LAND COURT OF QUEENSLAND

CITATION:	*Heavey Lex v Department of Transport* [2002] QLC 102
PARTIES:	**Heavey Lex No 64 Pty Ltd** (applicant) v **Chief Executive, Department of Transport** (respondent)
FILE NO:	A1997/0043
DIVISION:	Land Court of Queensland
PROCEEDING:	Remittal
ORIGINATING COURT:	Court of Appeal and Land Appeal Court
DELIVERED ON:	6 August 2002
DELIVERED AT:	Brisbane
HEARD AT:	Brisbane
MEMBER:	Mr RP Scott
ORDER:	**I order that the respondent pay the applicant, Heavey Lex No 64 Pty Ltd compensation in the amount of $2,837,087 comprising loss of land and palms in the amount of $2,675,430 and disturbance in the amount of $161,657.**
CATCHWORDS:	Resumption – determination of compensation – disturbance – professional costs of various experts – costs must relate to lodgement of claim – not allowed, as disturbance, if more related to later court proceedings. [21, 26, 48, 57] Practice and Procedure – remittal to Land Court – requirement to provide reasons for decision – but no obligation to come to same monetary determination when reasons provided. [10] Valuation – methods of valuation – bottom-up/top-down – considerations in which alternative to use – top-down applied. [68, 84, 85, 86] Valuation – methods of valuation – before and after method – potential for higher use of balance land even

	with injurious affection – method of assessing such value. [61, 62, 64, 67] Valuation – sales and basic evidence – acceptable sales – use of offers – when permissible to use, limits on use. [87, 88]
COUNSEL:	Mr D Gore QC, for the applicantMr R Needham with him Mr R Jones for the respondent
SOLICITORS:	Connor O'Meara for the applicantCrown Solicitor, Crown Law for the respondent

[1] In reasons published on 22 December 1999 (my initial reasons) I determined compensation consequent upon a resumption of land from the applicant Heavey Lex No 64 Pty Ltd (Heavey Lex) pursuant to the *Acquisition of Land Act 1967* (*AOL*) and the *Transport Planning and Coordination Act 1994*. I awarded compensation for loss of land, disturbance, severance and injurious affection as well as the loss in value of palms growing on the land. In those reasons I also determined disturbance compensation in favour of Salvatore Paino, a lessee of the land and the principal of Heavey Lex. Both Heavey Lex and Mr Paino had made claims for compensation under the AOL. Together, I refer to them as "claimants". Whilst I will recite some of the facts essential to these reasons, I will not repeat relevant facts recorded in my initial reasons nor details of my reasoning. I adopt my initial reasons and vary them only to the extent that they are modified or supplemented by my present reasons. A detailed understanding of these reasons can only be had, therefore, if they are read together with my initial reasons.

[2] The resumption which was effected on 22 March 1996 involved the taking of 5.973 ha from a parcel of 37.43 ha. The resumed land comprised a corridor of land taken diagonally from the applicant's land which had been roughly square in shape. The balance land was therefore reduced to two separate portions: the one to the west of the resumed land being identified as Parcel A in my initial reasons, whilst to the east the land was designated as Parcels B and C, though the parties were not at one regarding the extent of Parcels B and C whose dimensions were dependent on considerations of highest and best use rather than on the cadastre.

[3] Both parties assessed the reduction in value of the Heavey Lex land by use of the before and after method of valuation. That method, which involves a valuation of the parent land before resumption then the balance land after, has the advantage of producing a figure which includes compensation for the loss of land, severance (s.20(1)(a) *AOL*) and injurious affection (s.20(1)(b) *AOL*) (See, for example, *Brisbane City Council v. Lansbury* (1977) 4 QLCR 502).

[4] The before resumption values were based on a consideration of the parent land as three parcels (numbered 1, 2 and 3) together with some palms that grew on the land. I concluded that the before value was:

Parcel 1		$2,205,000
Parcel 2		$3,053,875
Parcel 3		$875,000
Palms		$ 90,000
	Total	$6,223,875
	Rounded up to	$6,225,000

[5] And that the after value was:

Parcel A		$603,990
Parcel B		$1,841,800
Parcel C		$383,600
Palms		$60,000
	Total	$2,889,390
	Rounded up to	$2,890,000

Compensation for loss of land and palms was therefore assessed at $3,335,000 based on the following calculation:

Before value		$6,225,000
Less after value		$2,890,000
	Difference	$3,335,000

[6] Under the headings "Disturbance" and "Severance" separate claims were made:

Heavey Lex	$3,090,822.60
Salvatore Paino	$2,035,112.27

[7] I determined disturbance compensation payable to Heavey Lex in the amount of $160,362.65 and that payable to Mr Paino at $8,821.39.

[8] The respondent appealed to the Land Appeal Court against my determination of the value of Parcel A. That appeal was allowed and a subsequent appeal by the applicant to the Court of Appeal against that decision was dismissed. Both claimants appealed to the Land Appeal Court against my determinations of disturbance compensation and on a number of other grounds. The Heavey Lex appeal with respect to disturbance was allowed in part only , whilst Mr Paino's appeal was not allowed. There was no further appeal to the Court of Appeal in these respects. The result is that the orders of the Land Appeal Court are those now relevant to this remittal. Those orders are:

(a) The cross-appeal of the respondent Chief Executive Department of Transport is allowed and the determinations of compensation at first instance in respect of loss of land and palms in favour of the appellant Heavey Lex No 64 Pty Ltd are set aside.

(b) The determination of disturbance compensation payable to the appellant Heavey Lex No 64 Pty Ltd is set aside to the extent stated in these reasons.

(c) The matter is remitted to the learned member for further consideration and determination in the light of these reasons.

[9] The reasons of the Land Appeal Court are those delivered on 22 February 2001. Now whilst order (a) is expressed in terms of setting aside my determination with respect to "land and palms", the reasons of the Land Appeal Court do not reveal any concern with respect to my determination of the loss in value of palms, the wording of the order merely reflecting the form of my original determination. I understand the reasons with respect to the matter of land value raise only the matter of the value of Parcel A for my further consideration.

[10] On 29 May 2002 I heard further submissions from the parties confined to the issue of the value of Parcel A, both parties being of the view that further submissions on the matter of disturbance would not be needed. I will deal with the issue of disturbance first. In so doing I will proceed on the basis that I am not bound to arrive at precisely the same figures that have been set aside. There are four items of disturbance in my original determination which were remitted to me for further consideration:

	ITEM	**PAYEE**	**CLAIM**	**DETERMINED BY ME**
A	Solicitors	Connor O'Meara McConaghy	$81,893.98	$30,000.00
C	Valuers	John Robertson	$54,084.50	$28,848.70
D	Accountants	Deloitte Touche Tohmatsu	$63,965.00	$25,000.00
E	Architects	McKerrell Lynch	$19,105.00	$8,000.00

[11] Before I deal with each of these items I should set out what I understand to be the nature of the concerns which prompted the Land Appeal Court to remit these matters to me. I direct myself to three matters:

- the test employed by me;
- the application of the test;
- the assessment of the award of disturbance.

