

Kowanyama Aboriginal Shire Council

Expression of Interest (EOI)

Title: Licence Agreement – Kowanyama Blue Café

RFT Reference: KASC-2023-021

Date of Issue: 4 April 2024

Closing Date: 22 April 2024

Expressions of Interest

Council:	Kowanyama Aboriginal Shire Council (KASC)
Council Address:	Lot 30 Chapman Road, Kowanyama 4892
Contact (Principal):	Kevin Bell, Chief Executive Officer
Contact number:	40 4083 7100
Expression of Interest (EOI):	For suitably experienced suppliers to operate the Kowanyama Blue Café under a Licence Agreement with Council.
EOI Number:	KASC-2024-021
Closing date and time:	4:00PM – 22nd April 2024

Instructions for completing this EOI:

- Responders should ensure they read all parts of this EOI fully to ascertain the services to be performed and the terms on which the services are to be performed.
- Responders must respond to all sections of the EOI and must sign and date the form where indicated.
- Responders may provide supplementary material to support their offer. All supplementary material must be cross referenced to the relevant section of this EOI.
- Council will confirm in writing to suppliers, to advise if their EOI has been accepted or unsuccessful.
- Responses are to be submitted via email to tenders@kowanyama.qld.gov.au and must include the EOI number in the subject line (i.e., KASC-2024-021). Council reserves the right to not consider submissions sent to any other email address. Do not forward enquiries to this email address.

Part A: EOI Information



Introduction

The Kowanyama Aboriginal Shire Council lies 25 km (as the crow flies) from the east coast of the Gulf of Carpentaria in the south-western region of the Cape York Peninsula, and 600 km northwest of Cairns. The total area equals approximately 4,120 square kilometres. The community has a population of approximately 1200 people.

The community is based on the banks of Magnificent Creek, which joins the South Mitchell River, which in turn forms part of the Mitchell River Delta. Road access is only available four to five months of the year in the dry season. Weekday flights to and from Cairns service the community throughout the year.

Kowanyama has a rich abundance of nature and wildlife. Kowanyama consists mainly of wetlands and delta mangroves in the north, extending to forest country of the central peninsula. These unique natural environments are home to a vast array of bird and animal species.

Kowanyama means "place of many waters" in the Yir Yoront language. The Indigenous inhabitants are the direct descendants of Aboriginal groups who inhabited the Lower Mitchell and Alice Rivers and neighbouring areas. The community includes the Kokoberra, Yir Yoront (or Kokomjen) and Kunjen clans.

Kowanyama's Aboriginal people continue to identify strongly with their ancestral countries and with the languages, stories, songs, dances, and histories associated with those countries. Language groups associated with countries in the Kowanyama region are Yir Yoront, Yirrk Thangalki, Koko Bera, Uw Oykangand, and Olkola.

1.1. Council Services

The Kowanyama Aboriginal Shire Council is responsible for local government services such as road construction and maintenance, water infrastructure, sewerage infrastructure and maintenance, environmental health, and parks & gardens.

In addition to these primary functions, Council also provides the following services and facilities:

- Enterprises:
 - Post Office and Bank
 - Residential and Commercial Rentals
 - Training Centre Offices
 - Airport
 - Centrelink Agency
- Housing
- Local radio station
- Operation and management of the Purchasing Store
- Management of license hold cattle properties (Oriners and Sefton), including Carbon Farming
- Operation and management of the Aged Care Centre
- Operation and management of the Child Care Centre and Play Group
- Operation and management of the Land & Natural Resources Office (Rangers)
- Aboriginal Community Police Officers, in collaboration with Queensland Police Service
- Sport & Recreation programs and services, including those for young people
- Swimming Pool
- Women's Shelter
- Women's and Men's Groups
- Night Patrol

1. Opportunity

Kowanyama Aboriginal Shire Council (Council) is seeking Expressions of Interest (EOI) from suitable qualified and experienced persons or businesses to provide cafe services via a license to the community of Kowanyama.

The successful operator will have the opportunity to provide catering services to interested parties located within Kowanyama community.

Council is flexible on the term of the license including initial terms, optional extensions and is preparing an indicative license. As per standard license conditions, water and council rates, any licence fees and utility costs are the responsibility of the licensee.

The cafe does not operate in isolation and is a critical component of Kowanyama Community. Therefore, it is expected the successful Respondent will work collaboratively with the Shire, through the CEO and Executive Managers, for mutual benefit and growth

2. Site Information

Located as part of Lot 35 Cnr Gilbert White and Chellikee Street, the cafe provides services to commercial business, community residents and visitors of Kowanyama.

Please refer to Site Information outlined in **Annexure A**.

Respondents should indicate their proposed hours of trade and should consider that trading hours are an important factor.

Expressions which include the following trading hours will be highly regarded;

- Open 7 days;
- 8.30am to 5pm (to fit in Council and commercial business opening hours);
- Open Public Holidays;
- Available for events/ functions;
- Ability to cater for events and other such activities

3. Licensee's Responsibilities:

The successful Licensee will be responsible for:

- Obtaining all café (food business) permits and registrations prior to commencement of trading;
- All cafe utilities and consumables;
- Maintaining minimum operating hours throughout the term of the License. Hours of operation to be determined in negotiation with Council;
- Cleaning of common areas including toilets and toilet supplies;
- Procurement and installation of Point of Sale system/s;
- Procurement and installation of coffee machine and grinder;
- Procurement of all serving and operational items;
- Procurement of all loose furniture required for the cafe;

