

ORDINARY MEETING**31 JULY 2015****5.4**

COMPENSATION CLAIM - MATERIAL CHANGE OF USE FOR A HOUSE - 1996 SUPERSEDED PLANNING SCHEME & 2006 DOUGLAS SHIRE PLANNING SCHEME- L234 WHITE BEECH ROAD COW BAY

Jenny Elphinstone, Senior Planning Officer: SUP 2642/2008: 459876

<u>PROPOSAL:</u>	COMPENSATION CLAIM - MATERIAL CHANGE OF USE FOR A HOUSE (SUPERSEDED PLANNING SCHEME)
<u>APPLICANT:</u>	B W VOSS PO BOX 378 GARbutt QLD 4814
<u>LOCATION OF SITE:</u>	L234 WHITE BEECH ROAD, COW BAY
<u>PROPERTY:</u>	LOT 234 ON RP740658
<u>PLANNING SCHEME:</u>	2006 DOUGLAS SHIRE PLANNING SCHEME
<u>LOCALITY:</u>	SETTLEMENT AREAS NORTH OF THE DAINTREE RIVER
<u>PLANNING AREA:</u>	CONSERVATION
<u>DAINTREE PRECINCT:</u>	RAINFOREST CONSERVATION
<u>SUPERSEDED PLANNING SCHEME:</u>	1996 DOUGLAS SHIRE PLANING SCHEME
<u>ZONING:</u>	RESIDENTIAL - RURAL
<u>STRATEGIC PLAN:</u>	AREA OF HIGH BIOLOGICAL AND / OR SCENIC VALUE
<u>DCP:</u>	3- DAINTREE- BLOOMFIELD PRECINCT A
<u>REFERRAL AGENCIES:</u>	EPA (ADVICE AGENCY FOR THE ORIGINAL APPLICATION – NO LONGER APPLICABLE)
<u>NUMBER OF SUBMITTERS:</u>	1 (TO ORIGINAL APPLICATION)
<u>STATUTORY ASSESSMENT DEADLINE:</u>	EXPIRED
<u>APPLICATION DATE:</u>	22 JULY 2008
<u>APPENDIX:</u>	1. DECISION NOTICE - REFUSAL 2. VALUER'S REPORT

LOCALITY PLANRECOMMENDATION:

- A. That in consideration of the claim of compensation lodged under Section 704 of the *Sustainable Planning Act 2009* (SPA) by Mr Barry Voss being the owner of Lot 234 White Beech Road, Cow Bay, more particularly described as Lot 234 on RP 740658, at the time the 2006 Douglas Shire Planning Scheme came into effect and continuing to be the owner of the property, Council decide the claim under section 701 as follows:
- i. Council approves part of the claim being a compensation of \$85,000.00 to be paid to Mr Barry Voss; and
 - ii. Council refuses that part of the claim being the amount greater than \$85,000.00; and
- B. That Council instructs the Chief Executive Officer to advise Mr Voss in writing of the above decision and of his appeal rights in respect to the *Sustainable Planning Act 2009*;
- C. Council advise Mr Voss that the timing of the payment of compensation is as per section 712 and that such payment will be recorded on the land title as per the *Sustainable Planning Act 2009*;
- D. Council advises the Department of Environment and Heritage Protection of the actions above; and
- E. Council advises Mr Voss, the applicant that a decision has previously been made to refuse the material change of use for a House on the land.

EXECUTIVE SUMMARY:

The land was affected by the introduction of the 2006 Douglas Shire Planning Scheme whereby the use of a House was no longer supported by the Planning Scheme. A request was lodged for assessment under the superseded (1996) Planning Scheme for a material change of use for a House. This request was refused and the application was assessed against the current Scheme. The Application was refused.

At the time Council gained an expert valuation from Herron Todd White that identified a compensation amount of \$85,000 to be appropriate. The Applicant was notified of an offer of compensation of \$85,000 for the loss of development rights. The Applicant refuted this valuation and did not accept the offer. The Applicant, Mr Voss, is seeking compensation of between \$1.5 and \$2.0 million and this is significantly in excess of the expert opinion of the valuation provided by Herron Todd White. It was agreed that a claim for compensation was lodged by the Applicant within the required period. However no further actions were undertaken by Council at this time. The determination of the claim remains outstanding.

Discussions with the Department of Heritage and Environment have identified that the agreement for compensation payments between the State and the former Douglas Shire Council remain relevant.

