

# Street Vending Consent – The Hatch

Part 9 Division 3 *Roads Act 1993*

Item 2 Part E *Local Government Act 1993*

## Roads Authority and Local Authority

Maitland City Council  
ABN 11 596 310 805  
263 High Street  
Maitland NSW 2320  
(“**Council**”)

## Applicant

[Legal entity name, ABN or ACN -  
ABN only if ACN is same with 2 digits  
in front, otherwise use ACN]

(“**Applicant**”)

## BACKGROUND

- a. On 16 March 2016, Council (in its capacity as a roads authority under section 7(4) of the *Roads Act 1993*) granted a consent, with conditions, which included:
  - b. consent to erect a street vending structure on the Road, with that structure known as ‘The Hatch’, and
  - (i) consent to use ‘The Hatch’ for the purpose of street vending.

The consent was for a term of seven (7) years and has therefore lapsed.

- c. Pursuant to section 139E of the *Roads Act 1993*, the Applicant has applied to Council (in its capacity as a roads authority under section 7(4) of the *Roads Act 1993*) for a fresh street vending consent to use ‘The Hatch’ for street vending. Concurrently, the Applicant has applied to Council (in its capacity as a council) for an approval under Item 2 Part E of section 68 of the *Local Government Act 1993*.
- d. Council has decided to grant the Applicant the fresh street vending consent under the *Roads Act 1993* and grant the concurrent approval under the *Local Government Act 1993* on the conditions set out in this document (“this Consent”).

## OPERATIVE PART

### 1. Interpretation

- 1.1 Unless the context requires otherwise, in this Consent:
  - a. words beginning with a capital letter are explained in clause 2;
  - b. where any time limit pursuant to this Consent falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
  - c. a reference to a statute, regulation, ordinance, law or by-law will be deemed to include a reference to all statutes, regulations, ordinances, laws or by-laws amending, consolidating or replacing the same from time to time;
  - d. the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
  - e. clause headings are for convenience only and do not affect interpretation;
  - f. references to persons include an individual, bodies corporate, unincorporated association, partnership, joint venture or government agencies and vice versa;
  - g. where an expression is defined, any other grammatical form of that expression has a corresponding meaning;

- h. monetary references are references to Australian currency;
- i. the singular number includes the plural and vice versa, unless the context requires otherwise;
- j. a reference to a month means a calendar month; and
- k. no term or provision of this Consent will be construed against a Party on the basis that the Consent or the term or provision in question was put forward or drafted by or on behalf of that Party.

## 2. Definitions

In this Consent:

**Act of Bankruptcy** means:

- a. the suspension or cessation of the Party's business activities;
- b. the liquidation or insolvency of the Party;
- c. the appointment of a receiver or trustee in respect of any property of the Party;
- d. the assignment of any rights or other property by the Party for the benefit of its creditors;
- e. the making of any scheme of arrangement by the Party with its creditors; or
- f. any other act which shows the Party is unable to pay its debts as and when they fall due.

**Applicant's Business** means the business specified in Item 8 of **Schedule A: Details**.

**Appurtenances** means all stop-cocks, hydrants, fire hoses, alarm systems or other fire prevention and extinguishing equipment, water closets, lavatories, water apparatus (including pipes and drains), wash basins, washrooms, gas mains and fittings, electrical fittings and apparatus and other services contained in or about the Premises.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales, Australia.

**Commencement Date** means the date in Item 5 of **Schedule A: Details**.

**Claim** means any cost, expense, Loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

**Conflict of Interest** means a situation in which someone cannot make a fair decision because they will be personally affected by the result (whether, financially or otherwise).

**Council's Fittings and Fixtures** means the inclusions specified in Item 12 of **Schedule A: Details**.

**Consent** means this consent including the Background, Operative Part, and all Schedules and Annexures.

**Core Trading Hours** means the minimum trading hours specified in Item 11 of **Schedule A: Details**.

**Expiry Date** means the date specified in Item 6 of **Schedule A: Details**.

**Extended Term** means the term specified in Item 7 of **Schedule A: Details**

**Footway Dining Area** means that part of the Road adjacent to the Kiosk included in the Consent as the area on which tables and chairs can be placed for non-exclusive use in association with the Kiosk and shown as Consent Area B in Annexure A of this Consent

**Force Majeure Event** means any of the following: accidental fire, storm, flood or tempest, or any act of God, inevitable accident, riot, civil commotion, or enemy action, or incidental to resisting or preparing to resist enemy action.

**GST** means goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* calculated by reference to the value of anything supplied but does not include any related additional tax, interest, penalty, fine, or other charge imposed in relation to the late or incorrect payment of GST.