4. Scope

Principal:	Kowanyama Aboriginal Shire Council					
Project Name:	Licence Agreement - Kowanyama Blue Cafe					
Scope:	Licence to a suitably experienced supplier of goods and/or services and assets of the Kowanyama Blue Cafe					
Site:	Kowanyama Aboriginal Shire Council					
Proposed timetable:	Action			Proposed Date		
	EOI of Tender Documents			4 April 2024		
	EOI Close Date			4pm 22 April 2024		
	EOI Assessment Completed			26 April 2024		
	Adopted by Council			30 April 2024		
	Issue Letter of Confirmation			6 May 2024		
EOI briefing or site inspection:	Description	Time / Date	Place	Maximum Attendees	Mandatory or optional	RSVP
	N/A	N/A	N/A	N/A	N/A	N/A
Communication method:	<input checked="" type="checkbox"/> Email: tenders@kowanyama.qld.gov.au					
Evaluation criteria:	Criteria			Weighting (%)		
	Experience			25		
	Value for Money (Offering/ Pricing/ Format of service/ Menu/ hours etc).			30		
	Insurance and compliance			20		
	Knowledge and understanding of ATSI communities			15		
	Key Personnel			10		
	Mandatory Details			Mandatory		
EOI box:	EOI's must be lodged at: tender@kowanyama.qld.gov.au					
EOI format:	EOI's must consist of: <ul style="list-style-type: none"> • 1x complete copy of the EOI in a single PDF document; • 1x set of the Response Schedules in the format provided by the Principal File names must include the contract number and a brief description of the document					
Page limit:	No limit					
EOI validity period:	90 calendar days from the Tender Closing Time					
Procurement administrator:	Darryl Pollard tenders@kowanyama.qld.gov.au					
Principal complaints Manager:	Name: Danae Maltby Contact: 4040 4510 Email: governance@kowanyama.qld.gov.au					

5. Selection criteria

Respondents submitting an Expression of Interest will be required to address the following criteria in writing and must include all information requested within this document to be considered.

The below requirements are to be included with respondents' response schedules in Part C.

1. Include the full details (name, address, and contact details) of all parties involved in the Expression of Interest.
2. Proposed management and operation structure for the cafe detailing the style and type of venue proposed including a draft menu and proposed trading hours for the business. Council considers that the cafe respondent should be able to provide quality food choices.
3. Show how you would work in partnership with Council to provide a menu and pricing model to cater for inbound and wholesale tour group commercial businesses and special events.
4. Detail any previous and or current business experience.
5. Provide contact details of no less than 2 suitable referees that are able to provide independent feedback.
6. Demonstrate a financial capacity to operate a business.
7. Acknowledgement of the need to obtain and maintain appropriate licences including payment of any fees.
8. Detail how you would manage supply of a quality menu during wet season (roads are closed from Dec through to April/May).
9. Provide details on staffing, including any training or employment opportunities for community members.
10. Knowledge and understanding of Aboriginal and Torres Strait Islander cultures and demonstrated ability to communicate effectively and sensitively with Indigenous people. Experience working and living in remote areas and/or Aboriginal communities would be highly regarded.

Part B: Draft Licence Agreement



6. Overview

The successful candidate shall enter into a standard terms licence agreement (draft **attached** at **ANNEXURE B**) with Council for the operation of Kowanyama Blue café (12-month term).

A peppercorn annual licence fee of \$1 shall be invoiced. It is a requirement that the successful supplier bring to site all tools and equipment required to perform the work, however Council shall provide complementary use of its equipment on site, provided the supplier maintain at its cost.

This Licence Agreement does not include staff accommodation.

6.1. Outgoings

The licensee will be responsible for all outgoings for services including electricity, water, sewer connections, bottle gas, waste management and any other applicable variable outgoing expenses.

6.2. Waste

The licensee will be responsible for all waste materials generated during the trade period. Waste materials such as food packaging should be collected in bins or suitable receptacles, bagged, or contained, and stored and disposed of at the cost of the operator. Council will provide an adequate number of exclusive 24 litre Mobile Garbage Bins that will be regularly serviced by Council's Waste contractor with the costs appropriately charged back to the cafe operator.

6.3. Insurance

The successful applicant must provide Council with the following insurances but not limited to (including policy wording and certificate of currency for each insurance type);

1. Public Liability Insurance (minimum \$20 million);
2. Evidence of workers compensation (if applicable);
3. Products Liability Insurance (if excluded from Public Liability)

Part C: Response Schedules



Part 1: Applicant Details

Applicants Name:

Applicants ABN:

Applicants Address:

Applicants email:

Applicants contact number:

Part 2: Anticipated trade commencement date

Commencement date:

Part 3: Referees

Attach the names and contact details of two (2) referees, and label **"Referees"**.
You should give examples of work provided for your referees where possible.

Tick if attached

Part 4: Conflicts of interest

Will any actual or potential conflict of interest in the performance of your obligations under the Contract exist if you are awarded the Contract, or are any such conflicts of interest likely to arise during the Contract?

Yes

No

If **Yes**, please supply in an attachment detail of any actual or potential conflict of interest and the way in which any conflict will be dealt with and label it "Conflicts of Interest"

Tick if attached

Part 5: Business Plan / methodology

Applicants must supply evidence of their business plan which includes:

- Relevant experience - Describe your experience in undertaking similar delivery of service.
- Technical Skills - information of proposed personnel including experience and qualifications of key personnel
- Safety systems - details of any WHS and Food Safety systems.
- Licencing - details of relevant qualifications and professional licences.
- Supply & Delivery - detail how you will manage and supply services during wet season (road closures).

Tick if attached

Please attach this information and label "Business plan/methodology".

Part 6: Financial capacity	
<p>Is the Applicant presently able to pay all its debts in full as and when they fall due? If "No" please provide details.</p> <p>Is the Applicant currently engaged in litigation because of which it may be liable for \$50,000.00 or more? If "Yes" please provide details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>If the Applicant is awarded the Contract, will it be able to fulfil the obligations of the Contractor under the Contract from its own resources or from resources readily available to it and remain able to pay all its debts in full as and when they fall due? If "No" please provide details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>Is the Applicant presently able to pay all its debts in full as and when they fall due? If "No" please provide details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
Part 7: Insurances	
<p>Applicants must provide evidence of their insurance coverage (including copies of certificates) for each type of insurance specified below in an attachment labelled 'Insurance Certificates'</p>	
Part 8: Local Content Considerations and Community Benefits	
<p>Show how you would work in partnership with Council to provide a menu and pricing model to cater for inbound and wholesale tour group commercial businesses and special events.</p>	Tick if attached
	<input type="checkbox"/>
<p>Provide details on staffing, including any training or employment opportunities for community members.</p>	Tick if attached
	<input type="checkbox"/>
<p>Knowledge and understanding of Aboriginal and Torres Strait Islander cultures and demonstrated ability to communicate effectively and sensitively with Indigenous people.</p>	Tick if attached
	<input type="checkbox"/>
<p>Detail your previous experience working and living in remote areas and/or Aboriginal communities would be highly regarded.</p>	<input type="checkbox"/>

The Applicant confirms that it has read and fully understood the Expression of Interest (EOI) including (but not limited to) the following documents:

- Part A: EOI Information
- Part B: Draft Licence Agreement
- Part C: Response Schedule

By lodging this EOI, the Applicant warrants and represents that it can and will comply with all obligations under, warranties given in, and representations made in the agreement.