The report recommends that the claim be approved in part, being to the order of \$85,000 and refused in part, being that amount in excess of \$85,000.

Mr Voss has continued to seek to develop a House on the land. Mr Voss did not lodge an appeal against the refusal. This application was refused and this matter is considered closed. The recommendation includes advice to Mr Voss of this situation.

TOWN PLANNING CONSIDERATIONS:

Background

A significant intent of the 2006 Douglas Shire Planning Scheme was to limit further development on land north of the Daintree River, in particular land north of the Mt Alexandra Range. To achieve this intent introduction of the 2006 Douglas Shire Planning Scheme was accompanied by a Temporary Local Planning Instrument (TLPI) that prohibited the development of a House on the land. At the time the former Douglas Shire Council entered into a Memorandum of Understanding with the State Government for provisions to meet compensation claims and buy-back of land in this area.

Once the new scheme came into effect there was opportunity under the then *Integrated Planning Act 1997* for a property owner to seek a Development Approval under the Superseded Planning Scheme. Where Council resolved to require such application to be assessed under the newly introduced scheme and refused the application there was opportunity for a compensation claim to be made by the property owner.

On approving the Planning Scheme the former Council wrote to property owners advising, *"If the Council decides to assess your development application under the new planning scheme, instead of the superseded planning scheme, and refuses your development application, you may apply for compensation within 6 months of receiving the Council's decision. Alternatively you may wish to sell your property to the State Government and can do so under their Daintree Buyback program."*

A request was lodged by Mr Barry Voss, the land owner on 22 August 2008, for an application for a Material Change of Use to develop a House on the land under the superseded (1996) Douglas Shire Planning Scheme.

Under the superseded Planning Scheme the use was a Column 3B land use, meaning that the application could not be refused and conditions would only be applied where the application as considered within the statutory decision making period. Under the 2006 Planning Scheme the use was an impact assessable (inconsistent) use that was not supported by the Scheme.

In the submission accompanying the application the Applicant advised, “*circa 1988-9 a habitable clearing had been established (see Items 4&5) & a caravan was moved there so I could spend long week-ends. ... The caravan was burnt to the ground in the last 18-24 months by a fire which looks to have started elsewhere but I still have photos of the remains (see Items 10&12 Photos). The reason I say this is to furnish proof that from the start I've intended to live on the property & hence consider that I have a right to build a home to retire in there.*” The Applicant stated that the land was lawfully cleared, prior to the requirement for a Permit to Damage Protected Vegetation under Amendment 1 of 2005 of Local Law No. 56 Vegetation Management. Council officers who inspected the land in 2008 did not find that the land had remained cleared. It was also identified that the original track and caravan site had occupied the adjacent road, rather than the land.

At the Ordinary Meeting held on 25 September 2008 Cairns Regional Council resolved to,

“... refuse the request to assess the application for a House on land described at L234 White Beech Road Cow Bay, and described as Lot 234 on RP40658 under the superseded Douglas Shire Planning Scheme (1996) and issue an Acknowledgement Notice pursuant to Section 3.2.5 (3b) of the Integrated Planning Act requiring the application to be assessed under the Douglas Shire Planning Scheme (2006).”

An Acknowledgement Notice was issued requiring the application to be lodged under the current Scheme. An application was then lodged under the current Planning Scheme. The Douglas Iconic Places Panel advised Council that the Panel would determine the application. An independent valuation was obtained from Herron Todd White, Valuers, and a copy of this is included in Appendix 2.

At the Planning and Environment Committee Meeting held on 11 February 2009 the Cairns Regional Council resolved as follows:

- “
- A. *That Council recommends to the Douglas Iconic Places Panel that the application for a House on land described as Lot 234 on RP740658, located at Lot 234 White Beech Road, Cow Bay be refused on the following grounds.*
 - i. *The erection of a House on the subject allotment is not compliant with the relevant Performance Criteria and Acceptable Solutions for the Settlement Areas North of the Daintree River Locality Code for development in the Rainforest Conservation Precinct within the Eastern Management Area;*
 - ii. *The erection of a House on the subject allotment is inconsistent with both the intent and the Performance Criteria of the Conservation Planning Area.*
 - B. *Subject to a decision by the Douglas Iconic Places Panel to refuse the application, that Council:*
 - i. *make an offer of compensation to the Applicant in accordance with the findings of the report prepared by Herron Todd White Valuers.*
 - ii. *advise the Environmental Protection Agency to remit appropriate compensation to the Applicant in accordance with the agreement between Douglas Shire Council and the Environmental Protection Agency.*

