assist the court to arrive at the truth.
- Expert's role is to educate the court to the same level of understanding as the expert on the issue in question.
- An expert witness is **not** an advocate for a party

## Duty to the client

- Duty to ensure all relevant points of the client's case are brought to the court's attention.
- No duty to attempt to "win" the case.



# WHAT MAKES A GOOD EXPERT?

- ▶ Technical expertise
- ▶ Ability to deliver opinion in an articulate and persuasive manner
  - » opinion can be easily understood by non-experts
  - » delivers opinion persuasively, advocates own opinion
- ▶ Understands role in litigation
  - » familiarity with the process
  - » easy to work with and helpful

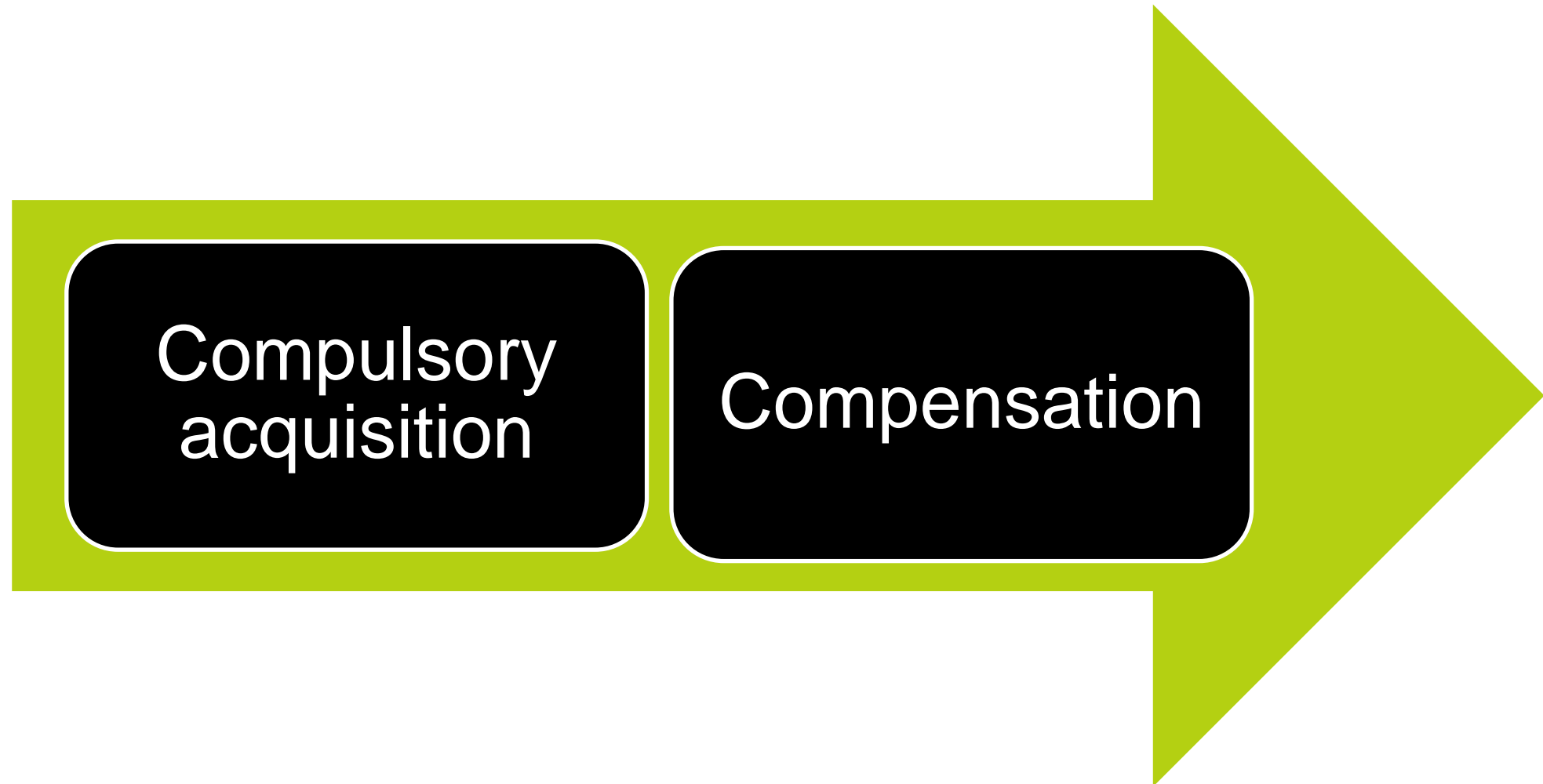
# QUALITIES OF A GOOD EXPERT



# THE COURT EXPECTS WITNESSES TO...

- A • understand and abide by their duty to assist the court
- B • refrain from acting as an advocate for a party
- C • comply with the court's directions
- D • read the Rules and Practice Directions dealing with expert evidence and the Guidelines
- E • know what issues they are being asked to consider
- F • identify if they need further information or instruction in order to give their opinion
- G • confine their evidence to the issues relevant to their area of expertise
- H • confine their opinion to their area of expertise
- I • expose the facts, assumptions, methodology, and reasoning that supports their opinion
- J • fully engage in a meeting of experts
- K • change, qualify or revise their opinion where necessary

# ROLE OF A VALUER



# ROLE OF A VALUER

Compensation assessed for:

