

## 19.2 ENCROACHMENT - VALANTINE PARK 78 FINUCANE ROAD ALEXANDRA HILLS

### Objective Reference:

**Authorising Officer:** David Jeanes, Acting General Manager Community & Customer Services

**Responsible Officer:** Graham Simpson, Group Manager Environment & Regulation

**Report Author:** Damien Jolley, Senior Property Officer

**Attachments:**

1. Locality map
2. Encroached area
3. Valuation report

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (h) *other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.*

### PURPOSE

To recommend that Council resolves to dispose of land, without a tender or auction, to remedy an encroachment on Council land, being Valantine Park located at 78 Finucane Road Alexandra Hills (the Park), by an adjoining property owner.

### BACKGROUND

Following an investigation being undertaken, in response to a potential encroachment being identified as a result of planned works to upgrade the Park, it was confirmed that an area of the park was being encroached by the owners of [REDACTED]

The area of park encroached is approximately 78m<sup>2</sup> and includes raised garden beds and a boundary fence. The total area of the Park is approximately 11.13ha.

The property was developed circa 1989 and aerial photography indicates that the encroachment first occurred around the time the dwelling was built. The current owners, who purchased the property in 2002 have indicated that they were not aware of the encroachment at the time of purchase.

### ISSUES

#### Encroachment

Under Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2015 owners can be required to remedy an encroachment. However, in certain circumstances it may be appropriate for the encroachment to be addressed by disposing of the area of land being encroached to the property owners.

In this case the owners have shown a desire to purchase the land rather than relocate the fence, remove garden beds and other vegetation and the City Operations Group (asset owner) have agreed to the owner's request.

#### Valantine Park (the Park)

The total area of the Park is approximately 11.13ha and the disposal of 78m<sup>2</sup> will not materially change the function, use and accessibility of the Park. It is also noted that the encroached area may not have been used as part of the Park since 1989.

Under the Redland City Plan 2018 (the City Plan), the area encroached is zoned Recreation and Open Space and the disposal is not considered to have any material impact to future development appropriate to the zone. Building work located in the area is considered accepted development under the City Plan.

### **Disposal**

The *Local Government Regulation 2012* (LGR) describes land as a “Valuable Non-Current Asset” and prescribes a number of options available to enter into a contract to sell the land.

Sale by tender or auction is the prescribed method of disposing of land however the LGR provides for exceptions to this rule if certain conditions are met. In particular reference is made to the exception in subparagraph 236(1)(c)(iv):

- a) *the land is not suitable to be offered for disposal by tender or auction for a particular reason, including, for example, the size of the land or the existence of particular infrastructure on the land; and*
- b) *there is not another person who owns other adjoining land who wishes to acquire the land; and*
- c) *it is in the public interest to dispose of the land without a tender or auction; and*
- d) *the disposal is otherwise in accordance with sound contracting principles.*

The area to be disposed of is 78m<sup>2</sup> making it unsuitable to be offered for disposal by tender or auction due to the size, location and the level and type of private embellishments.

Due to the overall size of the Park, there are a number of other adjoining owners, however in practical terms there is only one adjoining owner to the encroached area of land being considered for disposal. The realignment of the boundaries to facilitate the disposal will also result in there being only one adjoining owner.

The costs associated with the disposal will be borne by the owners, including purchase of the land at market value. As per the requirements of the LGR the owners have obtained a written report about the market value of land from a valuer registered under the *Valuers Registration Act 1992*.

### **Boundary Realignment – two (2) into two (2)**

A condition of the disposal will require the owners to submit a reconfiguring a lot application and receive approval to realign the boundaries of the two properties, which will include obtaining a survey plan. Following approval and registration of the survey plan, City Plan would be amended to change the zoning of the encroachment area from open space and recreation to low density residential.

### **Summary**

Accordingly it is considered that the requirements of the LGR as detailed above will be met and the land can be disposed of without a tender or auction.

## STRATEGIC IMPLICATIONS

### Legislative Requirements

Disposal will be in accordance with the *Local Government Regulation 2012*.

### Risk Management

There are no risk management implications identified with this report.

### Financial

There are no financial implications associated with this report as disposal will be cost neutral as far as practicable to Council and funds from the sale allocated to City Spaces.

### People

There are no people implications identified with this report.

### Environmental

There are no environmental implications associated with this report.

### Social

There are no social implications identified with this report.

### Human Rights

There are no known human rights implications for this report.