[12] In paras [74] and [75] of the joint reasons of the Land Appeal Court the learned Members said:

> "[74] … In our view a claimant can recover for work of a nature and within the scope of that which a reasonable person in the position of the claimant would have done or caused to be done. The fees and charges for the work must also be reasonable.

> [75] In our view the tests ultimately formulated by the member, in their broad effect, were consistent with those just expressed."

[13] In para [78] the Court referred without criticisms to "extensive reasons in support of (my) conclusion that fees claimed were unreasonable in various respects". The learned Members of the Court went on to refer to some examples from my initial reasons in support of that conclusion.

[14] It is my understanding then that the Land Appeal Court does not require me to reconsider the test that ought to be applied, nor my conclusion that the disturbance items now under consideration were unreasonable. Rather, the Members of the Appeal Court were concerned that I did not provide sufficient explanation as to how I had settled upon the amounts that I awarded for each item now under consideration.

[15] In respect of Item A, Solicitor's fees, the Land Appeal Court said:

> "[81] The reasons explain why the member regarded the level of solicitor's fees as excessive but provide no explanation of how he reached the assessment of $30,000. In our view, the member erred in failing to explain how that figure was determined."

The Court then referred to various authorities in support of that conclusion, then at para [91] said:

> "[91] … an apportionment must be made between work and charges which are allowable on the one hand and ones which are not on the other."

As a qualification to that, the Land Appeal Court said at para [88]:

> "[88] We do not suggest that a tribunal, in the position of the member, must resolve its task by precise mathematical analysis. To a degree, members of the Land Court are appointed by virtue of their specialist skill or experience. That skill and experience may be used in the making of value judgments involving the process of estimation and impression. That, however, does not relieve Land Court members from the obligation of showing a basis of reasoning sufficient to indicate why one sum is selected in respect of a head of disturbance rather than another."

[16] I am, of course, guided by the authorities referred to by the Land Appeal Court and return to one of those authorities below.

[17] In its consideration of Item D, Accountants, the Land Appeal Court drew on its reasons with respect to its consideration of Item A and said:

> "[95] For the reasons given under the heading 'solicitors' fees', the member's reasons were inadequate in respect of the claim for Deloitte's fees."

Further at para [97] the Court said:

> "[97] It might be that on the material presented, the member was able to do no more than form a conclusion that a particular percentage of the work carried out by the accountants was referable to the preparation and formulation of the claim. But, if that were the case, the appropriate course was to identify such a percentage and the reasoning by which it had been set. The difficulty with the member's approach is that it gives little inkling of the process by which the figure of $25,000 was reached. "

[18] Similar conclusions were drawn by the Land Appeal Court with respect to Item C, Valuer's fees, at para [99] and with respect to Item E, Architect's fees at para [100].

[19] Guidance as to the task that I should now perform is provided by *Gamser v. The Nominal Defendant* (1997) 136 CLR 145 and in particular by the judgment of Stephen J at 149-150.

> "So long as compensation takes the form of a lump sum award, arrived at by an evaluation of evidence and by processes of reasoning, there must necessarily be involved some assessment of each item of detriment and some process of computation in order to arrive at the ultimate sum to be awarded. There will very often be detriments suffered or risks of detriment to which a party has been exposed which are incapable of precise quantification. In such cases estimates must suffice and the notion that some false impression of precise mathematical accuracy may be given can readily be dispelled by a few words of explanation. There is no occasion to abandon altogether the task of explaining the components of the award."

[20] I am guided also what was said by the Land Appeal Court particularly as quoted above and in para [96] which I now quote in part only.

> "[96] We do not intend to convey that it was necessary for the member to effect a precise apportionment of every item of work in the claims under consideration. Compensation may be assessed by reasonable estimation where precision cannot be expected. In the analogous field of damages, where a loss has been suffered, the Court must do its best to arrive at a figure for damages, even if there is a degree of speculation or even guesswork involved…."

[21] Each of the items of disturbance remitted to me for reconsideration was an item of professional fees claimed as being referable to the preparation of the claim for compensation. In my initial reasons I drew the following conclusion:

> " I think that the evidence points, quite clearly, to a high degree of over-preparation in the formulation of the claim for compensation. The work of the individual experts and the conduct of the claim formulation "project", together with specific evidence I have referred to above, point to the claimant having clearly in mind that he was preparing for trial and that the lodgment of the claim for compensation was simply a step in the overall process. What Mr Connor had to say in the quotation from the transcript that I have included above does not dissuade me from that conclusion.

> Whilst I will, as I must, consider each item of professional fees individually, I am influenced in my view that the professional work was excessive by the substantial amount claimed for professional fees."

[22] I also referred in my initial reasons to the submission of Senior Counsel for the claimants acknowledging that the standard of preparation by the consultants in this case was higher than would "commonly be experienced" and the submission that such an approach was reasonable, having regard to:

(a) the unusual complexity of the matter;

(b) the magnitude of the claims;

(c) the previous litigation between the same parties involving the same land in the Land Court, then in the Land Appeal Court;

(d) the strained relationship between Mr Paino and the respondent (referred to in my initial reasons);

(e) the respondent's desire to protect its own interest with limited regard to the position of the landowner.

[23] I concluded that I ought not to accept points (c), (d) and (e) as being matters which were appropriate to take into account in forming a view as to what constitutes a reasonable expenditure on professional fees. I then said, "A level of preparation undertaken because of a real or perceived view of the attitude of the resuming authority or because of the level of concern and anxiety of the claimant is not a reasonable standard in my view." I will now turn to consider the individual items of professional fees.

A. Solicitor's Fees

[24] The total amount claimed is $81,893.98. In my initial reasons I concluded that this amount should be reduced by:

> $1,020 with respect to investigations of the various route options for the bypass;
>
> $523.50 with respect to applications made under the *Freedom of Information Act 1992*.

[25] I maintain the view that these reductions should be made, and adopt my initial reasons with respect to these amounts. The effect of this is to reduce the claimed amount to $80,350.48. I also decided in my initial reasons that solicitor's fees for work done in the form of attendance at meetings with other consultants regarding the prospect of reversing the decision to take part of the claimants' land ought not be allowed. I maintain that view for the reasons initially published. I was not provided with an identifiable figure with regard to that work, but did observe in my initial reasons with respect to the disturbance claim for "directors' and employees' time" that "much of Mr Paino's time was concerned with matters other than the formulation of the claim and I refer, for example, to attempts to reverse the resumption decision." Solicitors for the claimant were involved in that

attempt. I proceed on the basis that that involvement was not insubstantial.