- iii. *Update the Conservation Precinct Register to record that the landowner's development status is changed to "compensated".*

After this decision Mr Voss wrote to Council expressing concern with the recommendation and suggesting that a compensation of some \$2 million to be appropriate. *Council officers advised Mr Voss that the Panel, not Council would determine the application.* On the 6 March 2009 the Douglas Iconic Places Panel refused the application. Council then corresponded with Mr Voss advising of actions necessary to receive the nominated compensation package of \$85,000 and that these actions needed to be initiated within 6 months of the date the application as refused. Council had erroneously stated in the correspondence that Mr Voss had agreed to the amount of \$85,000. Mr Voss then wrote to Council advising of this error and clarifying that he maintained an opinion that the land was worth significantly more. The error was clarified and Mr Voss was advised that he needed to lodge a claim for compensation within 6 months.

In August 2010 Mr Voss wrote to Council seeking an update as to the progress of his compensation claim. Council advised Mr Voss that its records did not reflect that the claim had ever been lodged. There was dispute between Mr Voss and Council to the lodging of the compensation claim, in particular the date on which the claim was lodged. Mr Voss asserted that Council must have misplaced the claim. On the 3 July 2012, with the assistance of Townsville Community Legal Service, Mr Voss provided a sworn affidavit that the claim had been lodged within the required 6 months period. Cairns Regional Council, in consultation with the Department of Environment and Resource Management (DERM) agreed that the claim had been satisfactorily lodged.

Council then wrote to the Townsville Community Legal Service in late 2012 seeking substantiating evidence to justify the amount Mr Voss was seeking. In March 2014 Mr Voss made enquires as to the progress of his claim. No further action occurred to this matter at this time.

Enquires were made by Mr Voss through the Mayor in March of this year seeking that he be allowed to construct a house on the land and if not then sought a compensation in the order of \$1.5 million.

A review of the file was undertaken by Council officers. It was identified that despite numerous occasions of Mr Voss refuting the Council's offer of \$85,000 the matter was not reported to Council for a determination under the *Sustainable Planning Act 2009*.

Section 710 SPA states,

- "(1) In deciding a claim for compensation under this part, the local government must—*
- (a) grant all of the claim; or*
 - (b) grant part of the claim and reject the rest of the claim; or*
 - (c) refuse all of the claim.*

Section 709 SPA requires Council was required to determine the claim within 60 days of the claim being lodged. After which SPA requires,

- "the chief executive officer of the local government must, within 10 business days after the day the claim is decided—*
- (a) give the claimant written notice of the decision; and*
 - (b) if the decision is to pay compensation—notify the amount of the compensation to be paid; and*
 - (c) advise the claimant that the decision, including any amount of compensation payable, may be appealed."*

Section 712 states that if compensation is payable then it must be paid, “*within 30 business days after the last day an appeal could be made against the local government’s decision about the payment of compensation, or if an appeal is made, within 30 business days after the day the appeal is decided or withdrawn.*” Once paid the compensation is then recorded on the land title.

Proposal

The purpose of this report is to determine the claim for compensation by Mr Voss which has ranged over time from \$1.5 to \$2 Million. Mr Voss has also sought that he be allowed to construct a House on the land. The details of Mr Voss’s claim are contained in Appendix 3.

Officer Comment

The application for a House was refused by the State, being the Douglas Iconic Places Panel, and no appeal was lodged within the statutory period against this refusal. The consideration of developing a House on the land is closed.

Advice was sought from the Department of Environment and Heritage Protection to the status of the agreement between the former Douglas Shire Council and the State regarding compensation payments for properties north of the Daintree River. The Department has advised in writing confirming the following:

- a. In the circumstances of Mr Voss the agreement remains applicable;
- b. An amount of \$85,000 remains available to meet the expert valuation; and
- c. All costs associated with any subsequent appeal will be met by the State (Department of Environment and Heritage Protection).

No expert valuation has been provided by Mr Voss to justify a claim of more than \$85,000. In these circumstances it is recommended that the claim be approved in part, to the order of \$85,000 and refused in part, being the amount over \$85,000, which has been referred to by Mr Voss as being of the order of \$1.5 to \$2 million.

Should Mr Voss remain unsatisfied with the Notice of Decision then he has the ability to pursue an appeal against the amount of compensation in the Planning and Environment Court.