**Kiosk** means the kiosk structure known as 'The Hatch' on the Road and shown as Consent Area A in Annexure A of this Consent, together with Council's Fittings and Fixtures.

**Law** means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-

law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.

**Loss** means any loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, Claim, outgoing, fine or payment of any nature or kind.

**Notice or Notify** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communications that one Party is required to give, or gives, to another Party in writing under this Consent.

**Outgoings** means those costs of the Premises specified in Item 10 of **Schedule A: Details**

**Party** means each Party to this Consent as specified in Item 1 and Item 3 of the **Schedule A: Details** and includes the respective authorised representatives, directors, officers, and Personnel of the Parties, as well as a Party's executors, administrators, trustees, successors and permitted assigns.

**Personnel** means in relation to a Party, its employees, sub-contractors, agents, volunteers, executives and representatives.

**Plan** means the plan at Annexure A of the Consent.

**Premises** means the Kiosk and Footway Dining Area and is shown as the Consent Area in Annexure A of this Consent.

**Rent** means the amount in Item 9 of **Schedule A: Details**.

**Road** means High Street, Maitland NSW 2320.

**Schedule** means a schedule to this Consent.

**Standards** means all applicable standards relating to the regulation of food service in New South Wales, which comprises the *Food Act 2003*, the *Food Regulation 2015*, the Australia New Zealand Food Standards Code (FSANZ) (as updated from time to time).

**Term** means the term of this Consent as set out in clause 5.

**WH&S Law** means the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011* as updated from time to time and any other Law relating to occupational health and safety which applies to the Premises.

### 3. Consent

- 3.1 Council grants to the Applicant a street vending consent pursuant to Part 9 Division 3 of the *Roads Act 1993*.
- 3.2 Concurrently, Council grants to the Applicant an approval under Item 2 Part E of section 68 of the *Local Government Act 1993*.
- 3.3 The consent under clause 4.1 and the approval under clause 4.2 are granted on the conditions set out in this Consent.

### 4. Term

This Consent commences on the Commencement Date and ends on the Expiry Date, unless revoked earlier in accordance with this Consent.

### 5. Rent and other payments

- 5.1 The Applicant must pay the Rent in the amount specified in Item 9 of **Schedule A: Details** to Council via direct debit on a date to be agreed in writing per week as per the Direct Debit Service Agreement at Annexure C of this Consent.
- 5.2 The Applicant must pay the Outgoings as specified in Item 10 of **Schedule A: Details**.

- 5.3 The Applicant must pay interest to Council on any money due under this Consent. Interest will accrue and be calculated daily at the rate specified in Item 14 of **Schedule A: Details**.
- 5.4 All payments under this Consent must be made free of deductions, set off or counter claim.

## **6. GST**

- 6.1 Except where expressly stated to the contrary, the consideration for a supply under this Consent is exclusive of GST.
- 6.2 The recipient of a supply must pay the supplier an amount equal to the supplier's GST on the supply at the same time as the consideration is paid. The supplier must issue a tax invoice before the recipient is obliged to pay the GST.

## **7. Turnover Reporting**

The Lessee will, within thirty (30) days following the end of each financial year, provide the Lessor with a written statement of the Lessee's gross turnover for the preceding financial year. The Lessor may request such turnover figures in writing, and the Lessee shall comply with this request by providing accurate and complete documentation, certified by a qualified accountant if required by the Lessor.

## **8. Specified purpose**

- 8.1 The Applicant covenants and agrees with Council that it will:
- a. only use the Premises for the purposes of the Applicant's Business; and
  - a. at all times give to Council a faithful and true account of the nature of the Applicant's Business and the times during which the Kiosk has been kept open for business and in any proceedings in relation to the Premises, with the onus being upon the Applicant to prove that the Premises was used in accordance with this clause 8 and not otherwise.

## **9. Core Trading hours**

- 9.1 The Applicant must keep open and conduct the Applicant's Business during the Core Trading Hours as specified in Item 11 of **Schedule A: Details**.
- 9.2 Upon no less than 20 Business Days' written notice, Council may vary the Core Trading Hours so as to require the Applicant to conduct the Applicant's Business at the Premises and for the avoidance of doubt this may include public holidays other than Good Friday, Anzac Day, Christmas Day and New Years Day.