[26] I concluded that the claim for solicitor's fees is particularly amenable to the criticism of over-preparation as the firm was centrally involved in the claim preparation "project". In addition to the solicitor's actual involvement in the process, funds were expended on the mechanical processes of coordination, preparation of minutes of meetings, copying of transcripts, etc, and distribution of material. The level of discount that I make with respect to solicitor's fees is substantially influenced by my conclusion that solicitor's and other professional fees were greatly inflated by the fact that the claimants were not simply preparing to lodge a claim for compensation, but were proceeding on the basis that the claim would be contested in Court. Indeed, I found that the preparation and lodgment of the claim was simply a step in the process of preparing for a Court contest. I maintain that view. I formed the view that had the focus of the claimants and their solicitors been confined to the preparation of a claim only, less than half of the fees claimed would have been sufficient. I have settled on a figure of 40% of the figure of $80,350.48 ($32,140.19) and rounded this down to $30,000 to make further allowance for fees associated with the attempt to reverse the decision to take part of the applicant's land.

C. Valuer's Fees

[27] Fees with respect to professional work carried out by John Robertson, Valuer, were claimed in the amount of $54,084.50. The respondent challenged this level of fees on three particular bases:

- that the charge-out rate was too high;
- that Mr Robertson charged a full valuation fee for an incomplete valuation;
- on the basis that the work performed exceeded that which would be required to formulate a claim for compensation.

[28] Other criticisms of Mr Robertson's charges will become apparent in my reasons below.

[29] In my initial reasons I found that the charge-out rate was appropriate and that no discount of the valuation fees was warranted on the basis that Mr Robertson's valuations were not completed. I maintain those views for the reasons initially published. Nevertheless I have discounted the valuation fees claimed for other reasons given below.

[30] The total figure of $54,084.50 is made up of figures contained in three invoices or adjustments of those invoiced figures. The invoices bore the following dates respectively: 3 September 1996; 10 May 1997 and 18 March 1998.

[31] In the invoice dated 3 September 1996 the claimant was billed a total amount of $13,142.80 of which Mr Robertson estimated $1,970 was attributable to preparation of the claim for compensation. I see no need to adjust that figure and will allow that amount.

[32] The invoice of 10 May 1997 was with respect to these fees:

Item 1. Conferences:

- 12.7.96 Marriot (4 hours)
- 21.8.96 COM (2 hours)
- 28.8.96 COM (2 hours)
- 13.9.96 COM (2 hours)
- 19.12.96 JR (1.5 hours)
- 6.5.97 COM (2 hours)
- D Bobbermen (1.5 hours)
- Teleconference (0.5 hours)

(Total Hours: 15.5 @ $200 per hour) $3,100.00

Item 2. Analysis of Draft Reports, Final Reports & Addendums:

- Buckley Vann - Planning
- Bramley Tourism Analysts Pty Limited
- McKerrell Lynch - Architects
- D Bobbermen - financial Analysis
- DTT - M Corigliano - financial Analysis
- Kinhill - M McCracken

(12.5 hours @ $200 per hour) $2,500.00

Item 3. Four Days of Investigations, Conferences and Inspection of Property in Cairns on 8, 9, 10, 11 July 1996 (4 days @ $1,000 per day) $4,000.00

Item 4. Three Days of Investigations, Conferences and Inspection of Property with S Paino, B Lynch, R Bramley, C Buckley in Cairns on 20, 21, 22 August 1996 (3 days @ $1,000 per day) $3,000.00

Item 5. Telephone Conferences & Attendances:

- M Connor/T Griffin - 2.5 hours
- S Paino - 1.0 hours
- Buckley Vann - 1 hour
- Bevan Lynch - 0.5 hour
- Richard Bramley - 1.5 hours
- D Bobbermen - 1.5 hours
- M Corigliano - 1.0 hour
- P Cronin - 0.5 hours

(9 hours @ $200 per hour) $1,800.00

Item 6. Attendance & Advices Re: Selection of Experts to Undertake Financial Feasibility: Discussions & Profiles of D Bobbermen, G Smith, M Hackett, Ecotourism Mgt Aust, J Banks KPMG (3.5 hours @ $200 per hour) $700.00

Item 7. Attendance to Preparation of Model - Peter Sands (1 hour @ $200 per hour) $200.00

Item 8. Attendance to Instructions for HTW, Richard Ellis, Taylor Byrne:
(1 hour @ $200 per hour) $200.00

Item 9. Perusal of Minutes Prepared by COM: $200.00
(1 hour @ $200 per hour)

Item 10. Perusal & Analysis of DOT documents produced under FOI Application:
(1.5 hours @ $200 per hour) $300.00

Item 11. Analysis of Evidence produced in First Hearing relating to Resort Potential/Viability:
(2.5 hours @ $200 per hour) $500.00

Item 12: Attendance to Correspondence:

- DTT - SA (1.5 hours)
- COM - General Advices (1 hour)
- COM - Re DTT - Sydney (8 hours)

(10.5 hours @ $200 per hour) $2,100.00

Sub-total $18,600.00

Item 13. Disbursements:

• Airfares	$1,444.00	
• Accommodation/Meals	$672.10	
• Car Hire	$446.90	
• Petrol	$50.10	
• Photocopying	$32.40	
• Parking (Brisbane & Airport)	$130.00	
• Facsimile	$139.00	
• Travelling Time (20 hours @ $80.00 per hour - 8 hours GC-Bris & 12 hrs GC-Cairns	$1,600.00	$4,514.50
	Total	$23,114.50

[33] The invoice of 18 March 1998 was with respect to these fees:

Item 14. Conferences:

- 19.5.97 COM + Experts (5.0 hours)
- 3.10.97 Counsel, MC (2.0 hours
- 20.10.97 Counsel (2.0 hours)
- 29.10.97 R Warren (2.5 hours)
- 27.11.97 Counsel (2.0 hours)
- 27.11.97 S Paino (2.5 hours)
- 15.12.97 DTT (1.0 hours)
- 29.1.98 Counsel (2.0 hours)
- 4.2.98 COM, R Bramley (1.5 hours)
- 10.3.98 COM, S Paino (1.5 hours)

Total Hours (22 hours @ $200 per hour) $4,400.00

Item 15 Telephone Conferences & Attendances:

- M Connor - 2.5 hours
- S Paino - 1.0 hour
- R Bramley - 0.5 hours
- E Taylor - 0.5 hours
- R Warren - 1.0 hour

Total Hours (5.5 hours @ $200 per hour) $1,100.00

Item 16. Attendance on Correspondence: $600.00
(3.0 hours @ $200 per hour)

Item 17. Analysis of Expert Reports subsequent to 10 May 1997.