All EOI Forms must be signed for and on behalf of the Applicant by a person or persons having full authority to bind the Applicant for the purposes of the EOI and evidence of such authority must be provided on request.

Business Name:

Name of Authorised Representative:

Signature of Authorised Representative:

Date:

Annexure: A Site Information

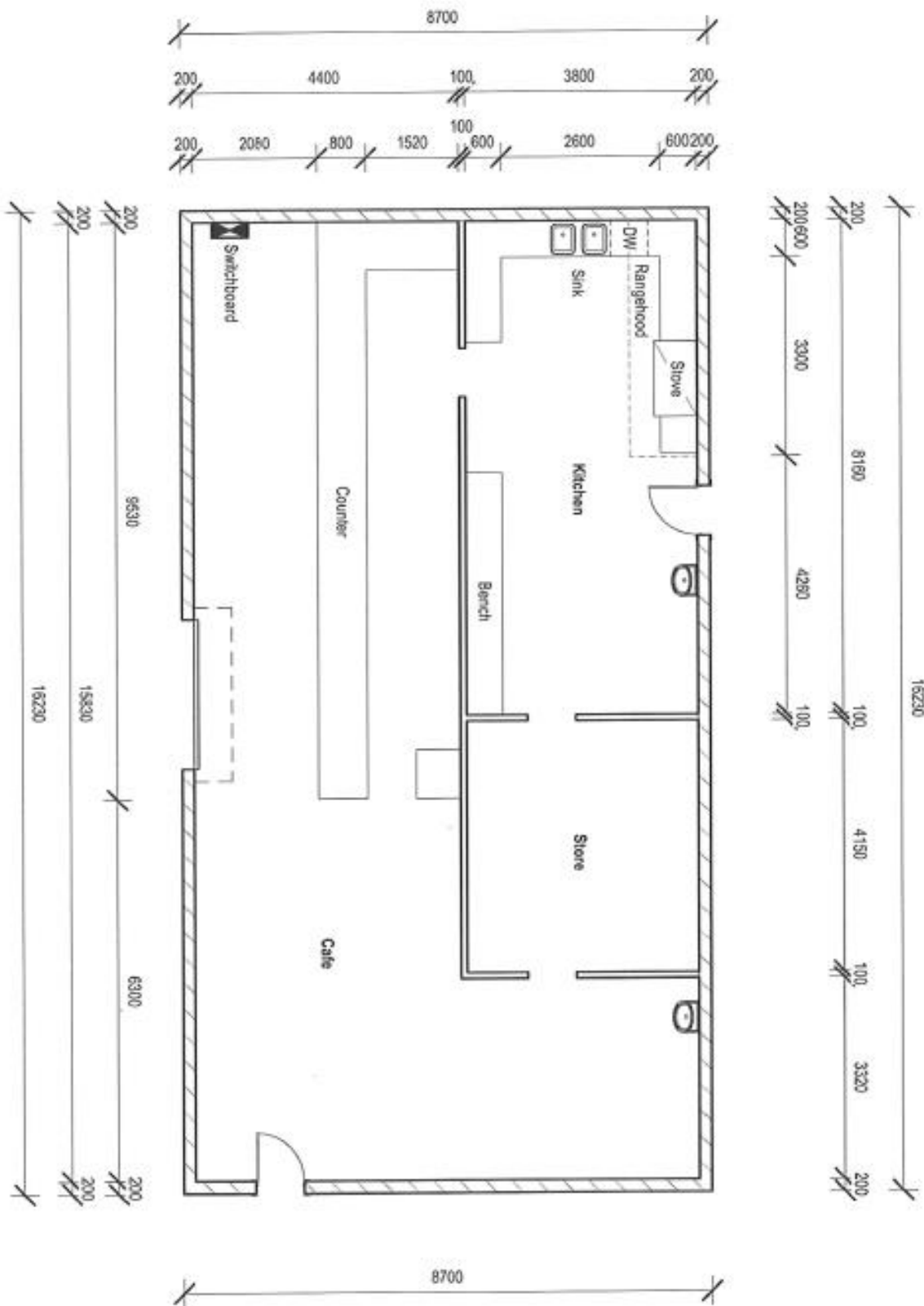


Annexure A – 1

Map 1 – Kowanyama Blue Cafe – part of Lot 35 on SP272069 (Licensed area highlighted)