whole or part take

volumetric land take

easement

volumetric easement

lesser interest in land

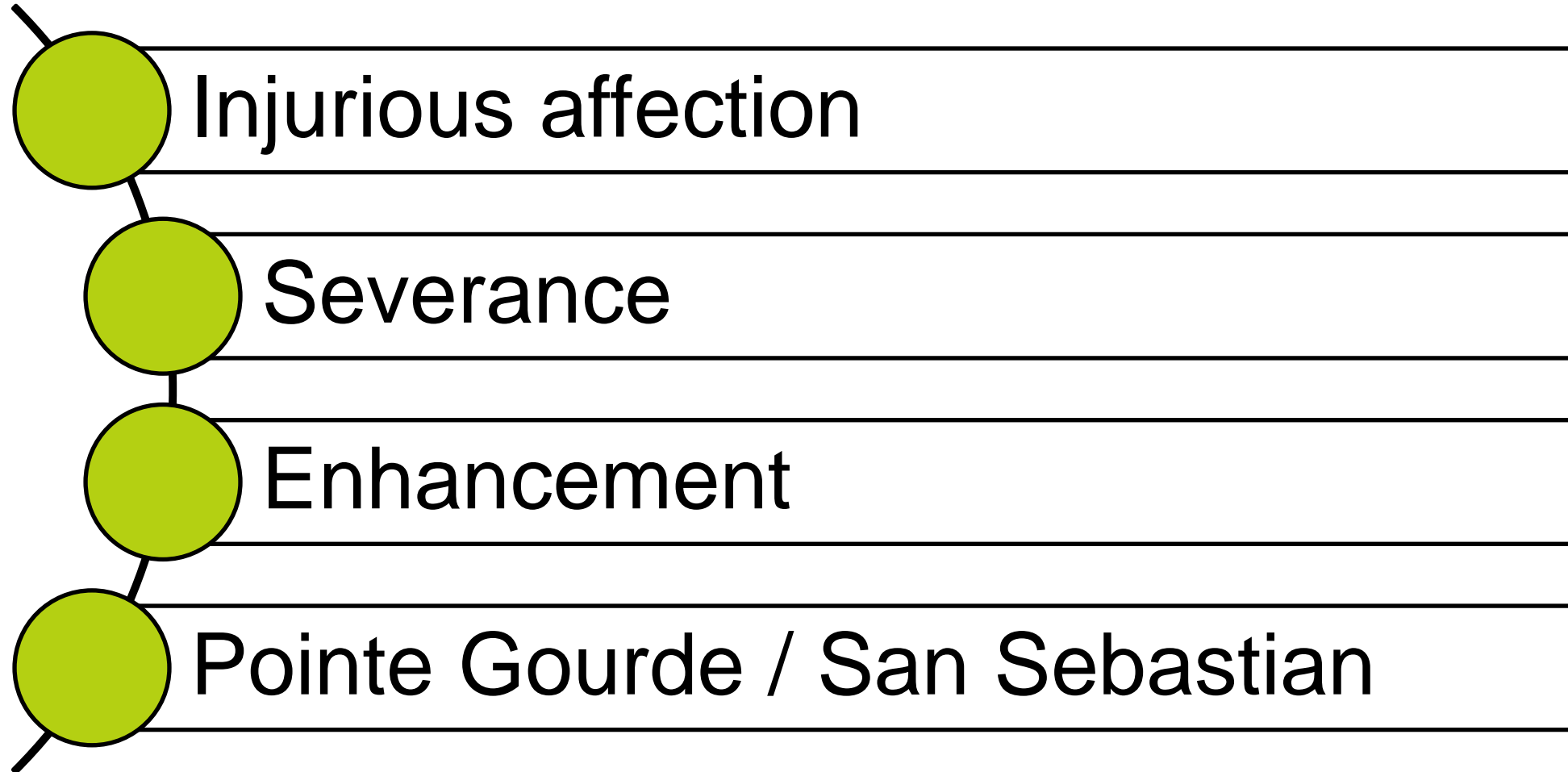




# ROLE OF A VALUER

- Classic test is willing buyer and willing seller
- Test of "hypothetical prudent purchaser"
- Compensation is assessed on the basis that the land is valued for its "highest and best use"
- Highest and best use may not be the current use

# ROLE OF A VALUER



## MEMBERS OF THE LAND COURT



**President**  
Fleur  
Kingham



**Member**  
Peta  
Stilgoe



**Judicial  
Registrar**  
Graham  
Smith



**Member**  
James  
McNamara



**Member**  
Bill Isdale



# LAND COURT

1. Guidelines for Expert Evidence
2. Court Managed Expert Evidence (CMEE)
3. Joint Briefs to Experts
4. Joint Expert Reports
5. Mediation
6. Concurrent oral evidence



## *Van Byron Pty Ltd v Department of Transport and Main Roads [2011] QLC 65*

### Facts

- ▶ Applicant owned two adjoining lots (14 and 5). Part of Lot 14 resumed for Toowoomba bypass. No land resumed from Lot 5 but claim for injurious affection (**IA**).
- ▶ Was lot 5 'severed' from the resumed part of Lot 14?
- ▶ Comparison with section 20(3) of the ALA for increases in value caused by the resumption, where the test examines the 'whole of the landowner's balance parcel'.
- ▶ Differences between section 20(1) and section 20(3).
- ▶ Regardless, court held that they were 'sufficiently connected'.

**HELD:** Entitled to IA on both lots.

### Key takeaway

- ▶ IA may apply to other lots of the owner where only part of an adjoining lot is resumed



## Lim v Moreton Bay Regional Council [2019] QLC 2

### Facts

- ▶ Council resumed multiple neighbouring properties for the purposes of flood mitigation
- ▶ Applicant contended that he had intended to develop the land and that:
  - » Council's valuation failed to consider various important factors
  - » the value of the property ought to be enhanced due to proposed development



## Lim v Moreton Bay Regional Council [2019] QLC 2

### HELD:

- ▶ Not court's function to determine whether a hypothetical development application would have been approved.
- ▶ The before-and-after valuation method must take into account all relevant factors, including flood risk, flora and fauna.
- ▶ Valuation based upon comparable sales should use recent sales in a similar region, similarly zoned and with similar development potential.
- ▶ If multiple properties resumed under scheme, other properties can be used as comparable sales references in limited circumstances and extreme care and caution must be exercised.