- HTW Report - Medium Density (2 hours)
- Bramley Reports - Old and New (7 hours)
- DTT - Dated 16.7.97 (2.0 hours)
- R Warren - Medium Density (2.5 hours)
- McKerrell Lynch (1.0 hours)
- C & B Consulting (1.5 hours)

Total Hours (16 hours @ $200 per hour) $3,200.00

Item 18. Valuation Fee (As per scale) Based on Before Value of $9,775,000

- Assessment of Value - Resort Land
- Assessment of Value - Medium density Land
- Assessment of Value - Proposed Commercial Land $20,869.00

Item 19. Valuation Fee (50% of Scale) for After Value of $2,900,000

- Assessment of Residential Value
- Assessment of Medium Density Value $3,953.00

Item 20. Analysis Undertaken as per Instructions by Mr Paino:

- Rationale Adopted to Arrive at $13,000 per room: (3.5 hours)
- Analysis of Mr Paino's Investigations: (2.0 hours)
- Response to Mr Paino's Investigations: (1.5 hours)

Total Hours (7.0 hours @ $200 per hour) $1,400.00

Sub-total $35,522.00

Item 21. Disbursements:

- Airfare - Cairns (29.7.97) $1,120.00
- Lands Dept - Maps & Sales $130.50
- Meals $64.00
- Accommodation $112.30
- Car Hire $72.40
- Petrol $10.00

▪ Parking (2 days - 29.7.97)	$18.00	
▪ Parking - Brisbane	$119.50	
▪ Travelling Time:		
▪ Cairns (5 hours @ $80.00 ph)		
▪ GC Bris (16.5 hours @ $80 ph)		
▪ Photocopying (R Warren)	$76.00	
▪ Facsimile Charges	$295.00	$3,737.70
		$39,259.70

[34] The invoice of 18 March 1998 totalled $39,259.70, however included work carried out after the lodgment of the claim for compensation. Fees/costs of such work are not properly the subject of a claim for disturbance compensation as it has been held that the relevant period during which a claim for such fees is appropriate is between the time of the issue of the Notice of Intention to Resume and the time of the lodgment of the claim in Court (*Merivale Motel Investments Pty Ltd v Brisbane Exposition and South Bank Redevelopment Authority* (1984-85) 10 QLCR 175 at 203-207). Mr Robertson estimated the pre-claim amount at "a value" of $29,000 and that was the basis of the claim with respect to this invoice, yet there was evidence that the whole of the invoice was settled between Mr Paino and Mr Robertson at $30,000. If I accept Mr Robertson's proportions, that part of the settled amount attributed to pre-claim work would have been $22,181. That figure is about 56.5% of the full invoiced sum and is a more consistent representation of what the claimant might properly have claimed in accordance with *Merivale*. The following summary points employ that percentage:

Item 14	$2,486
Item 15	$621
Item 16	$339
Item 17	$1,808
Item 18	$11,791
Item 19	$2,233
Item 20	$791

It is these adjusted figures that I will consider further. It should be noted that I have not adjusted Item 21 for reasons I give below.

[35] At para [98] of its reasons the Land Appeal Court said:

> "[98] In this case, the member set out the relevant itemised invoices of Mr Robertson. The member accepted Mr Robertson's hourly charge out rate, but stated that he would not be allowing the following items -
>
> - his work as a result of his role in the claim "project";
> - preparation of a model;
> - perusal of documents obtained under freedom of information legislation;

- a separate hourly rate for inspection of the land in addition to the fee charged for the valuation.

We can see no error in the member's conclusions in this regard."

[36] I will proceed on the basis of those conclusions and will first consider Item 18 of the invoices, that is "Valuation Fees Before Resumption". The Land Appeal Court made no criticism of my decision to award compensation of $455 for valuation fees for Taylor Byrne and $3,000 for Keith Brady, the firm which employed Mr Randall Warren. Each of those items was invoiced separately from the invoices presently under consideration and was claimed and dealt with separately in my initial reasons. Mr Warren had provided a before resumption valuation of the medium density residential land (MDR land) and commercial lands and the applicant had relied on those valuations in completing its claim for compensation. It is appropriate therefore that compensation for Mr Robertson's valuation fees not include any amount for similar valuations. I have therefore reduced the amount of Item 18 from $11,791 by $3,000 to a rounded figure of $8,800.

[37] In respect to Item 19 Mr Robertson said that the after resumption MDR valuation prepared by him should attract a 50% fee only because of the fact that much of the work needed for that valuation was done by him in the before MDR valuation. Given, however, that I have allowed for Mr Warren's fees for the before MDR valuation, a 50% discount for the after valuation of the MDR land would not be appropriate. The fee claimed at Item 19 does not distinguish between the fees for the two valuations carried out. I must therefore make an estimate of the fees that would have been payable for the after resumption MDR valuation work. I will allow a 50% increase of the amount of $2,233 to cater for the assumed additional MDR work. I settle on a figure of $3,350 for Item 19.

[38] The additional work done at Mr Paino's request (Item 20) was concerned with queries raised by Mr Paino concerning Mr Robertson's valuation of Parcel 2 of the pre-resumption land as resort land. Mr Robertson provided Mr Paino with a "detailed rationale" as to how he had arrived at his valuation figure of $13,000 per room. Mr Paino undertook some research into comparable sales referred to by Mr Robertson, following which Mr Robertson provided further responses to Mr Paino's queries. I will not allow this item. The award of compensation to cater for a valuation fee is sufficient to cater for that valuation to be expressed in such a way that it may be understood by the client. Any propensity for the client to undertake his own inquiries and to ask searching questions which require further explanation ought not to be a matter for compensation.

[39] Item 3 was associated with the preparation of Mr Robertson's valuations. Therefore this amount should not be allowed, as the work undertaken under this item would be reflected in the valuation fee. Item 4 should be disallowed to the extent that it also involved work that was integral to the preparation of Mr Robertson's valuations. Some of this item involved discussions between Mr Robertson and other consultants concerning the resort land valuation. Whilst each expert should be considered as competent to provide his or her own report, some allowance should be made for consultation to ensure that each understands the task being undertaken. I have, in the absence of precise figures, to assume that the bulk of the work (say, two-thirds) was to do with such consultation so will allow a round figure of $2,000 to cater for that aspect. That figure is considered further below at para [47].

[40] Item 5 includes amounts for consultation with Mr Bobbermen and Mr Corigliano. These gentlemen were associated with the preparation of DCF exercises not adopted by the applicant as the basis for the claim. Just as it would not be appropriate to grant compensation with respect to any fees payable or paid to these gentlemen, it is not appropriate to grant compensation for work done by others, namely Mr Robertson, with respect to their rejected work. In my initial reasons I disallowed a claim with respect to work done by Mr Cronin. Similar reasoning to that just provided leads to my rejection of the claim with respect to time claimed for Mr Robertson's consultation with Mr Cronin. Item 5 is therefore reduced by three hours, that is $600. The net figure of $1,200 is considered further below at para [47].

[41] Item 1 is adjusted for similar reasons to those outlined in the above paragraph by the disallowance of 1.5 hours ($300) concerning a conference with Mr Bobbermen. The balance $2,800 is considered further below at para [47].

[42] For similar reasons to those contained in para [40] above, Item 2 is adjusted by the rejection of the claim as it touches upon work done by Mr Robertson with respect to the analysis of draft reports of Mr Bobbermen and Mr Corigliano. No particular allowance is identified in the invoice with respect to these two gentlemen, therefore I will assume a pro-rata distribution of the 12.5 hours totalled under that item and will delete a rounded 4 hours ($800) leaving $3,200, which I consider further below at para [47].

[43] I can find no example of the type of claim made under Item 6 having been considered by this Court on any previous occasion. I have doubts as to whether, as a matter of principle, such a claim ought to be allowed, however I reject the item on the basis that there is no evidence that any of the persons who were the subject of discussions were relied upon in the preparation of the claim for compensation.