### Alignment with Council's Policy and Plans

There are no alignment implications identified with this report.

## CONSULTATION

Consulted	Consultation Date	Comments/Actions
Division 8 Councillor	5 February 2020	Councillor supports disposal
Policy and Strategy Officer – City Operations	4 December 2019	Supports disposal
Compliance Services Manager	3 December 2019	Supports disposal

## OPTIONS

### Option One

That Council resolves as follows:

1. That the exception to dispose of land under subparagraph 236(1)(c)(iv) of the *Local Government Regulation 2012*, without tender or auction to the owners of [REDACTED] applies.
2. To delegate the Chief Executive Officer under s.257(1)(b) of the *Local Government Act 2009*, to negotiate, make, vary and discharge any resultant contracts and related documentation with the adjoining property owner, including the purchase price of the land.
3. To maintain the contents and attachments of this report as confidential until the approval and registration of the survey plan, subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.

## Option Two

### That Council resolves as follows:

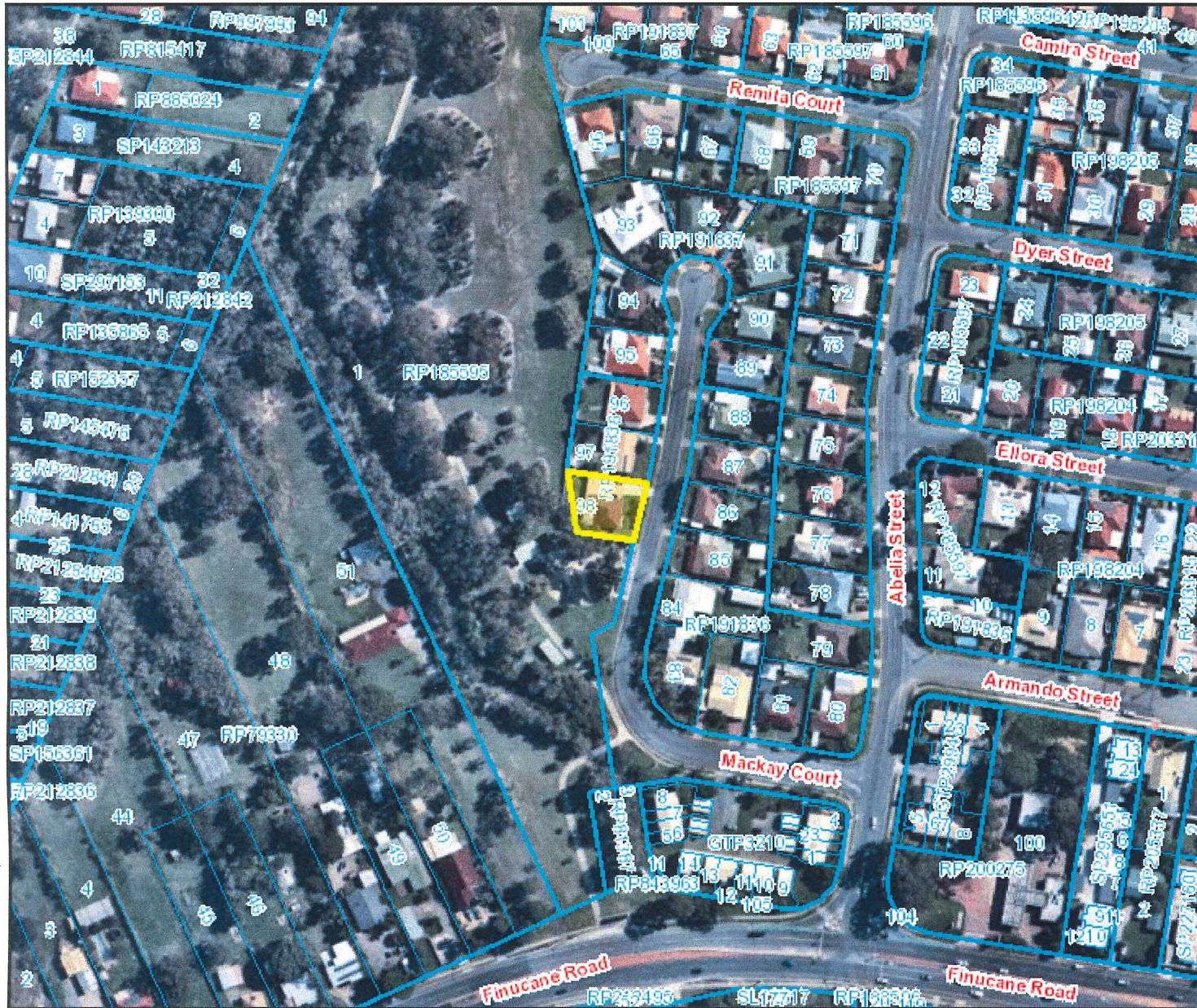
1. That compliance action is commenced under Local Law 4 (*Local Government Controlled Areas, Facilities and Roads*) 2015 to remedy the encroachment.
2. To maintain the contents and attachments of this report as confidential until compliance with Local Law 4 (*Local Government Controlled Areas, Facilities and Roads*) 2015 is achieved, subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.