COUNCIL’S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council’s involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

APPENDIX 1: REFUSAL



Douglas Iconic Panel

Our ref: Meeting 16 2-1; 2-2; 2-3
Your ref: Douglas Iconic Panel

6 March 2009

Chief Executive Officer
Cairns Regional Council
PO Box 359
Cairns QLD 4870



Attention: Simon Clarke

**RE: Decision As Assessment Manager
Douglas Development Assessment Panel**

At it's meeting of 6 March 2009, the Douglas Development Assessment Panel acting as the Assessment Manager decided the following development applications:

Council & Panel Ref. No.	Name of Applicant	Type of Application	Address of Premises
Meeting 16 2-1 8/8/1014	Wujal Wujal Aboriginal Council Wujal Wujal Community COOKTOWN QLD 4895	Material Change Of Use – Tourist Attraction (Wujal Wujal Arts Centre)	Lot 9 RP903516, Bloomfield Degarra
Meeting 16 2-2 8/35/62	Mr B W Voss C/- Planning Far North PO Box 7801 CAIRNS QLD 4870	Application for a Material Change of Use (Impact) – House (Rainforest Conservation Precinct)	Lot 234 RP740658 White Beech Road Cow Bay
Meeting 16 2-3 8/35/65	Mr R W Houston C/- Planning Far North PO Box 7801 CAIRNS QLD 4870	Material Change of Use (Impact) – House (Rainforest Conservation Precinct)	Lot 259 RP738997 Silver Ash Road Cow Bay

A copy of each decision notice issued, is attached, in accordance with the requirements under the *Iconic Queensland Places Act 2008* (IQPA).

Douglas Iconic Panel
PO Box 5666
Townsville Qld 4810
Telephone +61 7 4760-7527
Facsimile +61 7 4760-7535
Website www.dip.qld.gov.au
Email douglas.panel@dip.qld.gov.au



**Decision Notice
REFUSAL**

Integrated Planning Act S 3.5.15

Douglas Iconic Panel

**Application for a Material Change of Use (Impact)
House (Rainforest Conservation Precinct)
Lot 234 RP740658 White Beech Road Cow Bay**

1. Referral agencies

Referral agency	Address
Environmental Protection Agency	PO Box 2066 Cairns QLD 4870

2. Direction to refuse

The assessment manager was not directed to refuse the application by a concurrence agency.

3. Reasons for the refusal

The reasons for refusal are:

- i. The erection of a House on the subject allotment is not compliant with the relevant Performance Criteria and Acceptable Solutions for the Settlement Areas North of the Daintree River Locality Code for development in the Rainforest Conservation Precinct within the Eastern Management Area.
- ii. The erection of a House on the subject allotment is inconsistent with both the intent and the Performance Criteria of the Conservation Planning Area.

4. Submissions -

There were no properly made submissions about the application.

5. Appeal rights -

Attached is an extract from the *Integrated Planning Act 1997* which details your appeal rights and the appeal rights of any submitters regarding this decision.

Douglas Iconic Panel
PO Box 5666
Townsville Qld 4810
Telephone +61 7 4760-7527
Facsimile +61 7 4760-7535
Website www.dip.qld.gov.au
Email douglas.panel@dip.qld.gov.au

APPENDIX 2: HERRON TODD WHITE VALUATION

I N D E P E N D E N T P R O P E R T Y A D V I S O R S

Reply To: HTW Valuers (Cairns) Pty Ltd
Our Ref: CNS80450
MH:



Cairns
Herron Todd White (Cairns) Pty Ltd
ABN 43 581 062 790
Level 1 258 Mulgrave Road
PO Box 6843
CAIRNS QLD 4870
Telephone: 07 4057 0200
Facsimile: 07 4051 3946
email: admin.cairns@htw.com.au