[44] Item 7 is disallowed on the same basis that I rejected the claim for the preparation of the model in my initial reasons. It follows that this associated item should not be the subject of compensation. I do not allow the claim for Item 10. In my initial reasons I did not allow any claim with respect to work associated with the *Freedom of Information Act*.

[45] I will include Items 8, 9 and 12 for further consideration below at para [47] but will disallow Item 11. This item I find to be exclusively concerned with preparation for litigation and not for the purpose of compiling a claim for compensation.

[46] I have considered afresh the matters of disbursements (Items 13 and 21) and have decided to allow these in full. I have concluded that even though a proportion of the work done by Mr Robertson and his various consultations with others, including experts, was greater than needed to prepare the claim for compensation and should be characterized as preparing for a Court contest, the disbursements would probably have been incurred to the extent claimed had his task been limited to the matters properly claimable.

[47] I now turn to consider the following items including those I have considered in part above:

Item 1	$2,800
Item 2	$3,200
Item 4	$2,000
Item 5	$1,200
Item 8	$200
Item 9	$200
Item 12	$2,100
Item 14	$2,486
Item 15	$621
Item 16	$339
Item 17	$1,808
Total	$16,954

It will be noted that each of these items comprises fees/charges associated with Mr Robertson's liaison and consultation with others associated with the claim preparation "project", as I described it in my initial reasons.

[48] Mr Robertson played a pivotal role in the claim project which I have found was dominated by the claimant preparing for a Court contest, not by the need to lodge a claim for compensation. I accept that there would be a need for some consultation between Mr Robertson and other experts, as well as the perusal of reports, however I conclude that the level of consultation was substantially excessive. In my view less than half of the time involved in this list of items would have been sufficient to allow Mr Robertson to complete his valuation work. I will adopt 40% as representing the proportion of these

fees/charges that would have been reasonably incurred in the preparation of the claim for compensation. I will therefore allow $6,782 with respect to these items.

[49] In the result then my conclusion is that Item C Valuers fees ought to be allowed as follows:

Items 1, 2, 4, 5, 8, 9, 12, 14 to 17	$6,782.00
Item 3	Nil
Item 6	Nil
Item 7	Nil
Item 10	Nil
Item 11	Nil
Item 13	$4,514.50
Item 18	$8,800.00
Item 19	$3,350.00
Item 20	Nil
Item 21	$3,737.70
Invoice of 3 September 1996	$1,970.00
Total	$29,154.20

D. Accountants

[50] The firm Deloitte Touche Tohmatsu (Deloittes) provided a document entitled "Gemini Park Resort - Financial Feasibility Assessment", a report which employed the discounted cash flow (DCF) methodology with the purpose of theoretically demonstrating the economic viability of the resort usage proposed on Parcel 2 of the applicant's pre-resumption land.

[51] Fees charged for the Deloittes work totalled $63,965. I found in my initial reasons that the charge-out rate for Messrs Johnson and Gillman, who produced the DCF report, was not excessive and that it was appropriate for Deloittes to provide such a report. I noted, however, that Mr Johnson's statement showed that he reviewed a large amount of information supplied to him by the claimant's solicitors including:

- numerous reports prepared by Mr Bevan Lynch;
- a report prepared by Richard Bramley, together with numerous discussions with Mr Bramley;
- a book of documents supplied by the claimants' solicitors including correspondence in connection with a matter and transcript of evidence of an earlier hearing before the Land Court;
- the original projected cash flows of Gemini Park;
- HTW Valuers report dated 12 September 1995.

[52] One of the Deloittes invoices reveals that that firm made "numerous adjustments" to the feasibility study document which became the final report and created numerous "scenarios for both Peter Cronin and (Mr) Paino on the cash flow statements".

[53] Each of the Deloittes invoices list "numerous meetings" and discussions with Mr Paino and Mr Cronin and indicate that substantial work flowed from these meetings. There were also a number of meetings and discussions with other experts.

[54] I conclude that the work carried out by Deloittes and the subject of the disturbance claim was far in excess of that which would have been required to provide a report sufficient to support a claim for compensation and that much of that excessive work was involved in the applicant preparing for trial, rather than simply preparing to lodge a claim for compensation. I am of the view that less than half of the expended fees would have been sufficient to prepare a DCF report suitable for the purpose of a claim for compensation. I adopt a figure of 40% as representing a suitable level of fees and accordingly I calculate $25,586 for this item.

E. Architects

[55] Mr Bevan Lynch of McKerrell Lynch, Architects, was retained by the claimants to investigate:

- an assessment of the design of the proposed resort including its presentation, room sizes public areas and the overall quality of the design;
- an assessment of the likely construction costs;
- an assessment of the proposed development strategy for the resort (this and the previous item were apparently prepared by Mr James previously with respect to his initial design);
- a commentary on the target market for the resort;
- the impact the Smithfield Bypass would have on the proposed resort.

[56] Mr Lynch completed this work and provided a draft report addressing each of these items, one of which "estimated construction cost" I refer to in particular. I understand that the invoiced professional fees included a charge for that work. In my initial reasons I determined that disturbance compensation in the amount of $2,300 was payable to the applicant with respect to estimates of construction costs supplied by Obersky & Jarmey. In these circumstances it is not appropriate that fees with respect to this item also be paid to Mr Lynch. I have no precise figure as to Mr Lynch's charges with respect to this work, but I notice that para 19 of Exhibit 140 (Mr Lynch's statement) says, "Throughout October and November 1996 I spent considerable time investigating the costing issue". I do not know the actual period of time involved, but assume that it was a substantial part of the time charged for in the invoice of 4 December 1996 with respect to professional fees which totalled $5,250. I will assume a figure of $2,300 being the same as that allowed for Obersky & Jarmey, though a higher amount may have been paid to Mr

Lynch's firm. I reduce Mr Lynch's invoiced total $19,105 by $2,300 to yield a net figure of $16,805.

[57] The evidence shows that Mr Lynch was also involved in the claim preparation "project" along with other experts and that he spent considerable time consulting with other experts reading their draft reports, including modified reports, responding to queries and criticism of his work raised by Mr Paino and reading about the history of the parent site including a previous resumption from the land. This work was excessive to what would have been sufficient to prepare a claim for compensation and was, in my opinion, undertaken largely for the purposes of preparing for trial. I formed the view from Mr Lynch's evidence, however, that he was somewhat less enmeshed in the trial preparation process than, for example, Deloittes, so in comparison with the discount I assessed with respect to the Deloittes professional fees figure, I will adopt a 50% discount with respect to Mr Lynch's net figure of $16,805. I therefore calculate disturbance fees with respect to Mr Lynch's fees at $8,402.50.

[58] It will be convenient if I provide a summary of the disturbance compensation determined afresh in these reasons, together with the amounts determined in my initial reasons with respect to the applicant and not the subject of criticism by the Land Appeal Court.