### OFFICER'S RECOMMENDATION

#### That Council resolves as follows:

1. That the exception to dispose of land under subparagraph 236(1)(c)(iv) of the *Local Government Regulation 2012*, without tender or auction to the owners of [REDACTED] applies.
2. To delegate the Chief Executive Officer under s.257(1)(b) of the *Local Government Act 2009*, to negotiate, make, vary and discharge any resultant contracts and related documentation with the adjoining property owner, including the purchase price of the land.
3. To maintain the contents and attachments of this report as confidential until the approval and registration of the survey plan, subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.





### Red-e-map Plot

#### Legend

- Land
- Current Land
- Current Lot

Scale:  
1:2500

Date:  
23/04/2020



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### Redemap Portal Map

#### Legend

 Current Lot

Scale @ A4:  
1:552

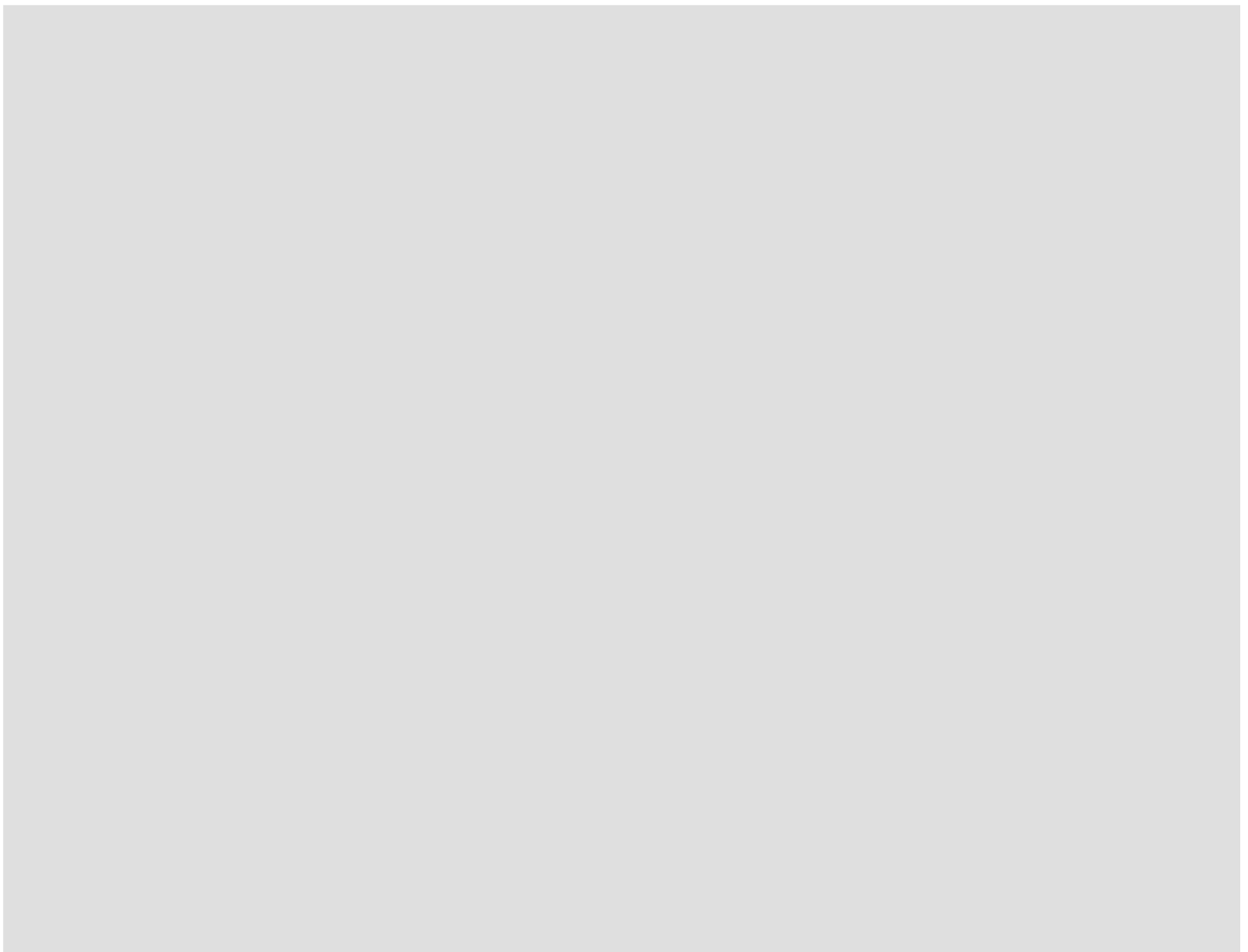
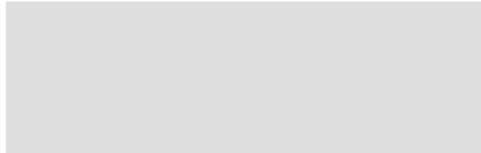
Date:  
23/04/2020



