



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 28 March 2019

held at Council Chambers, Station Street, Mullumbimby
commencing at 2:00pm

Public Access relating to items on this Agenda can be made at 2pm on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink that reads "Mark Arnold".

Mark Arnold
General Manager

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;

(b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

BYRON SHIRE COUNCIL
BYRON SHIRE RESERVE TRUST COMMITTEE

BUSINESS OF MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
4. STAFF REPORTS

General Manager

- 4.1 Access through Crown land for commercial equestrian activities required by sub-licences4

Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director or Executive Manager prior to the meeting. Any suggested amendments to the recommendations should be provided to the Administration section prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

STAFF REPORTS - GENERAL MANAGER

Report No. 4.1 Access through Crown land for commercial equestrian activities required by sub-licenceses

5 **Directorate:** General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2019/242

10 **Summary:**

Byron Shire Council was granted Crown licence RI 564194 ('the Licence') in July 2017. The Licence permits Council to grant sub-licenceses for commercial equestrian activities on Crown land following a competitive process under clause 64(e) of the Licence.

Council has granted, by direct negotiation, two terms of twelve-month sub-licenceses to three commercial operators for equestrian access through Lot 409 DP 759057 and Lot 428 DP 729272. A competitive process should be undertaken before granting new sub-licenceses and will require the inclusion of commercial equestrian activities into Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('Policy 5.52').

A strategic planning workshop on the inclusion of commercial equestrian activities into Policy 5.52 was held on 7 February 2019. The workshop identified two main issues that Council, as the Crown Land Manager, must consider before including access through Lot 409 DP 759057 and Lot 428 DP 729272 for commercial equestrian activities into Policy 5.52, being:

1. Access to Crown land must be licensable. The inability for horses to access Lot 409 DP 759057 without entry onto private land is a barrier for Council to run a public tender process as required by the Licence; and
2. Access to Crown land must be safe. Dedicated horse float/truck parking areas is required to ensure the safe unloading and loading of horses, a secure area to handle horses and a safe area to instruct clients away from public parking and recreating areas in Reserve R97139.

This report discusses options to the possible resolving of both issues and estimated expenditure required.

RECOMMENDATION:

1. That Council as the Crown Land Manager note this report.
2. That Council as the Crown Land Manager note the proposals to resolve parking of horse floats/trucks and the handling of horses in Reserve R97139 and invite investigation of options including the development of plans.
3. That in order to avoid prejudice to the sub-licenceses while the matters raised in this report to be investigated and reported to Council, Council as the Crown Land Manager, recommend that Council issue each sub-licencee, on expiry of their current sub-licence, a six (6) month sub-licence for access through Crown land for commercial equestrian activities.

REPORT

Background:

5 In July 2017 a combined Licence RI 564194 ('the Licence') was granted to Byron Shire Council by the Ministers responsible for the *Crown Lands Act 1989* and the *Roads Act 1993* for business purposes (low impact commercial recreational activities). The licence expressly authorised Council to grant sub-licences for commercial equestrian activities on Crown lands including Lot 409 DP 759057 and Lot 428 DP 729272 being Crown land not managed by Council.

10 Council by resolution granted, by direct negotiation, two terms of twelve-month sub-licences to Cape Byron Seahorses Riding Centre, Zephyr Horses and The Ranch Byron Bay for access through Crown land to operate commercial horse riding tours on Tyagarah Beach. Current sub-licences terminate on 30 June 2019, 30 June 2019 and 22 April 2019 respectively.

15 In granting sub-licences for commercial activities by direct negotiation, Council may have failed to comply with clause 64(e) of the Licence that requires a competitive process to grant sub-licences.

Policy:

20 Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('Policy 5.52') expressly states the types of commercial activities referred to as Class 2 activities that can be sub-licensed under the Licence. Commercial equestrian activities must be included as a Class 2 activity in Policy 5.52 to allow Council to run a tender process to grant sub-licences.