Heavey Lex

A.	Solicitors		$30,000
B.	Barristers		$2,480.00
C.	Valuers	John Robertson	$29,154.20
		Taylor Byrne	$455.00
		Keith Brady	$3,000.00
D.	Accountants	Deloittes	$25,586.00
		Pritchard Adams	Nil
E.	Architects and		
	Builders	McKerrell Lynch	$8,402.50
		Obersky & Jarmey	$2,300.00
		JB Design	$310.00
		James Architects	$800.00
F.	Bramley Tourism Analysts		$18,364.95
G.	Modelling, photography, artists		Nil
H.	Economists		$5,507.00
I.	Town planning		$9,000
J.	Interpreters		$435.00
K.	Directors and employees' time		Nil
L.	Landscaping		$4,925.00
M.	Property consultants		Nil
N.	Resort construction costs		Nil
O.	Liaison consultant		$500.00
P.	MDR	- rezoning costs	Nil
		- appeal costs	$16,000

	- miscellaneous	$2,437
Q.	Wasted legal costs	$2,000.00
R.	MSC appeal costs	Nil
S.	Miscellaneous resort costs	Nil
		$161,656.65

I round this up to $161,657.

MDR Land

[59] I now turn to consider the question of the value of Parcel A after resumption and refer to para [123] of the Land Appeal Court reasons from which I take direct guidance.

> "[123] We are persuaded that if medium density residential potential existed on part of the subject land before resumption as was found by the member, then it remained in some form after resumption. We are not in a position to provide an assessment in substitution for that arrived at by the member, but we see no reason, for ease of reconsideration, why the continued existence of that potential should not be restricted to parcel A in the after valuation approach."

[60] The respondent raised the possibility of part of Parcel B having MDR potential. It was suggested that the prospect of applying part of Parcel B to MDR usage should be addressed if I were to conclude that the value of Parcel A, viewed as containing MDR land, was $90,000 per ha or less. Given my conclusion on the value of Parcel A viewed as having MDR potential (see below), I need not consider the Parcel B option though I must say that I would find it difficult, given the weight of planning evidence to the contrary, to draw a conclusion that any part of Parcel B might be seen as suited to MDR use.

[61] Each of the parties provided submissions as to how I should employ the evidence in placing a value on Parcel A. I will refer first of all to the primary submission of the applicant. That submission was to the effect that I should conclude that the MDR potential in Parcel A was such that the value of that land as MDR land would be little more than its value as single unit residential land, which I found in my initial reasons to be $90,000 per ha. This has often been referred to in this Court as the "bottom-up" method. That submission is not in direct conflict with the conclusion of the Land Appeal Court which was that MDR potential "remained in some form" after the resumption, there being no suggestion by that Court that the potential was in the same form after as before. The Appeal Court simply held, as I understand it, that I was in error in finding that the MDR potential was completely destroyed by the resumption. It was submitted for the applicant that, accordingly, the respondent had succeeded on appeal with a fairly narrow point. That may be so, however it calls for a reconsideration of the valuation evidence

with respect to MDR potential, not an assumption that such potential merely adds some small premium to the single unit residential value found by me initially.

[62] Some reliance was placed by the applicant on the reasons of Ambrose J where at para [69] of the Court of Appeal decision he said:

> "In my view upon the appeal, it was open to the Land Appeal Court to conclude that upon the evidence which it analysed, the Land Court member had erred in principle in concluding that any potential - *however slight* - that 6.2 ha of the appellants' land had for development and use for (MDR) purposes had been destroyed by the resumption." (italics added by the applicant)

[63] It was suggested for the applicant that the observation of His Honour revealed an awareness of the prospect that the impact of the resumption and the proposed bypass was sufficient to reduce the MDR potential to something that was only slight. That suggestion assumes that His Honour was referring to the after resumption Parcel A as having MDR potential "however slight". It is not totally clear to me that this is what His Honour intended, however the context suggests that Mr Gore QC may well be right in his suggestion that the reference is to the after resumption land. The words, however, cannot in my view be taken to suggest a conclusion that the MDR potential was in fact slight. They should be understood as saying something to the effect of "even if that MDR potential was slight". His Honour and the Court of Appeal has, with respect, properly left it to me to draw conclusions of fact on the evidence.

[64] Now I will not repeat those facts which are fully canvassed in my initials reasons and which are relevant to my present task, however I will summarise the more significant matters which I will call "amenity issues":

(i) Parcel A is deleteriously affected by the physical presence of the bypass construction whose dimensions will make it an imposing, bulky structure.

(ii) Despite noise attenuation works associated with the bypass, noise pollution will impact on the residential amenity of Parcel A.

(iii) Whilst the above two points comprise objective aspects of injurious affection on Parcel A, the psychological impact of those facts on residents or prospective residents would be a matter of significance with respect to the raw land value.

(iv) Parcel A is impacted upon by the Cook Highway to the west and the link road parallel to that, as well as the drainage reserve to the south. These constraints, together with the bypass to the east, incarcerate Parcel A in its own restrictive environment though I note that the Cook Highway and the drainage reserve were present before resumption.

(v) The shape of Parcel A will impact on its development efficiency.

[65] The before MDR land in Parcel 1 was of such a size that Mr Gould had reservations as to whether the market could accommodate a development of that dimension. The same

reservation applied in the after situation, however Mr Gould valued the Parcel A land on the basis that it could be utilized for MDR development with the after area being the same as the before. Now whilst Mr Gould purported to be "ruthless" in his appreciation of the impact of the various amenity issues which flow from the resumption and its works, there seems to me to be a compounding effect in the size and the amenity elements coming together. There is, in effect, a negative synergy that would be perceived in the market in Cairns, in my view, with the effect that the Parcel A land would have a compounded diminished attractiveness in the marketplace.

[66] Mr Gould purported to take the various amenity issues, apart from the link road, into account in his valuation of Parcel A. I return to the link road matter below. In my initial reasons I expressed the view that Mr Gould had made insufficient allowances for similar issues as they applied to Parcel B. Similar comments can be made with respect to his valuation of Parcel A. In addition to the amenity issues and the issue discussed in para [65], I find that there are two other relevant factors to be taken into account:

(i) In order that the pre-resumption MDR zoned area be reinstated in Parcel A, there will be a need to arrange for a rezoning of that part of Parcel A not so zoned and the consolidation of the MDR land. There will be some costs, delay and risk associated with such a rezoning, however neither party suggested that this rezoning would not be successfully achieved.

(ii) The $1,800,000 offer is to be relied upon as a moderating influence in ascertaining the after resumption value of the applicant's land. See para [88].

[67] I understand the reasons of the Land Appeal Court, which were upheld by the Court of Appeal, direct me to commence my reconsideration of the value of Parcel A on the basis that in the general market area of which Parcel A forms part, the need for MDR land would be the same after as it was before the resumption, but that the value of Parcel A is a matter left to me for consideration. I have observed in the previous three paragraphs that the Parcel A MDR land would be less attractive after resumption than it was before. Put another way, this means that of all the land in the relevant area competing in the MDR market, the Parcel A land would have slipped substantially on any rank-ordered list that a would-be purchaser might prepare. The land would therefore need to have a price advantage to make it an attractive purchase proposition.