VALUATION REPORT

PROPERTY ADDRESS

Lot 234 White Beech Road,

Cow Bay, QLD 4873

Date of Valuation	3rd September 2006 and the 4 th September 2006
Date of Inspection	18 September 2008
Prepared For	Queensland Parks and Wildlife Service.
Purpose of Valuation	<p>Market Value of the land as a "Rural Residential" zoned site on the 3rd September 2006 and the market value of the land as a "Rainforest Conservation Precinct" zoned site on the 4th September 2006.</p> <p>As instructed by the 20/20 Group Australia Pty Ltd, on behalf of Queensland Parks and Wildlife Service, (EPA), for purposes of "compensation", to the land holder.</p> <p>The instructions are in keeping with the Integrated Planning Act 1997 which instructs under this heading, (Compensation), " For compensation payable because of a change, reasonable compensation is the difference between the market values" , (in Part 4 section 5.4.9) that the; "difference between the market values, is the difference between the market value of the interest in land immediately before the change came into effect, disregarding any temporary local planning instrument, and the market value of the interest immediately after the change came into effect."</p> <p>If it is intended that any mortgagee rely upon this valuation for mortgage security purposes, they must seek an express written authorisation from Herron Todd White. We will not accept any responsibility or liability for reliance upon this valuation without such an authorisation.</p>
Definition of Market Value	The estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.
Applicant	Barry Voss
Real Property Description	<p>Lot 234 RP 740658 :Parish ALEXANDRA</p> <p>No title search of the property has been undertaken or sighted. Reliance should not be placed on the valuation report unless or until a title search is undertaken. In the event that the title search reveals any information or discrepancy which may affect of the property, the valuer's opinion should be obtained before reliance is placed on the valuation.</p> <p>Should any encumbrance not noted within this report be discovered, the valuer should be consulted to reassess any effect on the value stated in this report.</p> <p>A Local Authority search has not been carried out and it is assumed the property is free of requisitions.</p>
Land Area	<p>1.17 hectares</p> <p>Approximate site dimensions: Irregular shape</p>
Registered Proprietor	Barry Voss
Local Authority	Douglas Shire Council at the time.

*Address Lot 234 White Beech RD Cow Bay *

*Job No 80450 *

* Date of valuation 3rd September 2006 and 4th September 2006*

Herron
Todd White

Town Planning	<p>The property lies within the Rainforest Conservation Precinct zone under the current Douglas Shire Planning Scheme as from the 4th September 2006. Previously under a rural residential zoning.</p> <p>Under the new scheme in this precinct, essentially, no new development occurs in the Rainforest Conservation Precinct on vacant land except that ; land which has previously been cleared and currently remains cleared; or land which is subject of a current clearing permit but has yet to be cleared; or land which is the subject of a current operational works permit.</p> <p>Accordingly, the difference between the two schemes is the loss of development rights for rural residential purposes.</p>				
Services	Gravel formed road. Phone. No water, power or sewer services.				
Amenities	<table border="0"> <tr> <td style="padding-right: 10px;">Urban Facilities</td> <td>Mossman some 40 kilometres south.</td> </tr> <tr> <td>Local facilities</td> <td>Alexandra primary school at Cow Bay. Fuel station and general store at Diwan. Hotel and tourist facilities at Cow Bay</td> </tr> </table>	Urban Facilities	Mossman some 40 kilometres south.	Local facilities	Alexandra primary school at Cow Bay. Fuel station and general store at Diwan. Hotel and tourist facilities at Cow Bay
Urban Facilities	Mossman some 40 kilometres south.				
Local facilities	Alexandra primary school at Cow Bay. Fuel station and general store at Diwan. Hotel and tourist facilities at Cow Bay				
Unimproved Capital Value	The unimproved capital value for rating purposes as at 30/6/2005 was \$15,800.				
Location	Cow Bay is a relatively isolated rural residential precinct north of the Daintree River. It is situated approximately 40 km north of Mossman, which is the nearest town. The area is serviced by a small Service Station / General store and Alexandra Bay Primary School, which is located to the east.				
Neighbourhood	Located in a rain forest area with mixed quality properties and vacant rain forest properties surrounding. There are improved properties dispersed throughout the area. There is a hotel and motel in nearby Cape Tribulation Road. The Cape Tribulation Road is the main road through Cow Bay and Diwan and is a fairly busy access route to the north towards Cape Tribulation.				
Site Description	<p>An irregular shaped, steeply sloped inside lot, being a difficult building site (under the previous zoning) positioned below road level and sloping down to the rear. The lot is forest covered faces north but would have southerly views from the elevated position. A small clearing had been cut just below the road but now has regrowth and has not been maintained. Possible views could be sought but substantial forest clearing below the site would be required. White Beech Road is a formed gravel surfaced country road with gravel verges.</p> <table border="0"> <tr> <td style="padding-right: 10px;">Access:</td> <td>Moderate to difficult</td> </tr> <tr> <td>Views:</td> <td>Reasonable of surrounding properties.</td> </tr> </table>	Access:	Moderate to difficult	Views:	Reasonable of surrounding properties.
Access:	Moderate to difficult				
Views:	Reasonable of surrounding properties.				
Improvements	None, the property is without structural improvements.				
Environmental Statement	<p>To the best of the valuer's knowledge, the land is not affected by unstable, hazardous or toxic soil material, however, no searches have been undertaken in this regard. If you have any concerns, we recommend that you appoint a contamination consultant to confirm the state of the land inspected.</p> <p>The right is reserved to review and, if necessary, vary the valuation figure if any contamination or other environmental hazard is found to exist.</p>				
Restrictions/Limitations	<p>To the best of the valuer's knowledge the subject property is not affected by Heritage, landslip or resumption matters, however, no searches have been undertaken in this regard. However, under the new Conservation zoning the property cannot be built upon. The valuation in this instance is, as if the property has the right to be developed prior to the 3rd of September 2006 and loses that right following the 4th of September 2006.</p> <p>We have not undertaken a formal search to confirm whether or not the property is subject to flooding or other impediments caused by excess water saturation and/or flood. As the property appears to be located in an area which could be affected by flooding or other water related issues, it is recommended that a flood (or other) search be undertaken with the appropriate authority to establish if the property is affected in any way, prior to any reliance being placed upon this valuation.</p>				
Valuation Rationale	The Direct Comparison Approach is considered the most appropriate method of valuation. In this approach the property to be valued is directly compared to sales of similar property to establish a market value. The sales adopted include private sales in Cow bay and in the adjoining precincts of Forest Creek and Kimberley where relevant.				