25 Strategic Planning Workshop:

30 A strategic planning workshop on the inclusion of commercial equestrian activities into Policy 5.52 was held on 7 February 2019. At the workshop the following issues were identified as requiring a resolution of Council as the Crown Land Manager before inclusion of commercial equestrian activities into Policy 5.52:

1. Access to Crown land must be licensable;

35 The sub-licence granted by Council to Zephyr Horses is for access through Lot 409 DP 759057 being Crown land not managed by Council. The land is located at the northern end of Belongil Beach adjoining the Tyagarah Nature Reserve. Horses access Lot 409 DP 759057 through private land and Zephyr Horses has a private agreement with the land owner for access.

40 The inability for horses to access Lot 409 DP 759057 without entry onto private land is a barrier for Council to run a public tender process as required by the Licence.

45 Accordingly, the strategic planning workshop recommended that Zephyr Horses directly negotiate with Crown Lands for ongoing access through Lot 409 DP 759057.

Council staff have written to Crown Lands for comment but no response has been received at the time of writing this report. Should Crown Lands refuse to directly negotiate with Zephyr Horses for ongoing access through Lot 409 DP 759057 then a separate report will be brought to Council for consideration.

2. Access to Crown land must be safe;

50 Sub-licences granted by Council to Cape Byron Seahorses Riding Centre and The Ranch Byron Bay is for access through Lot 428 DP 729272 being Crown land not managed by Council. Lot 428

BYRON SHIRE COUNCIL

STAFF REPORTS - GENERAL MANAGER

4.1

DP 729272 adjoins the northern end of the Tyagarah Nature Reserve and accessed via South Beach Road at Brunswick Heads.

Both sub-licensees hold approval for up to ten horses in any one tour on Tyagarah Beach.

5 The following issues associated with continued access for commercial equestrian activities through Lot 428 DP 729272 were discussed at the strategic planning workshop:

- 10 1. no dedicated parking for horse floats/ trucks on the southern end of South Beach Road that has resulted in private vehicles being parked-in; and
- 15 2. no safe area to handle horses that results in:
- i. horses being handled on and off horse floats/trucks in public areas adjacent to the Brunswick Surf Club;
 - ii. horses being secured by headstalls to trees, bollards or other available structures because no horse handling area exists; and
 - iii. novice horse riders being instructed in a public place.

20 The above issues are exacerbated by the number of recreational horse riding permits granted by the Cape Byron Marine Park ('the Marine Park'). Any person wanting to ride a horse on Tyagarah Beach must hold a valid permit issued by the Marine Park. All permit holders compete with the public and sub-licensees for parking on South Beach Road and all must handle horses in public areas.

25 The strategic planning workshop recommended that Council as the Crown Land Manager resolve both issues of horse float/truck parking and the handling of horses at the southern end of South Beach Road Brunswick Heads opposite the Brunswick Surf Life Saving Club prior to including commercial equestrian activities in Policy 5.52.

30 Resolving issues:

1. Parking for horse float/trucks:

35 If the Policy is to authorise the granting of sub-licences for commercial equestrian activity access through Lot 428 DP 729272 then parking is required for sub-licensee horse float/trucks.

The following options are provided:

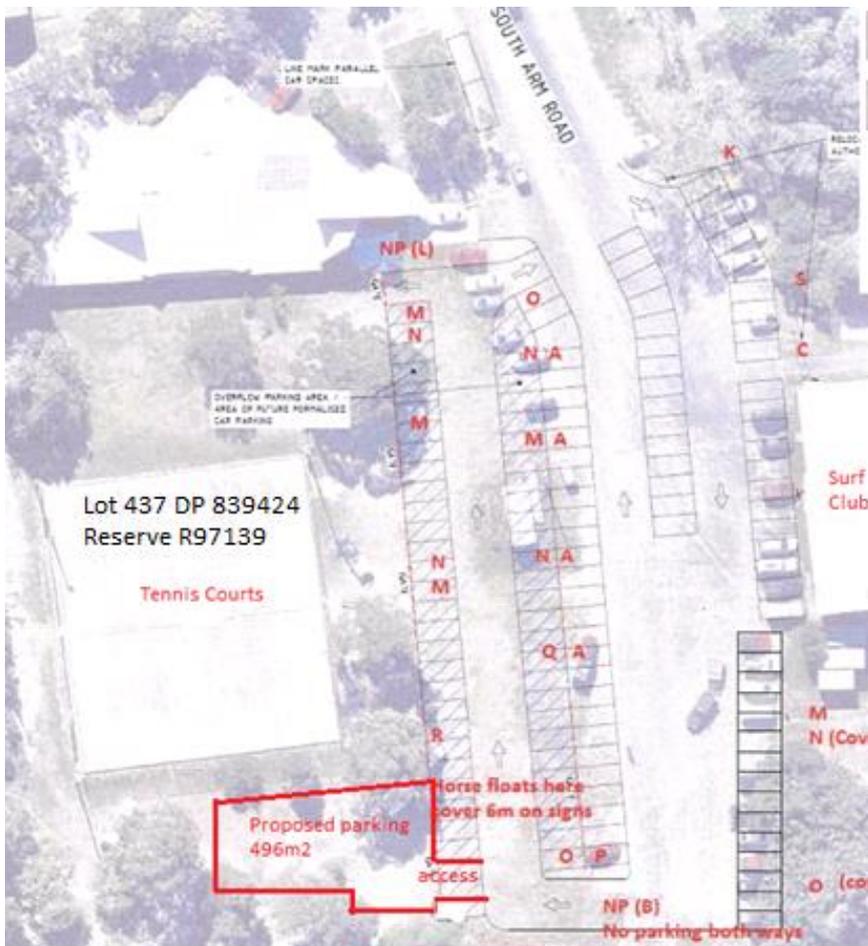
- 40 a) Create parking for horse float/trucks within the existing road reserve of South Beach Road Brunswick Heads at an estimated cost for \$21,000 including new signage and line marking.
- Advantage: use of existing road infrastructure without the need to obtain development consent.
 - Disadvantage: significant loss of public parking spaces that is inconsistent with the redevelopment of the Brunswick Surf Club and proposed extended uses. The option
- 45 does not resolve the ongoing need to unload and re-loading horses in public areas.
- 50 b) Construct a new horse float/trucks parking area off South Beach Road Brunswick Heads. Of the available land only part of Lot 437 DP 839424 in Reserve R97139 being managed by Council is suitable for construction of a horse float/truck parking area. The land is situated on the southern side of the Brunswick tennis courts.

The estimated cost to construct a horse float/ truck parking area of 496m² is \$143,000. The cost includes works to seal, line mark and erect new signage carried out by small

equipment due to the load limit imposed on South Arm Bridge over Simpsons Creek Brunswick Heads.

- 5 • Advantage: minimal loss of public parking, the creation of a designated space for horse float/trucks parking and the loading and unloading of horses in a secure area away from public parking and recreating areas.
- Disadvantage:
 - 10 i. The \$143,000 cost to construction and additional costs if the 496m² area needs to be expanded;
 - ii. Requirement for development consent to carry out the works and uncertainties whether the works are permitted under relevant zoning RE1 and Deferred Matter; and
 - 15 iii. Uncertainty whether the proposed horse float/trucks parking area will be compatible with the land categorisation yet to be determined by Crown Lands.

Option b) is preferred as shown below, however future investigation is needed to determine suitability of the site and the size of the parking area required.



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2. Secure horse handling area:

25 If the Policy is to authorise the granting of sub-licences for commercial equestrian activity access through Lot 428 DP 729272 then a secure horse handling area is needed.

The following options are provided:

a) Include a horse handling area as part of the construction of a horse float/trucks parking area in Reserve R97139 within part of Lot 437 DP 839424;

- 5 • Advantage: a single place for the parking, unloading and loading of horses, a place to secure horses and to instruct clients and the location provides unrestricted access to the fire trail at the end of South Beach Road Brunswick Heads required to access Lot 428 DP 729272.
- 10 • Disadvantage:
 - i. Additional costs of creating a horse handling area in Lot 437 DP 839424 that requires the construction of a metal 'hitching rail' to secure horses as shown below.