[68] For any intending purchaser the price paid would need to reflect the risks associated with the disabilities of the land that attend any price paid above the price for the next lower economic use. I found that lower use to be for single unit residential purposes and placed a value of $90,000 per ha on the land. This does not necessarily mean, however, that I should adopt the "bottom up" method that the claimant invites me to employ. I would use

this method only if I rejected fully the method utilized by Mr Gould. Mr Gould was the only valuer who placed an MDR value on land in Parcel A, so I must first consider his valuation.

[69] The respondent observed that I had accepted Mr Gould's valuation of $125,000 per ha for the Parcel 2 single unit residential land before resumption and had reduced that figure to $100,000 for the single unit residential land in the after resumption Parcel B. That calculates to a 20% reduction from the before value. In my initial reasons I found a value of $90,000 per ha for the single unit residential land in Parcel A, that is a 10% reduction from the Parcel B valuation, or a 28% reduction from the pre-resumption value of Parcel 2.

[70] It was suggested for the respondent that if a similar discounting process were applied to the MDR values, then at the very worst (viewed from the respondent's side) a 28% reduction from the pre-resumption MDR value would apply.

[71] It was further submitted that based on the evidence from Mr Gould that MDR land suffers less from the noise and visual impacts from the Captain Cook Highway, the link road and a bypass structure than would single unit residential development, a reduction in the pre-resumption MDR value of something less than 28% ought to apply. A 20% reduction was suggested.

[72] Mr Needham, for the respondent, drew my attention to the fact that Mr Gould has applied a discount of or approaching 20% of his before MDR values in his after valuation. The suggestion appears to be that this supports the submission that I should apply a similar discount to the before MDR value that I found. It will be seen below, however, that in Mr Gould's after valuation of the Parcel A MDR land the discount that he applied was not applied solely to cater for the aspect of injurious affection flowing from the purpose of the resumption. His valuation is more refined than that.

[73] Whilst I think the evidence overall supports Mr Gould's view that users of MDR land suffer less in terms of the impact of noise and the visual impacts referred to, this is not to say that purchasers of such land would apply a lower level of discount than 28% on this account in the after situation. I say this for the reasons discussed in paras [65] to [68] above. I also see no compelling reason to accept the proposition that the bulk of the occupants of residences constructed on the Parcel A land would be tenants and would be little concerned about such matters of noise and visual pollution. In addition, I have noted above the requirement for rezoning and the consolidation of MDR zoned land in Parcel A. In his valuation Mr Gould adopted a discount of about 20% of the in globo value to cater for "a 10% profit and risk element, associated application costs and fees, and interest

allowances". Such an allowance did not play any part in the conclusion I drew in my initial reasons that the Parcel A land viewed as single unit residential land should have a value 28% less than the pre-resumption residential land in Parcel 2.

[74] In his valuation Mr Gould took the whole of the western severance, that is 8.461 ha, and placed a value on that recognizing that some parts of the land would have a nil value. His valuation may be summarised thus:

0.700 ha land lost due to shape		Nil
0.300 ha required for Hwy Buffer		Nil
0.750 ha drain (excluding Buffer)		Nil
2.127 ha Visual/Noise impact (MDR)	@ $240,000/ha	$510,480
3.600 ha MDR rezoning potential	@ $290,000/ha	$1,044,000
0.984 ha 50% typical Res in globo	@ $62,500/ha	$61,500
8.461 ha		$1,625,980

[75] Mr Gould's valuation acknowledges that the resumption causes a loss in the area of MDR zoned land and splits the remaining MDR land into two with part on the eastern and part on the western side of the bypass. He proposes, and I accept, that it would be prudent to consolidate the MDR land into one area in Parcel A. In his valuation he adopts a discount rate of about 20% off his in globo value before resumption of $360,000 per ha for MDR land not noise affected, that is $70,000 per ha in his calculation, to cater for the risk, costs and fees, as well as interest allowance in rezoning part of Parcel A to MDR and consolidating the MDR zoned land. It is this process that led him to adopt the abovementioned value of $290,000 per ha (that is $360,000 minus $70,000 equals $290,000). His figure of $240,000 per ha was based on his before resumption value for visual/noise affected land of $300,00 per ha. The reduction of $60,000 per ha here is for rezoning/consolidation. I accept his opinion that a 20% discount from the in globo value ought to be applied to the MDR land for rezoning/consolidation purposes.

[76] The area figure of 0.984 ha in the para [74] figures from Mr Gould's valuation comprises the usable balance of what he took to be the area in Parcel A available to the applicant after resumption. He adopted a value for this land based on it being worth half the before resumption value of single unit residential land, which I accepted as $125,000 per ha. I accept his approach to this spare land. Whilst the Land Appeal Court expressed concern only with respect to the need to recognize that Parcel A contained land with MDR potential, I infer that it is appropriate for me to reconsider the value of Parcel A, as a whole, after taking into account that MDR potential.

[77] It will be noticed that there is no provision in Mr Gould's valuation summary for the link road which in the after situation would reduce the area of land available in Parcel A. The

relevance of this road in the valuation process was discussed in my initial reasons and I see no need to alter the conclusions that I drew there. It is clearly the case that part of the link road goes through part of the MDR zoned land which remains on the western side of the resumed land. On the assumption that I accept in para [75], however, that it would be prudent to rezone sufficient of parcel A to reinstate the usable area of 5.727 ha of before MDR land, no area of MDR land should be assumed as lost to the link road. In terms of loss of land the situation with respect to the link road is not, therefore, worsened in the after situation as I now have to view it. There may even be a gain to the applicant, however the state of the evidence does not allow me to draw such a conclusion with confidence. It should also be noted that whereas Mr Gould did not take into account the noise/visual affect of the link road in his Parcel A valuation, I did take it into account in concluding that, viewed as single unit residential land, the Parcel A land had a value 28% less than the pre-resumption value of Parcel 2.

[78] If I were to employ an approach that is similar in some respects to that used by Mr Gould, I would start with an overall value of $385,000 per ha, the value that I found for the MDR land in the before resumption situation. That would be the value for Parcel A at 5.727 ha, that is a total of $2,204,895 on the assumption, however, that the land was zoned and consolidated as discussed above. Now the cost and risks associated with rezoning/consolidating that land based on a 20% in globo figure would be $440,979, leaving a net amount of $1,763,916. That process would produce MDR land similar to the before MDR land, that is land yet to have its value reduced by the impact of the works, the purpose of the resumption.

[79] The proposition put by the respondent is that there needs to be a direct correlation between the level of discount applied by me in my initial reasons with respect to single unit residential land and that to be applied with respect to MDR land: subject only to the incorporation of Mr Gould's opinion that MDR uses can better accommodate noise/visual effects. If I put aside for the moment that this proposition disregards the need for rezoning/consolidating the MDR land, the proposition needs to acknowledge that other matters should be taken into account. These are the matters that I discuss above at paras [65] to [68]. Now whilst Mr Gould's abovementioned opinion would have the effect of reducing the discount from 28%, the other matters have the effect of enlarging it. One other factor needs to be mentioned - the sales evidence.