*Address Lot 234 White Beech RD Cow Bay *

*Job No 80450 *

* Date of valuation 3rd September 2006 and 4th September 2006*

**Herron
Todd White**

Sales Evidence

Recent sales in the area include:

Address	Sale Date	Sale Price
Lot 215 White Beech RD Cow Bay	6/6/2006	\$215,000
Brief Comments: This is an elevated cleared site with very good views and had a Development Application and Building approval. The home site was cleared, 1.08 ha		
In Comparison to Subject: Nearby site but significantly superior with the raised cleared knoll to allow for excellent views of the valley and coast. Premium for the DA and BA. Some indication that the purchaser from interstate and not fully aware of the market.		
Lot 273 Kauri RD Cow Bay	13/5/2005	\$95,000
Brief Comments: This is a rainforest covered site moderately sloping and located in the proposed Rainforest Conservation precinct at the time of purchase. The road is gravel formed. The site is located in close proximity to Cow Bay Beach and has views into valley due to its elevated position. The site is not serviced. Land area of 1.05 hectares.		
In Comparison to Subject: This is an older sale but it recognises that very few sales of elevated land in the area had taken place during this time. It is considered to be better located to the beach and easier to build upon.		
Lot 210 White Beech RD Cow Bay	22/6/2006	\$50,000
Brief Comments: This is a private sale that is rainforest covered and in a corner position. The property has a Development Application that can be exercised for another 18 months before expiry. It is slightly sloped from front to rear.		
In Comparison to Subject: This property is in the Rainforest Residential Precinct and can therefore be built upon with approvals. Below subject site, better to build upon but considered inferior without the elevation.		

Last Sale of Subject

We note that the last recorded sale of the subject property was in 26/3/1985 for \$25,500.

General Comments

The market values have increased in the interim years with some slowing during the Temporary Local Planning Instrument (TLPI) period, being from June 2004 to September 2006. Most of the sales in this period in Cow Bay and the adjoining Diwan were with the Queensland governments, Parks and Wildlife Department, the Australian Rainforest Foundation and a few private purchases.

The basis of this report is to recognise normal market activity during this period, which is difficult, due to the impact of the TLPI and the duration of this period. The sales in the nearby out lying precincts which were not under the TLPI with similar features had generally low sales activity and fluctuating values. However, it is recognised that the market increased in value through this period.

The sales in this instance indicate a land value of between \$50,000 and \$215,000. I have adopted \$95,000 for the subject property as at the 3rd September 2006. It is known also that a sale of lot 235 White Beech Road adjoining the subject site took place in January 2007 for \$90,000. Comparable property on eastern boundary. While it is after the fact it does support the mid range consideration of value adopted.

There has been no market established prior to this date of conservation zoned land.