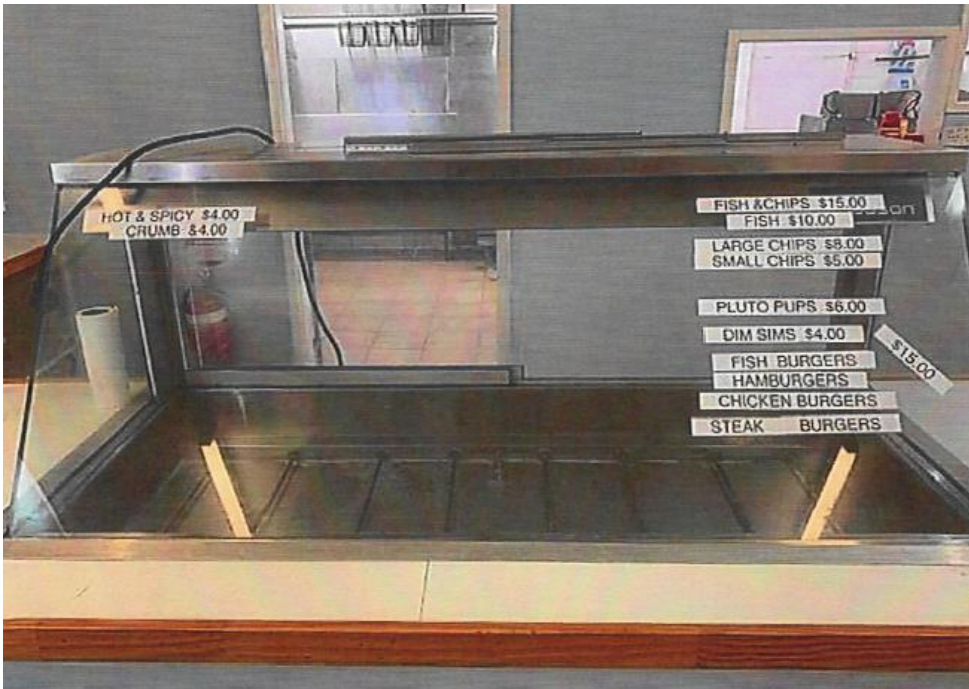
Annexure A – Blue Cafe Floor Plan



Annexure A – Blue Café Equipment Inventory

Please note that Council makes no guarantee that the listed assets below are in operational condition. In accordance with section 3 all operational and serving requirements are the Licensee's Responsibility not Council's.

Item 1: Hot Service bain-marie



Item 2: Cold service bain-marie



Item 3: Pie warmer



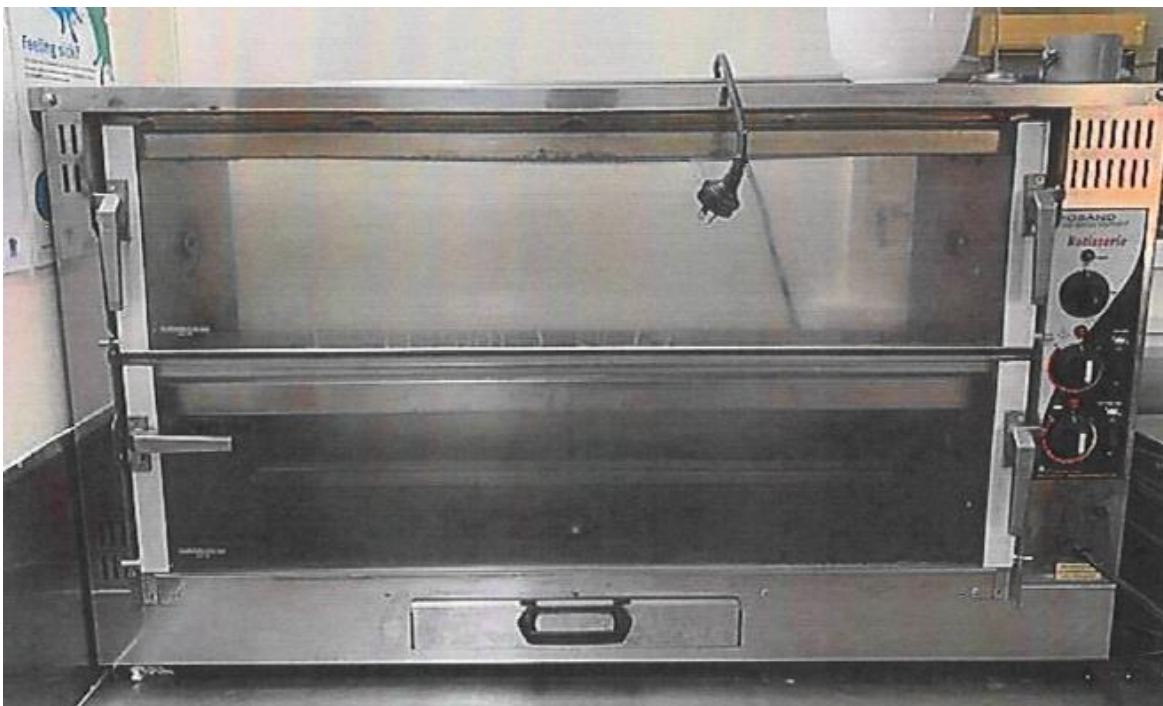
Item 4: Microwave 1



Item 5: Microwave 2



Item 5: Rotisserie oven



Item 7: Commercial fridge (Food)



Item 8: Commercial freezer



Item 9" Commercial Fridge (drinks)



Item 10: Electric hotplate



Item 11: Deep fryer - 1



Item 12: Deep fryer – 2



Item 13: Commercial gas oven



Item 14: Commercial dishwasher



Item 15: Small coffee grinder



Item 16: Pastry display cabinet



Annexure A – Blue Café Facility

The images shown are indicative and may not be an exact representation of the current layout of the Blue Café











Annexure: B “Draft” Licence Agreement





LICENCE AGREEMENT

PARTIES**Kowanyama Aboriginal Shire Council**

("Council")

[INSERT]

("Licensee")

RECITALS

- A. Council is the trustee owner of the Licensed Area.
- B. Council agrees to grant a Licence to the Licensee to occupy the Licensed Area for the Permitted Use for the Term pursuant to the terms and conditions contained in this Licence.
- C. The Licensee agrees to enter this Licence in accordance with the terms and conditions contained in this Licence.

OPERATIVE PROVISIONS**7. REFERENCE SCHEDULE**

Item	Reference	Details
Item 1	Council Address for Notices: Phone No.: Facsimile No.: Email address: Contact:	Kowanyama Aboriginal Shire Council Lot 30 Chapman Road, Kowanyama, Qld 4892 07 4083 7100 07 4060 5124 admin@kowanyama.qld.gov.au Chief Executive Officer
Item 2	Licensee Address for Notices: Phone No.: Contact:	[INSERT]
Item 3	Licensed Area	Kowyanama Blue Cafe– Part of Lot 35 Cnr Gilbert White and Chellikee Street, Kowanyama Q 4892, more particularly described as, part of Lot 35 on SP272069 as shown in Schedule 1.
Item 4	Licence Fee	\$1 (GST Excl) per annum. Payable upon demand.
Item 5	Licence Fee Review	NA
Item 6	Term Commencement Date: Expiry Date:	[INSERT]
Item 7	Insurance	Pursuant to clause 9
Item 8	Permitted use	Takeaway/ dine in food/ meals