## **10. No Alterations without approval of Council**

- 10.1 The Applicant must not make any alterations or modifications to the Premises without the prior written approval of Council, which approval will not be unreasonably withheld if the following conditions are complied with:
- a. the Applicant submits to Council full detailed drawings and specifications of the proposed works and such drawings and specifications meet with the approval of Council or Council's architect;
  - b. the materials to be used in the carrying out of such works are of such standard as to type, quality, colour, and size as Council may determine;
  - c. the works are to be carried out by tradespersons approved by Council;
  - d. the works are carried out under the supervision of Council or Council's architect, if required by Council;
  - e. the works comply with all relevant Laws including occupational health and safety Laws, traffic regulations and Laws relating to development and the carrying out of building works;
  - f. the Applicant pays to Council immediately upon demand all costs and expenses incurred

by Council, including architects' and other consultants' fees (whether or not any approval will be granted);

- g. any works approved will be effected by and at the expense of the Applicant, including the costs of all additional lights and power outlets, switches, telephone outlets, and alterations to any other services which may be required by reason of the alterations and the Applicant will indemnify Council from and against all injury or damages to the Premises or surrounding area caused in or about the execution of such works;
- h. any internal partitions erected by the Applicant will remain the property of the Applicant, who will be responsible for all maintenance and insurance on them.

10.2 The Applicant covenants with Council not to cut, make holes in, mark, deface, drill or injure and not to suffer to be cut, marked, drilled, or injured or holes to be made in any of the walls, ceilings or timbers of the Premises.

## 11. Applicant's obligation to repair and maintain

11.1 The Applicant covenants with Council to keep, repair and maintain the Premises and all Appurtenances, doors, windows, latches, keys, locks, furniture, glass, light bulbs, fluorescent tubes, alterations and additions thereto to a satisfactory state of repair (fair wear and tear and damage by a Force Majeure Event excepted) and at the expiration, transfer or revocation of this Consent will yield up the same to Council in a satisfactory state of repair (fair wear and tear and damage by a Force Majeure Event excepted) and with all doors, windows, latches, keys and locks intact.

11.2 Without limiting the generality of clause 11.1, the Applicant must:

- a. maintain and service Council's Fixtures and Fittings as itemised in Item 12 of **Schedule A: Details** and repair any of those fittings, chattels or fixtures which become broken, damaged or inoperative unless the cause of any such breakage, damage or inoperability is a direct act of Council or its Personnel;
- b. promptly repair or replace all broken, cracked or damaged glass and all light bulbs, fluorescent tubes and other lighting apparatus in or about the Kiosk;
- c. promptly arrange for all plumbing repairs that may be necessary to the Kiosk;
- d. promptly arrange and pay for the removal of any graffiti that appears on the Premises;
- e. keep and maintain the doors, locks, windows and window fittings of the Kiosk in good and efficient working order and condition as at the Commencement Date;
- f. unless Council directs otherwise, at the expiration of the Term or upon any earlier revocation, transfer or other determination of this Consent, paint and paper all parts of the Kiosk as were painted or papered at the Commencement Date in a proper and workmanlike manner and to the satisfaction of Council using materials reasonably determined by Council;
- g. ensure that the Premises are maintained so as to facilitate the smooth passage of traffic along the Road; and
- h. refer to **Schedule B: Maintenance Responsibility**.

11.3 Council may give the Applicant a written notice requiring the Applicant to execute within a specified timeframe any repairs and maintenance required to be done by the Applicant under this Clause 11 of this Consent.

## 12. Council's right to enter, inspect and repair

12.1 During the Term, the Applicant covenants with Council to permit Council, its Personnel or its invitees to enter the Premises at any reasonable time of the day for any purpose, provided such entry does not unreasonably interfere with the conduct of the Applicant's Business.

- 12.2 The Applicant covenants with Council to permit Council or its Personnel, accompanied by tradespersons or others, at all reasonable times to enter upon and inspect the condition of the Premises.
- 12.3 The Applicant must permit Council or its Personnel, accompanied by tradespersons or similar, at all reasonable times to enter upon the Premises for the purpose of effecting any alterations, remodelling or repairs (if any) which it may be incumbent upon Council to effect pursuant to Law or which Council may wish to carry out in order to ensure the safety and preservation of the Premises or any adjoining premises belonging to Council, provided however that nothing in this clause will oblige Council to carry out works or repairs necessitated by the type of business being conducted on the Premises by the Applicant.
- 12.4 If any works undertaken by Council under clause 12.3 require the Premises to be unusable, Council will provide twenty (20) days' written notice of the planned works and the Applicant is not liable to pay Rent, any Outgoings or other charges that are attributable to any period during which the Premises cannot be used or is inaccessible due to those works.

### **13. Council's right to specify standards**

- 13.1 The Applicant must ensure that the standard of food and service provided by it to patrons in the conduct of the Applicant's Business at all times complies with applicable Laws and Standards.
- 13.2 Council is entitled by notice in writing to the Applicant to specify the standard and quality of food or service required by Council to be provided by the Applicant to patrons of the Applicant's Business.