- 15 ii. Uncertainly whether the proposed use of the land for a horse handling area will be compatible with the land categorisation yet to be determined by Crown Lands; and
- 20 iii. The need for any person, including sub-licensee's who unload horses onto Lot 437 DP 839424 and use the horse handling area will need to obtain development consent as required by the RE1 land zoning and a temporary licence to handle and ride horses in Reserve R97139 Brunswick Heads.
- 25 b) Construct a separate horse handling area in Lot 379 DP 47471 being Crown land managed by Council. Planning constraints associated with land zoning of Deferred Matter would likely prohibit the use of the land for horse handling area.

30 Option a) is preferred as shown below, however future investigation is needed to determine suitability of the site for the purpose of a safe horse handling area.



In summary until issues of horse float/truck parking and horse handling in Reserve R97139 can be resolved to allow for commercial equestrian activities to be included in the Policy and a tender process to be run that Council limit the term of any further sub-licences to six (6) months.

Native Title:

1. The proposed act (construction of a horse float/truck parking area and a hitching rail on Reserve R97139 Brunswick Heads Lot 437 DP 839424) is works that may impact on native title. Council’s Native Title Managers have determined the proposed works are valid future actions that can be carried out by Council under s24JA of the *Native Title Act 1993* (Cth).

However, as the proposed works involves the construction or establishment of a public work, Council must notify NTSCORP, all registered native title bodies and registered native title claimants for comment at least 28 days prior to commencing works.

Should native title be determined to exist, at a future date, Council may be liable for compensation under the provisions of the *Native Title Act 1993* (Cth) and the *Crown Land Management Act 2016* (NSW), for the impact on native title rights and interests by the proposed works.

2. The grant of a licence to handle and ride horses in Reserve R97139 being Lot 437 DP 839424 may impact on native title. Council’s Native Title Managers have assessed the proposed licence to be a valid future action under s24JA of the *Native Title Act 1993* (Cth). As the proposal does involve the construction or establishment of a public work Council is not required to consult prior to granting the licence.

Should native title be determined to exist, at a future date, Council may be liable for compensation under the provisions of the *Native Title Act 1993* (Cth) and the *Crown Land Management Act 2016* (NSW), for the impact on native title rights and interests by the proposed licence.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.3	Provide accessible, local community spaces and facilities	2.3.7	Deliver Open Space and Recreational services in line with Community Solutions Panel values (SP)	2.3.7.2	Implement new works projects

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Legal/Statutory/Policy Considerations

Crown Land Management Act 2016 (NSW)

s21 Management in accordance with Local Government Act 1993

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(1) A council manager is authorised to classify and manage its dedicated or reserved Crown land as if it were public land within the meaning of the Local Government Act 1993, subject to this Division.

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Note. The term public land (as defined by the Local Government Act 1993) excludes land to which this Act applies even if it is vested in or under the control of a local council. The Act also requires local councils to classify their public lands as either community land or operational land and manage the land accordingly.

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(2) Accordingly, a council manager is also authorised to manage its dedicated or reserved Crown land as if it were community land or operational land, but only as permitted or required by this Division.

Note. For example, requirements relating to reporting and plans of management will generally be as provided by the Local Government Act 1993 rather than this Act.

s3.23 Management of land as community land

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(1) Application This section applies to a council manager that is required by this Division to manage dedicated or reserved Crown land as if it were community land under the Local Government Act 1993.

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(2) Initial assignment of categories The council manager must, as soon as practicable after it becomes the manager of the dedicated or reserved Crown land (including because of the operation of Schedule 7), assign the land to one or more categories of community land referred to in section 36 of the Local Government Act 1993.

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Note. Section 36 (4) of the Local Government Act 1993 requires a draft plan of management for community land to categorise the land by reference to one or more of the following categories:

- (a) a natural area,
- (b) a sportsground,
- (c) a park,
- (d) an area of cultural significance,
- (e) general community use.

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It also enables land that is categorised as a natural area to be further categorised as bushland, wetland, escarpment, watercourse, foreshore or a category prescribed by the regulations under that Act (or a combination of these).

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(3) The assigned category or categories must be those that the council considers to be the category or categories that are most closely related to the purposes for which the land is dedicated or reserved.

(4) The council manager must give written notice to the Minister of the categories to which it has assigned the land as soon as practicable after assigning them.