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# **CRANE & COMPANY VALUERS PTY LTD**

## **VALUATION REPORT OF**



**DATE:** 9 March 2020

**CLIENT:** 

**VALUER:** Chris Beattie QRV 2179  
AAPI Certified Practising Valuer

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## VALUATION REPORT

**CLIENT:**

**DATE:**

9 March 2020

**PREPARED BY:**

Chris Beattie, QRV 2179, AAPI Certified Practising Valuer

**PURPOSE:**

I refer to written instructions received from [REDACTED] as owner of the improved residential property at [REDACTED], to assess the fair current market value of a small parcel of land that has been encroached upon, with a view to purchasing this land from the current owner, the Redland City Council, for amalgamation to their existing property.

**BRIEF OVERVIEW:**

The property at [REDACTED] comprises of an improved residential property occupying a land area of 670 square metres approximately.

It is of slightly irregular shape and is located on the western side of the street.

Adjoining the western and southern side boundaries is an area of Redland City Council owned and managed park land, known as Valentine Road Park.

The current, and former owners of the property at [REDACTED] have encroached upon a triangular shaped parcel of land, about **78 square metres** (subject to final survey) in area that adjoins the rear western boundary.

This area of encroachment has the effect of 'squaring off' the rear of the property, so as to give it a more regular rectangular shape.

Both parties, the Redland City Council (as owner of the park land), and [REDACTED] (as owners of [REDACTED]) have agreed to the transfer of the land, subject to satisfactory valuation and agreement on term and conditions, if any.

The purpose of this assessment is to determine the value of this parcel of land that is proposed to be acquired from the Redland City Council.



**LAND AREAS FOR VALUATION:**

Land area prior to acquisition 670 square metres

Land area after acquisition 748 square metres

**STATUTORY GUIDELINES:**

Whilst the land to be assessed is not being acquired under statutory regulations, it is relevant to acknowledge the valuation principles in assessing land under these situations.

In Queensland, the *Acquisition of Land Act 1967* allows state and local governments to take privately held land (i.e. freehold land) for public works and public purposes, such as roads, railways, schools, parks, etc.

They may acquire land through negotiation with the landholder or a compulsory acquisition process, known as land resumption.

The compulsory process commences with the relevant government authority (the constructing authority) serving a 'Notice of intention to resume' showing the location and area of the land required.

The establishment cost of land to be resumed has been determined using the before and after method for estimating the current market value of land (the before and after method of valuation).

When determining the value of the land using the before and after method of valuation, two valuations of the subject land are undertaken.

In this particular instance where the land is proposed to be acquired, the value of the existing land, prior to the acquisition is determined, using the using the direct comparison method.

Assuming that the land to be acquired is otherwise developable (e.g. not within a stormwater or drainage corridor), this land should be valued based on a rate applicable to in this instance single residential homesites.

The value of the 'amalgamated' land area once acquired, is then determined, again using the direct comparison method.

The value of the former is then subtracted from the latter value to arrive at the value of the land to be acquired.