[80] It seems to me that, taking into account what I have set out in the above paragraph, the best approach would be for me to employ the discount rate of 28%, in addition to making allowance for the need for rezoning/consolidating, then to consider that result against the

sales evidence and the moderating effect of the $1,800,000 offer. If, at the outset, I apply the 28% discount rate to my notionally rezoned MDR land in Parcel A, the resultant value would be $1,270,020, that is $221,760 per ha for 5.727 ha.

[81] I will present a summary of the above reasoning in a somewhat similar fashion to that provided by Mr Gould, but reflecting my preferred approach of considering the MDR land overall, rather than on a piecemeal basis.

0.700 ha	land lost due to shape		Nil
0.300 ha	required for highway buffer		Nil
0.750 ha	lost to drain		Nil
5.727 ha	MDR rezoned land including noise/visual effect	@ $221,760/ha	$1,270,020
0.984 ha	50% typical Res in globo	@ $62,500/ha	$61,500
8.461 ha			$1,331,520

[82] I now consider the above MDR value of $221,760 per ha in the context of the sales evidence made available to me. There were three main sales which I relied on in placing a value on the before MDR land, that is the Trinity Beach Road sale, the Uni Village sale and the White Rock sale. Each of those sales reveals prices substantially higher than the above MDR value, such that any comparison is fraught with difficulty. Nevertheless, it is clear that the value of the Parcel A MDR land must be substantially less than the price revealed by those sales.

[83] Mr Gould referred to a further sale at Cottesloe Drive, Kewarra Beach, the details of which I set out in my initial reasons. Whilst the Parcel 1 MDR land before resumption was superior to that sale, I am comfortable in concluding that the value of the Parcel A MDR land must be less than the price of that land because of the compounding disabilities of the land discussed earlier in these reasons and in my initial reasons, together with the requirement for rezoning/consolidating. That sale attracted a price of $263,000 per ha. None of the other sales which were provided in the valuations provided in the original hearing directly assists me in placing a value on the MDR land in Parcel A.

[84] Having considered the sales evidence and the method that I have employed of extrapolating from my initial value of Parcel A as single unit residential land and taking into account the need for rezoning/consolidating, I conclude that I cannot accept the applicant's proposal that a "bottom-up" method be employed.

[85] I understand that the "bottom-up" method of valuation is employed in circumstances where there is such a prospect of land being developed for a use higher than its presently available use, that a vendor would expect and a purchaser would pay something for that prospect. The price of that prospect would be added to the "bottom" value, that is the

value for the presently available use. The "top-down" method, on the other hand, is appropriate where a higher use than the present use is apparently achievable, but may be deferred or be the subject of a risk or cost of such a dimension that the purchaser would discount the price that would otherwise have been payable for the higher use. The discount for the risk or the cost is deducted from the "top" value. It is that method that the evidence leads me to employ. The evidence is that a rezoning/consolidation to MDR is probable, but that the quality of the land for that use after resumption is substantially lower than before. These concepts are discussed in *Queensland Turf Club v The Valuer-General* (1979) 6 QLCR 180 at 187-188. The fact that I settled upon a value of $90,000 per ha for the Parcel A land in my initial reasons does not, by itself, assist the applicant as value cannot be properly determined independently of highest and best use.

[86] The method that I have adopted, subject to what I say below, uses the top-down method and produces a result that can be checked against the sales evidence. In the circumstances where I am obliged to assume MDR potential, it is not appropriate that I disregard the available sales evidence, such as it is. The MDR potential land in Parcel A would, even at a value of about $221,760 have a price advantage in the marketplace when all of the sales evidence is taken into account. Such a value also recognizes the force of the contention that one is not comparing like with like in considering the MDR value before against the MDR value after resumption. The difficulty I have is whether this figure is a sufficiently discounted value.

[87] A value of $1,331,520 for Parcel A would lead to a calculated after value of the applicant's land, ex palms, of $3,555,400, a figure substantially higher than the $1,800,000 offer for the balance land. In my initial reasons I took that offer into account in concluding that the applicant's balance land had a value of $2,830,000. Now the fact that my final after value figure was a little over $1,000,000 higher than the offer does not mean that I formed my conclusion of value based solely on that offer figure. My reasons make it quite clear that I did not do that, as I said that the offer ought not be relied upon directly - and my reference throughout my reasons to the relevant sales evidence and to the value as evidence with respect to sales, confirms that it was the standard valuation evidence that most influenced me in the conclusion of value that I drew.

[88] Now two things flow from this. First, the offer cannot be directly relied upon in support of a suggestion that the after value figure should be little more than that originally determined by me. I must reconsider my after value on the basis that the balance land has a similar area of land with MDR potential, as did the before resumption land. Second, the offer is not to be taken as a source of a proportionate discount that is called in support

once an indicative value based on a particular highest and best use is isolated. The $1,800,000 offer comprises a figure which is to be kept in mind in striking the after resumption value. It is, as I said in my initial reasons, "the level of value indicated in the offer … (which) may be referred to as a moderating influence in considering the application, for example, of in globo sales in striking the after resumption value". This is a proposition which was not criticized by the Land Appeal Court. It does not, therefore, follow that a reduction of a certain percentage in value of single unit residential land from the before value means that there should be a similar percentage reduction in the value of MDR land. Logic suggests that on the basis that MDR values are higher than single unit residential values, all things other than highest and best use being equal, the percentage reduction in value of MDR land would be greater once the moderating influence of the offer is taken into account.

[89] Accordingly, I will lean in favour of the applicant in concluding that the value of the MDR land in Parcel A is $210,000 per ha; that is a total of $1,202,670. That figure together with the value of 0.984 ha of "typical Res in globo" of $61,500 yields a value for Parcel A of $1,264,170. That figure takes into account all of the features and disabilities of the land and the moderating influence of the $1,800,000 offer. I have not taken into account Mr Gould's "commercial assessment" of the Parcel A land found in Exhibit 125, except to the extent that I recognize that Mr Gould considered the value of that land to be severely diminished. For me to do otherwise would be to risk falling into error. I must maintain the values placed on the various other parcels of land before and after resumption and the value of the palms. My summary of values, therefore, is altered from those which appear in paras [4] and [5] by the deletion of the Parcel A value of $603,990 and the insertion of the value of $1,264,170. The result is that compensation for loss of land and palms becomes $2,675,430, calculated as follows:

Before value of land and palms	$6,225,000
After value of land and palms	$3,549,570
Loss	$2,675,430

[90] I determine the compensation for loss or land in the amount of $2,675,430.

[91] I order that the respondent pay the applicant, Heavey Lex No 64 Pty Ltd compensation in the amount of $2,837,087 comprising loss of land and palms in the amount of $2,675,430 and disturbance in the amount of $161,657.

[92] Submissions are requested from the parties on the question of costs and interest on compensation.

RP SCOTT
MEMBER OF THE LAND COURT