8. DEFINITIONS AND INTERPRETATIONS

8.1. In this Licence unless inconsistent with the context or subject matter:

- a. **Commencement Date** means the commencement date stated in Item 6.
- b. **Current CPI** means the Consumer Price Index number for Brisbane - All Groups (or the index officially substituted for it) for the quarter last published immediately before the relevant Review Date.
- c. **Event of Default** means the occurrence of any one or more of the following events:
 - i. the Licensee fails to make a payment due under this Licence; or
 - ii. the Licensee fails to perform, keep, or fulfil any other covenant, undertaking, obligation, or condition in this Licence; or
 - iii. the Licensee attempts to assign, transfer or sublicense this Licence without Council's prior written consent pursuant to clause 12.1.
- d. **Expiry Date** means the date specified in the Reference Schedule, and if an Option is exercised, includes the date the Option is scheduled to end.
- e. **Fixtures** means all installations, plant, equipment, fixtures, fittings, furniture, furnishings, signs, and other property contained in the Licensed Area which are the property of Council, whether included in Schedule 2 or not. The Fixtures are and shall remain the property of Council.
- f. **Land** means the land specified in the Reference Schedule, being the land on which the Licensed Area is located.
- g. **Licence** means this Licence Agreement as varied or amended from time to time.
- h. **Licensed Area** has the meaning given to that term in Item 3 and includes the Fixtures.
- i. **Licence Fee** means the sum stated in Item 4 as reviewed in accordance with the terms of this Licence.
- j. **Licensee** means the [insert] and its successors and assigns.
- k. **Options** means any options to renew this Licence, which are specified in the Reference Schedule, and which may be exercised in accordance with this Licence.
- l. **Party** means the Council and the Licensee individually and Parties means the Council and the Licensee collectively.
- m. **Permitted Use** means the use of the Licensed Area for the Permitted Use specified in the Reference Schedule, and for no other purposes whatsoever.
- n. **Reference Schedule** means the Reference Schedule contained in clause 1 of this Licence.
- o. **Security Interest** has the meaning given to that term in the Personal Property Securities Act 2009 (Cth).
- p. **Schedule** means the schedule or schedules to this Licence.
- q. **Term** means the period commencing on the Commencement Date and ending on the Expiry Date and includes any Options.

8.2. Interpretation

In this Licence unless inconsistent with the context or subject matter:

- a. a reference to a person includes any other legal entity;
- b. a reference to a legal entity includes a person;
- c. words importing the singular number include the plural number;
- d. words importing the plural number include the singular number;
- e. the masculine gender must be read as also importing the feminine or neuter gender;
- f. a reference to a Party includes the Party's heirs, executors, successors and permitted assigns;
- g. headings are for reference purposes only and must not be used in interpretation;
- h. where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- i. a reference to a statute includes all regulations and subordinate legislation and amendments;
- j. references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
- k. a reference to a monetary amount is a reference to an Australian currency amount;
- l. an obligation of two or more Parties binds them jointly and each of them severally;
- m. an obligation incurred in favour of two or more Parties is enforceable by them severally;
- n. references to time are to local time in Queensland;
- o. where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
- p. a reference to a business day means any day on which trading banks are open for business in Brisbane;
- q. if any time period specified in this Licence expires on a day which is not a business day, the period shall expire at the end of the next business day;
- r. a reference to a month means a calendar month.

9. AGREEMENT AND TERM

- a. Council hereby grants the Licensee an exclusive licence to undertake the Permitted Use in the Licensed Area for the Term, and the Licensee accepts such engagement upon and subject to the terms and conditions of this Licence. For the avoidance of doubt, it is acknowledged that Council must not permit any other person or entity to use the Licensed Area.
- b. The Term of this Licence begins on the Commencement Date and ends on the Expiry Date.

10. FEES PAYABLE TO COUNCIL

10.1. Licence Fee

The Licensee shall pay the Licence Fee to Council as directed, weekly in advance or at such other intervals as Council directs from time to time.

- 10.2. If this Licence ends at a time other than the Expiry Date, the Licensee must pay to Council prior to the end of this Licence the proportion of the Licence Fee due at that time together with any other monies due under this Licence.

11. REVIEW OF LICENCE FEE

- 11.1. The Licence Fee from and including each Review Date is the Licence Fee payable immediately before the relevant Review Date multiplied by the Current CPI and divided by the Previous CPI.
- 11.2. Pending determination of the Licence Fee for any year of the Term, the Licence Fee shall be paid at the rate payable at the end of the previous year of the Term and an adjustment (if necessary) is to be made following determination of the reviewed Licence Fee.
- 11.3. If the Licence Fee is not reviewed in accordance with this clause, then Council may, at any time, recover (as a liquidated debt) the difference between the fee levied and paid, and the fee that ought to have been levied and paid had the Licence Fee been reviewed in accordance with this clause. This subclause survives the expiry of this Licence.
- 11.4. Regardless of any other provision in this Licence the Licence Fee in any year of the Term must not be less than the Licence Fee in the year immediately prior to that year

12. NO SET OFF

- 12.1. The Licensee must make payments under this Licence to Council by the method which the Licensor reasonably requires without set-off, counterclaim, withholding or deduction.

13. MANAGEMENT AND OPERATION

13.1. Permitted Use

- a. The Licensee will occupy the Licensed Area and use it for the Permitted Use only, and for no other purposes whatsoever.
- b. If the Licensee wishes to use the Licensed Area for a purpose other than the Permitted Use, then the Licensee must seek Council's written consent, which may be given or withheld by Council in its absolute discretion.

13.2. Maintenance of Licensed Area

- a. The Licensee is required to
 - i. maintain (annual and/or regular maintenance, minor repairs, and replacement of parts up to the maximum of \$5000 replacement value) the Licensed Area, including all plant and equipment, fixtures, and fittings, in good and tenable condition at its own cost always throughout the Term, fair wear and tear, fire, explosion, flood, storm, force majeure, riot, civil common or war excepted.
 - ii. Council will be responsible for fixing and covering costs of all major repairs (defined as repair or part replacement where the costs exceed \$5000) and breakdowns of the plant and equipment, fixtures and fittings as notified by the Licensee.
- b. The Licensee is required to maintain (annual and/or regular maintenance, repair, and replacement of parts) all air-conditioning and refrigeration equipment at its own cost always throughout the term.
- c. At its cost, the Licensee is required to undertake all fire safety inspections and maintain all fire safety equipment in good working order, throughout the term of the license agreement.