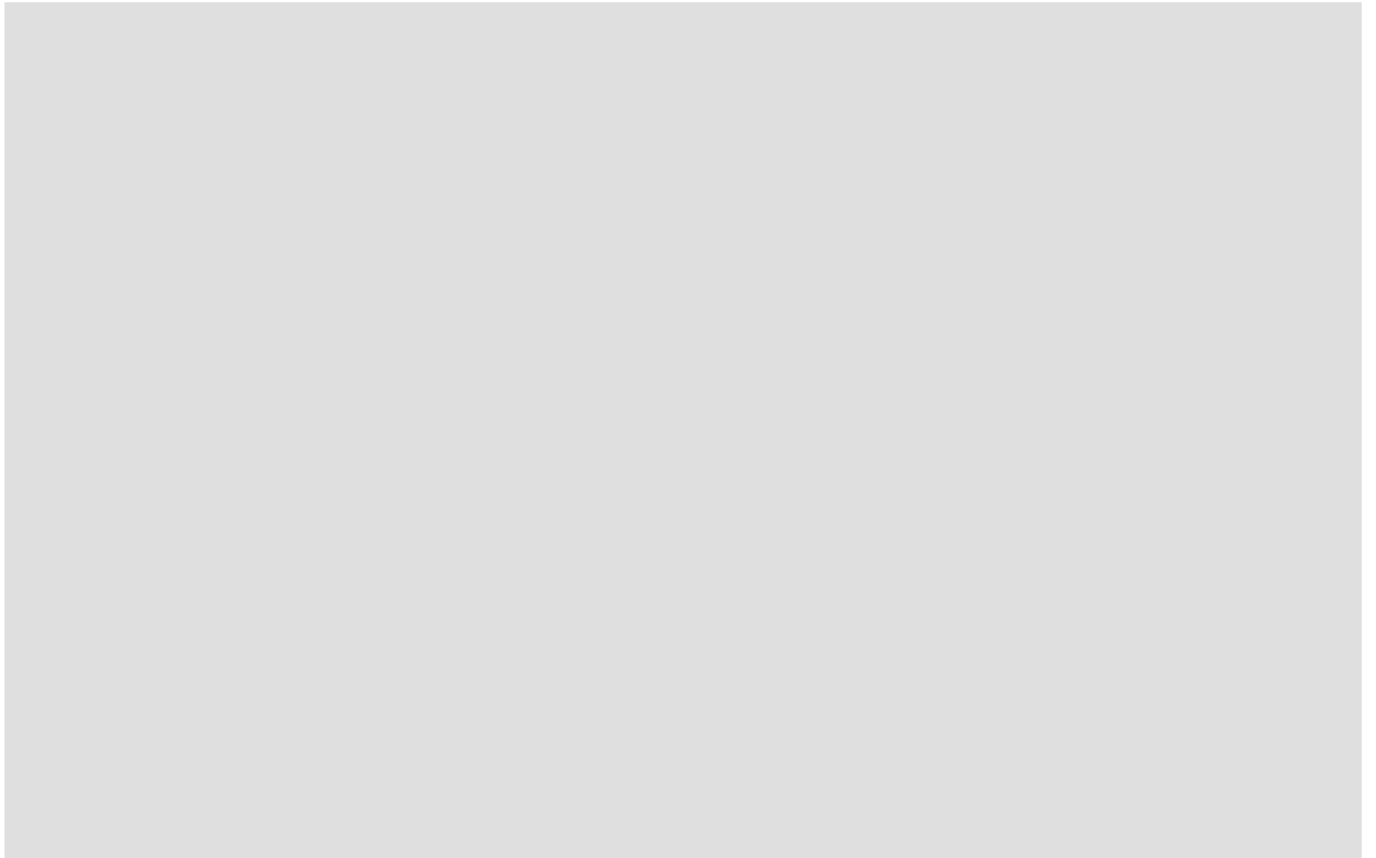
This method ensures that the land is not valued as a stand-alone allotment, but rather as a part of the overall land holding of the owner and that the valuation reflects any enhancement or diminution of value to the existing property that may occur as a result of the portion to be acquired.

As the land proposed to be transferred/acquired between the parties is not subject to a formal and legal process, the guidelines for assessment are considered to be relevant.

**MARKET VALUE DEFINITION:**

The estimated amount for which an asset should exchange on the date of valuation, between a willing buyer and a willing seller, in an arms length transaction, after proper marketing where the parties had each acted knowledgeably, prudently and without compulsion.