(5) The Minister may, by written notice given to the council manager, require the manager to alter an assigned category if the Minister considers that:

- (a) the assigned category is not the most closely related to the purposes for which the land is dedicated or reserved, or

- (b) *the management of the land by reference to the assigned category is likely to materially harm the use of the land for any of the purposes for which it is dedicated or reserved.*
- (6) *Adoption of plans of management Plans of management for the land are to be prepared and adopted in accordance with the provisions of Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993, subject to this section.*
- (7) *The following provisions apply during the period of 3 years after the commencement of this section (the initial period):*
 - (a) *a council manager must ensure that the first plan of management applicable to the land is adopted as soon as practicable within the initial period,*
 - (b) *the first plan of management may be prepared and adopted under Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993 by:*
 - (i) *amending an existing plan of management so that it applies to the land, or*
 - (ii) *adopting a new plan of management for, or that includes, the land,*
 - (c) *if the draft first plan of management results in the land being categorised by reference to categories assigned as provided by this section, the council manager will not be required to hold public hearings under section 40A of the Local Government Act 1993, but must give public notice of it as required by section 38 of that Act,*
 - (d) *if the draft first plan of management alters the categories assigned as provided by this section, the council manager must:*
 - (i) *obtain the written consent of the Minister to adopt the plan if the re-categorisation would require an addition to the purposes for which the land is dedicated or reserved, and*
 - (ii) *hold public hearings under section 40A of the Local Government Act 1993,*
 - (e) *section 37 (b), (c) and (d) of the Local Government Act 1993 do not apply to the first plan of management,*
 - (f) *section 44 of the Local Government Act 1993 applies to the land pending the adoption of a plan of management,*
 - (g) *this subsection does not apply to any further plans of management (or amendments to plans of management) made during the initial period.*
- (8) *To avoid doubt, Chapter 6 of the Local Government Act 1993 (except section 37 (b), (c) and (d)) will apply to plans of management made after the first plan of management is made during the initial period.*
- (9) *Alteration of land categorisation The categorisation of land by a plan of management cannot be altered by a further plan of management unless the Minister has given written consent for the further plan to alter it.*
- (10) *The Minister cannot give written consent to the alteration of the categorisation of land if the Minister considers that the alteration is likely to materially harm the use of the land for any of the purposes for which it is dedicated or reserved.*
- (11) *A written consent given by the Minister to the alteration of the categorisation of land operates as if the Minister had authorised the land to be used for additional purposes under section 2.14 that correspond to the purposes for which community land of that category can be used.*
- (12) *An additional purpose taken to be authorised by subsection (11) does not cease to be an authorised purpose for which the land is dedicated or reserved if the council manager concerned ceases to be the Crown land manager of the land.*

Financial Considerations

As a recommendation by the 7 February 2019 strategic planning workshop, this report puts forward a number of options to resolve safe access to Crown land for commercial equestrian activities.

This report considers options to:

- a) Resolving the parking of horse float/trucks Reserve R97139 at the southern end of South Beach Road by either modifying parking in the road reserve at an estimated cost of \$21,000 or the creation of a new 496m² parking area for horse float/trucks at an estimated cost of is \$143,000. Costings are estimates only and additional investigations may substantially change estimates; and

- b) The construction of a metal 'hitching rail' to secure horses. No costing has yet been obtained for this construction.

Annual rental income received from Reserve R97139 totals \$4,180 and includes:

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- a) Sub-licence rents total \$3,200;
- b) Lease rent on Brunswick Surf Life Saving Club \$490 (exclusive of GST); and
- c) Licence Brunswick Tennis Club \$490 (exclusive GST).

10 As a result expenditure the cost of any proposed works will need to come from the Reserve Trust. In accordance with the Transition Guide for Crown Land Managers – Local Councils released September 2018, for the period up to 30 June 2019 all revenue generated by a Crown Land Manager on the Crown Reserve is available for expenditure only on Crown Reserves under its management.

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Consultation and Engagement

20 Should Council as the Crown Land Manager for Reserve R97139 resolve to carry out public works in the Reserve then Council is obligated to notify in writing NTSCORP, all registered native title bodies and registered native title claimants for comment for at least 28 days prior to commencing the works.