- d. Subject to clause 7.2(a)(ii), if Council, acting reasonably, considers that the Licensed Area, including all plant and equipment, fixtures, and fittings, is not being maintained in a good and tenantable condition, Council must notify the Licensee to carry out specific repairs or maintenance at the Licensee's cost to ensure that the Licences Area is in good and tenantable condition unless the Licensee disputes the Council's notice.
- e. If Council reasonably considers the Licensee has not satisfactorily carried out repairs or maintenance specified in the notice given under clause 7.2(b) within a reasonable timeframe after provision of the Councils' notice in clause 7.2(b) (which must not be less than 21 days from the date of service of Council's notice) and subject to the Licensee not disputing the Council's notice, Council may enter the Licensed Area with five (5) business days' notice to effect the specified repairs and maintenance to ensure that the Licensed Area is in good and tenantable condition, with all reasonable costs of such repairs or maintenance to be wholly recoverable from the Licensee.
- f. The Licensee must not obstruct or interfere with the free movement of users and other persons entitled to occupy the Licensed Area or adjoining areas;
- g. The Licensee must not keep or allow animals in the Licensed Area without Council's prior written consent which consent may be granted or refused or granted subject to conditions, and withdrawn at any time, in Council's sole discretion;
- h. The Licensee must not do anything in the Licensed Area that may be offensive, dangerous, illegal or which may cause nuisance to users and other persons entitled to occupy the Licensed Area or adjoining areas;
- i. The Licensee must not paint, erect, or affix or permit to be painted, erected, or affixed any signs, notices or advertisements to any part of the Licensed Area without the prior consent in writing of Council which consent may be granted or refused or granted subject to conditions in the discretion of Council.

13.3. Access

- a. Prior to or on the Commencement Date, Council will provide to the Licensee all keys and security devices required to access the Licensed Area and the Common Area as necessary to gain access to and from the Licensed Area.
- b. The Licensee will have access to the Licensed Area 24 Hours a day during the Term of this Licence.

13.4. Operating Expenses

The Licensee must pay the following expenses incurred or levied separately to the Licensed Area:

- (a) Electricity;
- (b) Utility charges (consumption basis).

The above expenses shall be reviewed annually each financial year in accordance with Council's Register of Fees and Charges as notified to the Licensee in advance.

13.5. Compliance

The Licensee, at its cost and expense, must:

- a) comply with all standards, laws and regulations in relation to the Permitted Use including but not limited to AS/NZA1569:2014 - The storage and handling of LP Gas; AS 4332-2014- The storage and handling of gases in cylinders and any applicable Workplace Health and Safety Electrical Safety Office Workers' Compensation Regulator standards;
- b) comply with all standards, laws, and regulations in relation to the Permitted Use including Food Safety

- Act 2006, Food Safety Regulations 2016, and Food Safety Standards (3.2.2), including obtaining and maintaining a Food Licence from the Kowanyama Aboriginal Shire Council, prior to commencing trade;
- c) comply at all times with all applicable laws, including any local laws and all relevant environmental protection laws and orders, and the requirements of authorities in connection with the Licensed Area, the Licensee's property and the use or occupation of the Licensed Area (including obtaining all permits);
 - d) observe any applicable requirements of insurers and all relevant authorities relating to storage for categories of goods;
 - e) comply with all fire safety laws and directions in respect of the Licensed Area and pay any associated levies or charges;
 - f) remove trade waste and rubbish from the Licensed Area regularly and dispose of it in accordance with the requirements of Council and keep the Licensed Area clean and tidy at all times; and
 - g) know, understand and adhere to all workplace health and safety requirements and all environmental laws, including any particular requirements notified by Council to the Licensee from time to time.

13.6. Council's rights of entry etc

- a. Without limiting any other provisions of this Licence, Council may with prior reasonable notice, access any existing water or sewerage infrastructure located on the Licensed Area.
- b. When accessing the Licensed Area pursuant to sub-clause (a) of this clause, Council shall use best endeavours to minimise interference with the Licensee's use of the Licensed Area for the Permitted Use.

13.7. Alterations, Additions, or Improvements

- a. Council may after giving reasonable notice to the Licensee (except in an emergency, if it is impracticable to do so) enter the Licensed Area to make alterations, additions or improvements to any existing infrastructure contained on the Licensed Area, at its cost (unless otherwise agreed) that are required by law or necessary to ensure that the Building or the Licensed Area are safe or the services to the Building or Licensed Area continue to operate.
- b. In carrying out any alterations, additions or improvements, Council shall take all reasonable steps to minimise interference with the Licensee's use of the Licensed Area for the Permitted Use.
- c. The Licensee may not make any alterations, additions, or improvements (including the erection of signage) to the Licensed Area unless the Licensee has first obtained Council's prior written consent to the proposed alteration, addition or improvement, which consent may not be unreasonably withheld but may be subject to reasonable conditions (including but not limited to work plans and drawings).

13.8. Common Areas

- a. Council permits the Licensee in common with others having the like rights to use the Common Areas for their intended purpose.
- b. Council is responsible for maintaining and cleaning the Common Area, at its cost in a good, clean, and safe condition and state of repair.
- c. The Licensee will use reasonable endeavours to prohibit its employees and others over whom it has control, from parking vehicles or otherwise obstructing the entrances, exits and driveways in and to the Common Areas.
- d. The Licensee and any person under its control must not interfere with the air-conditioning equipment, appurtenances, or services within or about the Common Areas.

- e. Any directory boards, provided by Council, are under the sole control of Council, who may allot space for the names and descriptions of the Licensees of the Building.
- f. Council may, by giving written notice to the Licensee and others with access to the Common Areas, formulate and enforce rules and regulations relating to the Common Areas not inconsistent with the rights of the Licensee.

14. LICENSEE TO ACT ON OWN BEHALF

- a. Nothing in this Licence shall constitute or be construed to create a partnership or joint venture between Council and the Licensee. All debts and liabilities to third persons incurred by the Licensee during the Licensee's use of the Licensed Area shall be the debts and liabilities solely of the Licensee and Council shall not be liable for any such debts and liabilities by reason of this Licence unless such debt or liability arises because of Council's negligent act, omission or default or breach of this Licence.
- b. Each employee engaged by the Licensee shall be an employee of the Licensee and every person performing services in connection with this Licence, including any agent or employee of the Licensee or any agent or employee of Council hired by the Licensee, shall be acting as the agent of the Licensee.