**VALUATION SUMMARY:**



CHRIS BEATTIE QRV 2179  
AAPI Certified Practising Valuer  
**CRANE & COMPANY VALUERS PTY LTD**

**REGISTERED PROPRIETORS:**

According to RP Data property ownership records the registered owners of the property at

**TITLE DETAILS:**

Freehold description of the existing property is

**Encumbrances/Restrictions Considered:**

None evident, however more formal searches have not been undertaken.

**LAND:**

**Dimensions/Area:**

The freehold land contains an area of 670 square metres approximately and comprises of a slightly irregular rectangular shaped front lot positioned on the western side of

Frontage is about 24 with perpendicular side boundaries of differing length, and there is an angled rear boundary of just under 25 metres approximately.

**Local Government Authority:**

Redland City Council.

**Zoning and Planning:**

As per the current Redland City Plan the existing freehold property is shown as being zoned 'Low Density Residential'.

Permitted uses include for detached residential dwellings, and the current existing use of the land is considered to be the highest and best use.



**Environmental:**

None evident as per Redland City Council planning maps.

**Property Searches:**

None known or evident, however should the intending purchaser through its own enquiries and/or searches become aware of an issue which may affect value and/or liquidity then this valuation should be referred back to the valuer for comment and reconsideration.

**Unimproved Capital Value:**

The subject site has an unimproved capital value [redacted] for rating and taxation purposes effective as at 30 June 2019.

**Location:**

Alexandra Hills is one of the bayside suburbs of Brisbane, forming part of Redland City, being some 22 kilometres radially, and 30 kilometres by road east and slightly south of the Brisbane GPO.

The subject property is situated on the [redacted]

A wide range of state schools and other community facilities are also within convenient driving distance of this property.

**Surrounding Development:**

The immediate area includes a mix of land uses but the predominant mode of development is that of detached residential dwellings on standard size allotments of less than 800 square metres.

There are also some non-urban uses to include local parks and reserves, educational facilities (TAFE) and community facilities such as churches and child care centres.

There is a neighbourhood shopping centre to the east along Finucane Road, with larger centres at Capalaba to the west and Cleveland to the east.

**IMPROVEMENTS:**

A brief inspection of the existing dwelling and ancillary improvements was undertaken as part of my assessment.

A search of local council records indicates

**ENCROACHMENT BACKGROUND:**

The existing dwelling at [REDACTED] has been established for about 35 years approximately.

Current owners [REDACTED] purchased the property in [REDACTED] for [REDACTED]

At some stage, the exact or approximate dates are unknown, the original owners have 'fenced off' some of the adjoining park land so as to create a more regular shaped parcel of land.

This triangular parcel of land is about 6 metres deep at its widest point on the back-left side and tapers to the back-right corner approximately.

It is of near level contour and has for many years now been incorporated as part of the rear yard of the existing property.

It is adjoined to the left and rear by local park land.

The property is now fenced to the rear and left side boundaries in metal sheets, there is one large tree to the back-left corner, with some low height garden beds across the rear boundary.

The addition of 78 square metres of land to this property would result in a more regular shaped site and the fact that the current and former owners have utilised these 78 square metres over the past 30 plus years is noted.

**ASSESSMENTS:**

The property at [REDACTED] has been valued on a 'Before and After' basis which is considered to be the appropriate method of determining the value of the land to be acquired from council.

In determining the value of the land using the before and after method of valuation, two valuations of the subject land are undertaken.

In the first instance, the value of the property, prior to any land being added is determined.

Secondly the value of the property, after the land has been acquired has also then been determined.

The difference between the two valuation figures is considered to be the value of the land that is to be dedicated.

This method ensures that the property (land to be acquired) is not valued in isolation as a stand-alone allotment, but rather as a part of the overall land holding of the property at 19 Mackay Court, and that the valuation reflects any enhancement (or diminution) of value of the land that may occur as a result of the portion to be acquired.

The current market value of the land is the difference, determined by using the before and after method of valuation of the whole of the subject premises, between the value of the subject property including the land and the value of the subject property excluding the land.

**Added Value Comments:**

The value of the property with an additional 78 square metres of land area increases the total holding from 670 square metres to 748 square metres approximately.

The 78 square metres of land represents an increase in land area of 11.64%.

There are no structural improvements on the land, although it is fenced on 2 sides and has been planted and landscaped as if it were part of the property at [REDACTED]

The main benefit to the existing property is an increased depth rear yard and more regular shape.

