

# DRBF 28<sup>th</sup> ANNUAL INTERNATIONAL CONFERENCE

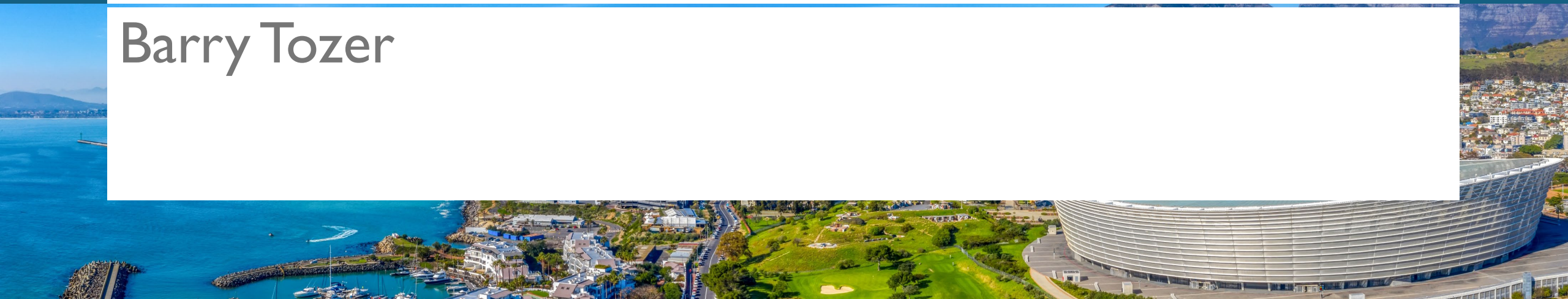
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# Evaluating Sole Member Dispute Boards: Balancing Cost and Effectiveness

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# My experience with one-person Dispute Boards

Since joining DRBF in 2003, I have had:

- **6 one-person DB appointments in the Pacific Islands\***
  - All smaller contracts with contract sum <US\$50 million
- **2 recent one-person DB appointments in Australia (NSW)**
  - Both >US\$200 million (one construct only, the other D&C)
- **6 three-person DB appointments, 2 as Chair**
  - In the period from 2009 to 2021; none since

\*See Region 3 Breakfast Briefing in 2017 “One-person Dispute Boards on Pacific Island FIDIC Contracts” by Barry Tozer in DRBF Library

# Appointment of one-person Dispute Boards

- **Cost is main reason for one-person DBs on smaller FIDIC Contracts**
  - This is acknowledged in FIDIC DAA Forum, Practice Note II 2024 (Task 3, #28a)
- **Employer appointment of DB**
  - Selection based on competitive pricing of rates
  - Selection based on Employer preference or list
- **FIDIC Contract process is recommended for appointments**
  - Practices favoring the Employer do not assist DB Member in gaining the trust and confidence of both parties

**NOTE:** one-person DBs require additional time and attention by parties. Cost will exceed 1/3 of 3 person DB cost as additional “face-to-face” time and more communication is required if trust and confidence in the DB is to be achieved.

# Site Visits and Meetings with Stakeholders

- **FIDIC Contracts timetable 70-140 days between visits**
  - Appendix Annex, DAAB Procedural Rules, Rule 3.3
- **One-person DB Members need more “face-to-face” time with stakeholders to develop trust and confidence**
  - Appendix Annex, DAAB Procedural Rules, Rule 3.4

Time between scheduled meetings is too long on complex infrastructure projects. Progress and development of issues needs to be reviewed monthly. For a one-person DB, meetings with the parties need to be monthly, even if conducted remotely.

Parties need regular encouragement to seek informal assistance from DB.

# Obligations of the one-person DB Member

- One-person DB is obliged to comply with GC of DAA Agreement, Clause 5.
- Primary role is to provide informal assistance to stakeholders to avoid disputes. Early joint discussion with DB of potential and real issues is the catalyst for dispute avoidance. Later intervention may be too late.
- The DAAB Procedural Rules, Rule 5, gives extensive powers to the DB to facilitate discussion and offer advisory opinions after the parties seek informal assistance. Encourage parties to seek help.

# Lessons learned: for future one-person DBs

- Be more assertive and remind parties what you are there for. Offer assistance frequently when potential issues arise. Do not accept excuses by parties to delay action on resolution.
- Attempt to increase engagement with parties by written communications, regular provision of documents, asking questions and requesting additional details of potential issues as soon as these are identified. Suggest additional 'catch-up' meetings between scheduled site visits where necessary.
- Failure of dispute avoidance leads to the formal decision processes and/or arbitration and exponential increases in cost for the parties.