Based on the change in land use, (from rural residential to conservation), a blot on title or covenant on its use, needs to be taken into account for the difference in value.

This was evidenced in North Arm Cove, north of Nelson Bay in New South Wales. A planning "glitch" has seen small residential sized allotments zoned rural. Consequentially, buyers have purchased this land based upon the prospect that planning in future years may change and a windfall for themselves or future generations could be anticipated. Based upon this logic, the market has dictated sales at 10% of the value of nearby similar sized residential zoned properties in North Arm Cove.

The Australian Rainforest Foundation did offer conservation land to sponsor (following their own purchases in Cow Bay and Diwan), to the public at a dollar a metre. Most sites in the subject area are approximately 1 hectare in size. There has been minimal response to this offer, as I am aware. The offerings by the ARF indicate a significant reduction in value following the purchase, through the organisations conservation intentions to reduce development following the purchase of the property.

*Address: Lot 234 White Beech RD Cow Bay *

*Job No 80450 *

* Date of valuation 3rd September 2006 and 4th September 2006*

Herron
Todd White

General Comments (cont)	<p>It is also evident from previous cases that Vegetation Protection Orders (VPO's) have impacted upon values where ordered.</p> <p>The Land Court Decisions of 23 December 1999 (<i>Bressow</i>) and 28 May 2003 (<i>Morris</i>) found that the utility and the values of prestige residential properties in the Ascot locality of Brisbane, were affected by a VPO. The rationale is that the control of the parcel affected by the VPO was vested to the Council, rather than the owner, and in effect creates an encumbrance or blot on title. In these cases the VPO was a small area within the whole but a value (often nominal) was attributed nonetheless.</p> <p>In this case it was found that the VPO (blot on title) was awarded a nominal value that amounted to 7% of the total value of the property.</p> <p>Based upon, the above advice and little to no further evidence of conservation zoned sales, a nominal value of 10% of the market value, (as at 3rd September 2006) has been adopted for the 4th September 2006.</p> <p>In this a case a nominal value of \$9,500 is calculated rounded to \$10,000.</p> <p>The difference in values before and after the relevant dates is the compensation amount with title of the land remaining with compensated owner.</p>
Marketability	<p>Poor going forward as Rainforest Conservation zoned land.</p> <p>Generally slow under the previous rural residential zoning in a normal market. Would anticipate firming of values in those new Residential Precinct areas with low supply of land available.</p>
Level of Market Activity	<p>Conservation land has not been traded since the new planning scheme was activated.</p>
Recent Market Direction	<p>Rising values for Rainforest Residential Precinct or conservation land with Development Applications or approved clearings, as it is finding a new position after the re-zoning and the new conservation zoned land has shortened supply. Sales in the buy back project and elsewhere support the current conclusions.</p>

*Address: Lot 234 White Beech RD Cow Bay *

*Job No 80450 *

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VALUATION

Based on the Direct Comparison Approach, we have assessed the local market value of the subject property as at the 3rd September 2006 as **Ninety Five Thousand Dollars**:

Based on the Direct Comparison Approach, we have assessed the local market value of the subject property as at the 4th September 2006 as **Ten Thousand Dollars**:

Based on the "difference" between the market values the compensation is considered to be **Eighty Five Thousand Dollars**.

Land value as 3 rd September 2006	\$95,000
Land value as 4 th September 2006	\$10,000
Difference between the market values	\$85,000

Our valuation is on the basis the property is input taxed and free of GST. We are not privy to the financial circumstances of the current owners(s) nor previous transactions upon the property which may impact upon the status of the property in relation to GST. Should the property not qualify as GST free, our assessment is inclusive of GST.



Mark Hiatt AAPI/2508
CERTIFIED PRACTISING VALUER

Certification and Qualifications:

This valuation is current as at the date of valuation only. The value assessed therein may change significantly and unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 3 months from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.

No title search of the property has been undertaken or sighted. Reliance should not be placed on the valuation report unless or until a title search is undertaken. In the event that the title search reveals any information or discrepancy which may affect the value of the property the valuers opinion should be obtained before reliance is placed on the valuation.

This valuation report is for the use of and may be relied upon only by the party to whom it is addressed. No other party is entitled to use or rely upon it and the valuer shall have no liability to any party who does so.

*Address: Lot 234 White Beech RD Cow Bay *

*Job No 80450 *

* Date of valuation 3rd September 2006 and 4th September 2006 *

**Herron
Todd White**

Locality