### Key takeaway

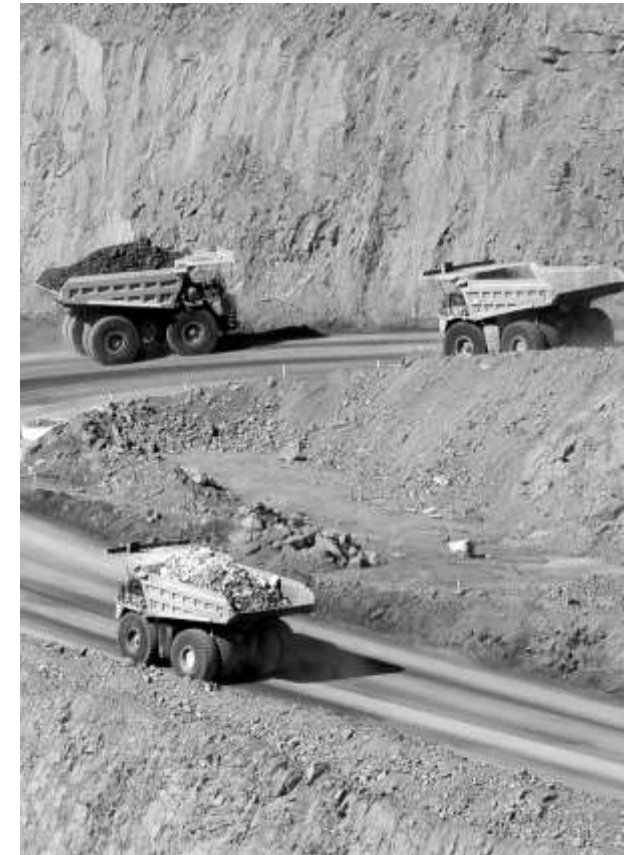
- ▶ Consider the comparability of sales and make adjustments.
- ▶ Even if the sole valuer, the Court may not accept your evidence.



## *Hail Creek Coal Holding Pty Limited v Michelmores* [2021] QLC 19

### Facts

- ▶ Applicant granted ML over respondent's land. Experts disagreed on appropriate valuation methodology in joint report, leading to a significant difference in valuations (\$530,530 vs \$7 million).
- ▶ Very few comparable sales.
- ▶ Applicant → 'Direct comparison approach', calculating the market premium paid for mining accommodation sites (250%).
- ▶ Respondent (initially)
  - » 1<sup>st</sup> alternative → 'Raja' approach (market value based on the attributes that are only of value to applicant).
  - » 2<sup>nd</sup> alternative → NPV of future rent from comparable tenancies
- ▶ Respondent (subsequently) → \$/ha of comparable sales.
  - » Equivalent to market premium of 3,694%
- ▶ **HELD:** Applicant's approach preferred.