15. INSURANCE

- a. The Licensee shall, at its cost, from the date of this Licence provide and maintain:
 - i. public liability insurance having a minimum limit of twenty million dollars (\$20,000,000.00) for each and every occurrence against all claims which may be brought anywhere in the world (including extra-territorial actions), and arising out of the Licensee's use of the Licensed Area, for bodily injury death or damage to property of third parties which shall include coverage against liability arising out of the ownership or operation of motor vehicles and coverage in the same amount against all claims brought anywhere in the world arising out of alleged assault and battery, false arrest, detention, libel, slander, defamation or other violation or wrongful entry or eviction; and
 - ii. workers' compensation insurance effected in accordance with laws for the time being requiring such insurances, arising out of the Licensee's use of the Licensed Area (if applicable); and
 - iii. any other insurance required by law or which Council reasonably requires.
- b. All insurances shall be in such form and for such amounts and with such companies as approved by Council, which approval shall not be unreasonably withheld.
- c. The Licensee assumes all risks in connection with the adequacy of any insurance and waives any claim against Council (in the absence of negligence of Council) for any liability, cost or expense arising out of any uninsured claims, in part or in full, of any nature whatsoever.
- d. Prior to the Commencement Date, and on further occasions upon request of Council, the Licensee must provide evidence satisfactory to the Council of the terms and currency of each of the insurance policies referred to in this clause.

16. RISK AND INDEMNITY

- a. Council (including its employees, representatives, contractors or any associated entity who performs services on behalf of Council hereunder) is not liable to the Licensee in contract, tort or otherwise whatsoever for any loss or damage (including consequential loss) to any person or property arising from the occupation and use of the Licensed Area by the Licensee or others, save to the extent the loss or damage is a consequence of the negligent acts or omissions of Council (or Council's employees, representatives, contractors or associated entities).
- b. The Licensee:
 - I. uses and occupies the Licensed Area at its sole risk;
 - II. shall be liable for claims of third parties for personal injury and property damage not covered by the insurance required under Clause 7 which result from the negligence of the Licensee having due regard to the standards set out in this Licence provided that the Licensee shall not assert any claims against Council and Council shall not be liable to the Licensee for any losses, damages, liabilities or expenses (including legal costs) incurred or sustained by the Licensee to the extent that the same are covered by insurance and the applicable insurer pays such amounts;
 - III. indemnifies Council from and against any claim, damage, loss, or expense suffered by Council or others arising out of or in connection with the use of the Licensed Area by the Licensee or the Licensee's employees and agents or because of or arising out of the grant of, or the exercise of, this Licence, save to the extent the loss or damage is a consequence of the negligent acts or omissions of Council.

17. EVENTS OF DEFAULT AND TERMINATION

17.1. Termination on notice

Council may at any time and without cause, terminate this Licence upon the provision of no less than three (3) calendar months' written notice to the Licensee.

17.2. Termination for default

- a. If an Event of Default occurs, Council shall give the Licensee a notice in writing requesting that the Event of Default be remedied.
- b. If the Event of Default is not remedied within fourteen (14) days of the date of the notice provided pursuant to paragraph (a) of this clause, Council may give to the Licensee notice of its intention to terminate its obligations under this Licence after the expiration of fourteen (14) days from the date such notice is served.
- c. Upon the expiration of such period referred to in sub-clause (b) of this clause, Council shall (without prejudice to any rights arising prior to such date) have no further obligations to the Licensee and this Licence shall be deemed to be terminated.
- d. Subject to subclause (e), if upon receipt of such notice the Licensee cures the default within the said fourteen (14) day period then such notice shall be of no force and effect.

- e. Subclause (d) does not apply, and the notice shall remain effective even if the default is cured, if the notice relates to a default that has occurred more than once in the six (6) months preceding the date of the notice.

17.3. Rights in Addition to Other Remedies

The rights contained in this clause shall be in addition to all rights and remedies for breach of contract or otherwise available to Council.

18. END OF LICENCE

18.1. The Licensee to yield up Licensed Area

When this Licence ends, either at the end of the Term or upon termination pursuant to this Licence, the Licensee must peacefully yield up the Licensed Area in good condition, fair wear and tear excepted, and return to Council all keys and security devices relating to the Licensed Area.

18.2. Removal of improvements etc.

- f. The Licensee must during the last fourteen (14) days of the Term remove any chattels, fixtures, fittings, additions, signage, and other branding it has stored on, erected, or affixed to the Licensed Area during the Term, and the Licensee must make good any damage caused by the removal.
- g. Any items not removed from the Licensed Area under sub-clause (a) of this clause shall be deemed abandoned and will become the property of Council.
- h. the Licensee's property becomes the property of Council in accordance with subclause (b) of this clause, then Council may, in its absolute discretion:
 - i. retain the property;
 - ii. dispose of the property, with the costs of such disposal to be wholly recoverable from the Licensee as a debt immediately due and owing.

19. HOLDING OVER

- (a) If the Licensee remains in occupation of the Licensed Area after the expiration of the Term with the consent of Council, the Licensee becomes a monthly tenant. The Licensee shall continue to pay the same amount of License Fee and other money under this Licence in accordance with this Licence.
- (b) The monthly tenancy created under sub-clause (a) will continue via the same terms of this Licence (so far as the terms can be applied to a monthly tenancy) until either party gives the other party one month's written notice terminating the tenancy. However, if the Licensee is in default, Council may give 72 hours written notice to the Licensee terminating the tenancy.

20. GENERAL

20.1. Assignment and other dealings

- (a) Subletting and encumbering

The Licensee must not without Council's prior written consent (which may be withheld or given on such conditions required by Council in its absolute discretion):

- i. sublet or in any manner part with possession of the Licensed Area; or
- ii. mortgage or otherwise encumber the Licensee's interest in this Licence.