The property is not greatly further enhanced by allowing for example additional or superior side access, or additional space to construct a garage-workshop or an in-ground pool etc.

The land proposed to be acquired is located to the back-left corner of the existing property and does not greatly enhance the overall street appeal of [REDACTED]

It does however create a more regular shape site and allow the land to be included as part of the gardens and landscaping of the existing property.

**Summary of Values on Before and After Approach:**

**Value of the property prior to acquisition**

**Value of the property after acquisition**

**LOSS IN VALUE TO REDLAND CITY COUNCIL:**

I have also considered the 'Potential Loss is Value' that these 78 square metres of park land may have to the current land owner, the Redland City Council.

Currently the 78 square metres of land forms part of the Redland City Council owned park land known as Valentine Road Park.

This park comprises a land area of 11.13 hectares approximately and extends north from Finucane Road to Valentine Road and adjoins existing residential development along part of the eastern boundary to [REDACTED]

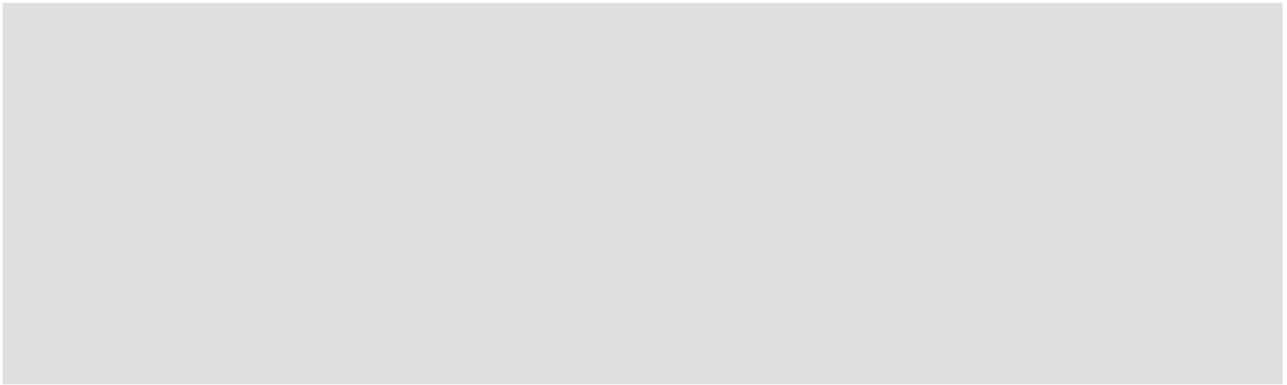
The park has been recently upgraded towards the southern end where there is off street parking, a children's play area, public toilets, and BBQ shelters, plus paths-walk ways.

The loss of 78 square metres represents well below 1% of the existing land area of the park and as such I consider the loss in value to the Redland City Council to be **nominal** at best.





**VALUATION:**



CHRIS BEATTIE QRV 2179  
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## VALUATION ASSUMPTIONS-LIMITATIONS

Assumptions, Disclaimers, Limitations & Qualifications

Important Warning Regarding Purpose Of Valuation:

**This 'Valuation Assessment' has been prepared for the instructing party for the stated purpose and HAS NOT been prepared for mortgage security purposes.**

This confidential document is for the sole use of persons directly provided with it by Crane and Company Valuers Pty Ltd. Use by, or reliance upon this document by anyone other than our instructing party for the stated purpose is not authorised by Crane and Company Valuers Pty Ltd. and Crane and Company Valuers Pty Ltd. is not liable for any loss arising from such unauthorised use or reliance.

This document should not be reproduced without my prior written authority.

### **Valuation Subject to change**

Real estate values vary from time to time in response to changing market circumstances and it should, therefore, be noted that this valuation is based on available information as at the date of valuation.

No warranty can be given as to the maintenance of this value into the future. It is, therefore, recommended that the valuation be reviewed periodically.

### **My Investigations**

The valuation is conducted on the basis that I am not engaged to carry out all possible investigations in relation to the property.

Where in my report I identify certain limitations to my investigations, this is to enable you to instruct further investigations if you consider this appropriate or I recommend as necessary to allow me to complete the valuation.

Crane and Company Valuers Pty Ltd is not liable for any loss occasioned by a decision not to conduct further investigations.

### **Assumptions**

Assumptions are a necessary part of undertaking valuations/the valuation.