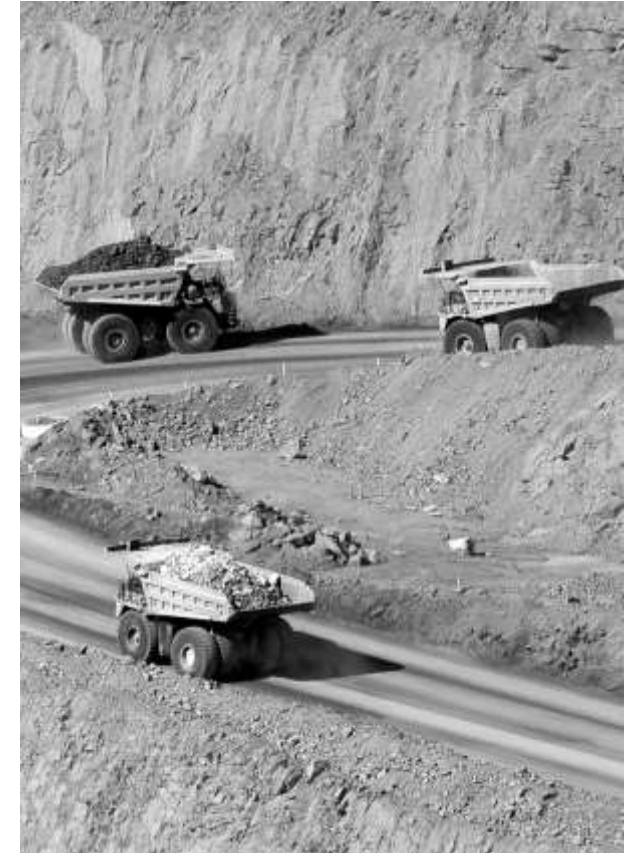




## *Hail Creek Coal Holding Pty Limited v Michelmore* [2021] QLC 19

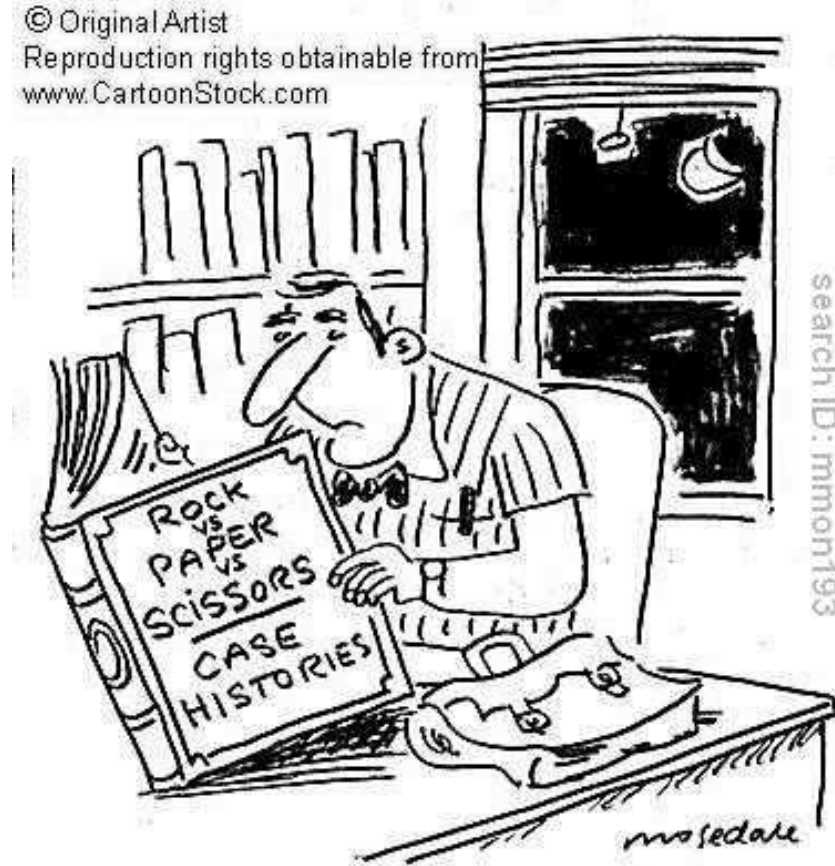
### Key takeaways

- ▶ Direct comparison method = authoritative, even where there are few comparable sales.
- ▶ Valuations should not draw comparable values from incomparable sales. Acceptable to calculate a comparable premium being paid above the agreed market rate.



# TIP - USE OF COURT CASES

- ▶ Cases outside Queensland hierarchy of courts are not binding on Queensland courts
- ▶ Every case has different facts
  - beware relying on a case without checking the facts



## **TIP – USE OF SALES**

If relying on sales make sure you know them

Don't just use ones from a data base that someone else analysed – they may have missed something

# TIPS FOR MEETING OF EXPERTS

Do you have the same information? If not, does any new information affect your opinion?

Do you need any more information or instruction from the parties?

Do you need an opinion or instruction on a matter outside your area of expertise?

Are you using the same methodology and in the same way? If not, why not?

What scenarios are presented in your briefs of instructions or in preceding expert reports? (If any)

How should you address the possible outcomes from those scenarios?

What are your points of agreement?

For your disagreements, are they about:

- the existence, relevance or validity of an asserted or assumed fact?