(b) Assignment

The Licensee must not assign this Licence without the prior written consent of Council provided that such consent will not be unreasonably withheld if:

- iii. the Licensee has, at least thirty (30) days before the proposed assignee intends to take possession of the Licensed Area pursuant to an assignment, makes a written request for Council's consent together with:
 - A. in relation to each proposed assignee:
 - I. their full names and addresses;
 - II. an up-to-date summary of assets and liabilities prepared by and signed by an accountant;
 - III. any other information reasonably required by Council to establish the proposed assignee's financial position; and
 - iv. the Licensee proves to Council's reasonable satisfaction that:
 - A. the proposed assignee is respectable, suitably qualified, and capable of carrying on the Permitted Use and performing the obligations on the part of the Licensee under this Licence; and
 - B. the proposed assignee is of sufficiently substantial financial standing, having regard to both its net assets and revenue, that a reasonable person would consider that the proposed assignee is able to meet the Licensee's payment obligations under this Licence for the entire duration of the unexpired Term.

(c) Council's consent

Any consent by Council to a proposed assignment given under this clause is conditional upon each of the following occurring before the proposed assignee takes possession of the Licensed Area:

- i. the Licensee and the proposed assignee entering a deed of consent with Council in the form reasonably required by Council;
- ii. the proposed assignee providing Council with a guarantee and indemnity signed by the proposed guarantor in favour of Council in the form required by Council;
- iii. the Licensee and the proposed assignee complying with Council's reasonable requirements in relation to the documentation of the intended assignment;
- iv. any default by the Licensee under this Licence arising up to the date of completion of the proposed assignment being remedied; and
- v. the Licensee paying to Council the Council's reasonable legal costs of the giving of its consent.

(d) Change of Control

If the Licensee is a corporation (which is neither listed nor wholly owned by a corporation whose shares are listed on the official list of the Australian Stock Exchange Limited), a change in the effective control of the corporation is deemed to be an assignment of this Licence and the Licensee may not make that change unless it obtains Council's prior written consent and complies with subclauses (b) and (c) (except for subclause (c)(i)) of this clause.

20.2. Native Title

The parties acknowledge and agree that nothing contained in this Licence constitutes a future act for the purposes of the Native Title Act 1993 (Cth).

20.3. Goods and Services Tax

(a) In this clause:

"GST" means the same as in the GST Law; and

"GST Law" means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(b) A recipient of a taxable supply made under this Licence must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply.

(c) The recipient must pay the GST to the supplier:

- A. if there is a due date for the consideration for the taxable supply, either on that date or within fourteen (14) days of receiving a tax invoice for the taxable supply whichever is the later; or
- B. if there is no due date, within fourteen (14) days of receiving a tax invoice for the taxable supply.

(d) A party's obligation to reimburse another party for an amount paid or payable to a third party (for example a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

(e) Each party making a taxable supply under this document must issue a tax invoice to the other party for each taxable supply within fourteen (14) days after the due date for payment of the consideration of the supply under this Licence.

(f) Each party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this document.

20.4. Notices

(a) Any notice, statement or demand required or permitted under this Licence shall be in writing and may be served in any manner recognised by law or by email, hand delivery or mail to the address of the recipient specified in this Licence or most recently notified by the recipient to the sender.

(b) If notice is sent by:

- I. email, it shall be deemed to have been served on the business day following transmission (unless evidence of a failed transmission is immediately received by the party transmitting the email).
- II. hand delivery, it shall be deemed to have been served on the day the document is left at the address for hand delivery (or if the document is served on a day that is not a business day or after 5.00pm on a business day, on the next business day).
- III. mail, it shall be sent by pre-paid post and shall be deemed to have been served seven (7) days after date of posting.

20.5. Governing Law

The laws of Queensland (and so far, as applicable of the Commonwealth of Australia) shall govern this Licence and each party hereby expressly accepts and acknowledges the jurisdiction of the Courts of Queensland and of Australia and all Courts to which appeals from those Courts may be taken.

20.6. Further instruments

Council and the Licensee shall execute and deliver all such further agreements and other instruments, do all things, and take any other action necessary to make this Licence fully effective, binding, and enforceable as between them and as against third parties.

20.7. Headings

Headings are inserted for convenience only and are not intended to govern the meaning of any of the provisions of this Licence.

20.8. Waiver

The waiver of any term or condition on any occasion shall not be deemed a waiver of such term or condition on any other occasion.

20.9. Severance

If a provision of this Licence is void or unenforceable it must be severed from this Licence and the provisions that are not void or unenforceable are unaffected by the severance.

20.10. Whole agreement

This Licence constitutes the whole of the agreement between the Parties relating to the subject matter hereof.

20.11. Amendment

This Licence can only be amended, supplemented, replaced, or novated by another document signed by the Parties.

20.12. Liability for cost

- (a) Each party must pay its own costs in relation to this document unless this document provides otherwise.
- (b) The Licensee shall pay to Council on demand Council's reasonable costs and expenses (including legal fees and disbursements on a solicitor and own client basis) in connection with:
 - I. considering, approving, and supervising anything needing Council's consent,
 - II. any dealing arising out of this Licence initiated by the Licensee;
 - III. any default by the Licensee, any termination of this Licence due to the Licensee's default, and the enforcement of any term or condition or the exercise of any
 - IV. power and any litigation commenced by or against the Licensee concerning the Licensee's occupation and use of the Licensed Area; and
 - V. responding to a request by the Licensee for any amendment or variation to this Licence.

20.13. Counterparts, Fax, and Email

This Licence may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by fax or email.

Executed as an Agreement

EXECUTED by **KOWANYAMA ABORIGINAL SHIRE**)

COUNCIL in accordance with the *Local*)
Government Act 2009 in the presence of:)

) Mayor

Witness: _____)

Dated: _____)

) Chief Executive Officer

EXECUTED by **[INSERT]** pursuant to its)
Constitution in the presence of:)

_____)
Signature of Authorised Representative

Dated: _____)

_____)
Name of Authorised Representative

SCHEDULE 1 – THE LICENSED AREA

Map 1 – Blue Café – Part of Lot 35 on SP272069 (licence area as highlighted, including road-frontage outdoor dining area)



SCHEDULE 2 – COUNCIL’S FIXTURES

Schedule 2 to be completed by Council and provided to Licensee by [insert date] for review and execution.