Crane and Company Valuers Pty Ltd. adopts assumptions for the purpose of providing its valuation advice because some matters are not capable of accurate calculation or fall outside the scope of our expertise, or our instructions.

The person or entity to whom the report is addressed acknowledges and accepts that the valuation contains certain specific assumptions and as such the person or entity to whom this report is addressed acknowledges and accepts the risk that if any of the assumptions adopted in the valuation are incorrect, then this may have an effect on the valuation.

### **Information Supplied by others**

The valuation contains information which is derived from other sources. Unless otherwise specifically instructed by you and/or stated in the valuation, I have not independently verified that information, nor adopted it as my own, or accepted its reliability.



The person or entity to whom the report is addressed acknowledges and accepts the risk that if any of the unverified information/advice provided by others and referred to in the valuation is incorrect, then this may have an effect on the valuation.

### **GST**

To the extent that the valuation includes any statement as to a future matter, that statement is provided as an estimate and/or opinion based on the information known to Crane and Company Valuers Pty Ltd at the date of this document.

Crane and Company Valuers Pty Ltd. does not warrant that such statements are accurate or correct. Issues concerning GST continue to arise which impact on market values.

Where relevant, the valuation is based on the assumptions relating to GST set out in the Valuation Rationale section of this document.

If any of the assumptions are found to be incorrect, or if the party on whose instructions this valuation is provided wishes my valuation to be based on different assumptions, this valuation should be referred back to Crane and Company Valuers Pty Ltd for comment and, in appropriate cases, amendment.

### **Site Details**

A current survey has been provided. The valuation is made on the basis that there are no encroachments by or upon the property and the person or entity relying upon the valuation should confirm this by obtaining a current survey report and/or advice from a registered surveyor.

If any encroachments are noted by the survey report, that person or entity must not rely upon the valuation, before first consulting Crane and Company Valuers Pty Ltd to reassess any effect on the value stated in the valuation.

### **Property and Title**

I caution that I have not conducted a title search and may not have perused the original Crown Grant documentation.

I have assumed that there are no restrictions, easements or onerous encumbrances not disclosed which may affect market value.

However, in the event that a comprehensive title search is undertaken by the person or entity relying upon the valuation, which reveals further easements or encumbrances, that person or entity must not rely upon the valuation, before first consulting Crane and Company Valuers Pty Ltd to reassess any effect on the valuation.

## **Valuation Methodology**

The primary valuation methodology used by Crane and Company Valuers Pty Ltd in valuing the subject property is the direct comparison approach with reference to recent sales.

The result is the best estimate of value Crane and Company Valuers Pty Ltd can produce, but it is an estimate and not a guarantee of value.

My valuation is fully dependent upon the accuracy of information provided to me and to market derived assumptions obtained from analysed transactions.

The most relevant transactions are detailed in this report.

Where reliance has been placed upon external sources of information in applying the direct comparison methodology, Crane and Company Valuers Pty Ltd has not independently verified that information and Crane and Company Valuers Pty Ltd does not adopt that information and/or advice nor accept it as reliable.

The person or entity to whom the report is addressed acknowledges and accepts the risk that if any of the unverified information in the valuation is incorrect, then this may have an effect on the valuation.

## **Town Planning**

The zoning/instrument stated in this report is based on information sourced from the relevant Town Plan (for the subject locality) or RP Data. I advise that I have not undertaken a formal Town Planning Search for the subject property.

Should a formal Town Planning Search reveal that the actual zoning/instrument for the subject property differ in intent from that which is contained within this report, then I reserve the right to amend my assessment.

## **Environmental Conditions**

In the absence of an environmental site assessment relating to the subject property, I have assumed that the site is free of elevated levels of contaminants.

My visual inspections of the subject property and immediately surrounding properties revealed no obvious signs of site contamination.

Furthermore, I have made no allowance in my valuation for site remediation works.

However, it is important to point out that my visual inspection is an inconclusive indicator of the actual condition of the site. I make no representation as to the actual environmental status of the subject property.

If a test is undertaken at some time in the future to assess the degree, if any, of contamination of the site and this is found to be positive, I reserve the right to review my valuation assessed herein, should I deem it to be necessary.

## **Side Agreement**

My valuation assumes that there are no side agreements that would have an adverse effect on the market value of the property.

## **Not a Structural Survey**

I state that this is a valuation report, and not a Structural Survey.