- the methodology that should be applied to deal with the issue?
- how that methodology should be applied?
- the conclusions that arise from applying the methodology to the facts or assumptions?

How will you draft and finalise the joint expert report and when?



## TIP - WHEN ARE YOU IN CONCLAVE?

### ► A meeting of experts:

- » starts when the expert witnesses first meet (whether in person or otherwise)
- » ends when they provide their signed joint expert report to the parties

## TIP - JOINT REQUESTS

### THE COURT EXPECTS A JOINT REQUEST TO BE MADE IF ONE OR MORE EXPERT:

A

- does not understand the issues as framed

B

- considers other issues arise for consideration within their area of expertise

C

- considers the material provided to them is insufficient

D

- considers advice from other experts is necessary

E

- wants to clarify an opinion provided by one or more expert witnesses in another area of expertise

F

- anticipates or experiences any delay in the timetable of steps



## TIPS FOR MEETINGS WITH YOUR TEAM

- ▶ You need to advocate for and defend your opinion in meetings with your client and legal team - not just in meetings with other experts and cross-examination
- ▶ Legal team need to understand and test your opinion
- ▶ Always be prepared to answer questions about your report and opinions
- ▶ Re-familiarise yourself with your report before meetings, mediation and court

**Thanks for listening**

**Any questions?**