### **14. Obligations in relation to the condition of the Premises and the operation of the Applicant's Business**

- 14.1 The Applicant covenants with Council to:
- at all times keep the Premises of good appearance and in a thoroughly clean, tidy and sanitary state to an acceptable commercial standard given the nature and status of the Premises and the Applicant's Business;
  - cause all wet refuse (if any) to be removed daily ;
  - not allow any accumulation of useless property, rubbish or waste within or around the Premises;
  - cause to be removed from time to time all useless property, rubbish or waste of every description which do not form part of the normal refuse removed by Council or the garbage contractor engaged by Council (to the extent necessary to ensure that the same do not become readily visible from outside the Premises);
  - to properly wrap and place in bins of a kind specified by Council all refuse which is removed by Council or by its garbage contractor, with such bins to be located in the service areas provided for the Premises; and
  - not bring upon or store in the Premises any explosives or any flammable or corrosive fluids or chemicals;
  - thoroughly fumigate and disinfect the Premises in the event of any infectious disease happening upon the Premises;
  - in the event of (g), if required by Law give all the necessary notices and any other information which may be required to the proper authorities, and also give notice in writing to Council;
  - take all proper precautions to keep the Premises free of rodents, termites, cockroaches, birds, animals and other vermin and, if reasonably required by Council, engage pest exterminators;
  - not to carry on nor to permit to be carried on upon the Premises or any part thereof any noisome, dangerous or offensive trade, business or process which may annoy persons in

the vicinity of the Premises;

- k. not unduly obstruct the free passage of pedestrians, especially children, people with prams, the elderly and people with disabilities, including wheelchair users; and
- l. not to obstruct in any way the Road (or any part thereof other than the Premises) nor use the Road for any purpose other than for ingress or egress to and from the Premises or the uses that may be designated by Council from time to time.

## **15. Appurtenances to be kept clear**

15.1 The Applicant covenants with Council:

- a. to keep Appurtenances on or relating to the Premises clean and clear from any obstructions whatsoever and to that end to engage competent and (where necessary) licensed tradespersons to affect such obligations; and
- b. not to use Appurtenances for any purpose other than those for which they were constructed and not to throw or place in any such Appurtenances, or drain any sweepings, rubbish, rags, ashes or other unsuitable substances.

15.2 The Applicant is responsible and liable for any damage to Appurtenances arising from their misuse by the Applicant or its Personnel.

## **16. Advertising and Signage on the Premises**

16.1 The Applicant covenants with Council not to cause or permit any advertising or other sign or advertisement or hoarding to be painted or erected or otherwise placed in or on the Premises or any part thereof without the prior written consent of Council and any consent that may be required from any government department or local authority, with the exception of any mandatory signage required by Law.

16.2 The Applicant is responsible for the design and expense of the printed signage with the design to be subject to the prior written consent of Council.

## **17. Applicant not to mortgage, charge etc Consent**

The Applicant covenants with Council not to mortgage, charge, encumber or pledge this Consent or any estate or interest therein without the written consent of Council, which consent may be withheld in Council's absolute discretion.

## **18. Auction sales**

The Applicant will not hold or permit to be held any auction sales in or about the Premises.

## **19. Overloading of electrical circuits**

The Applicant will not install any electrical equipment in the Premises that overloads the cables, switchboards or sub-boards through which electricity is conveyed to the Premises.

## **20. Overloading of floors**

20.1 The Applicant must observe the maximum floor loading weights nominated by Council from time to time and must not permit the floors of the Kiosk to be broken, strained or damaged by overloading them in any manner.

20.2 The Applicant must not install any safe or other heavy equipment except in such positions and subject to such conditions as Council may in writing approve.

## **21. Damage to Premises**

21.1 The Applicant will advise Council promptly in writing of:

- a. any damage sustained to the Premises or any part thereof; or

- b. the defective operation of any of the Appurtenances.
- 21.2 If the Premises is partially or wholly destroyed or damaged or otherwise seriously damaged, there is no obligation on Council to reinstate the Premises or find alternative accommodation for the Applicant and Council may revoke this Consent by giving the Applicant not less than seven (7) Business Days' notice in writing, and no compensation is payable in respect of that revocation.

## **22. Security of the Premises**

### **22.1 The Applicant must:**

- a. cause all exterior doors and windows of the Kiosk to be securely locked and fastened at all times when the Kiosk is not being used,
- b. ensure all keys, access cards or other door or window locking devices are securely stored and only distributed to current employees, keep a register of same and give the register to Council upon request, and
- c. if Council gives the Applicant any keys, access cards or other door or window locking devices:
  - not copy them without Council's written consent, and
  - reimburse Council for any cost it incurs because the Applicant loses them.

22.2 The Applicant authorises Council and any person authorised by Council from time to time to enter the Kiosk for the purpose of locking any such door or window left unlocked or unfastened.

22.3 Other than keys, access cards or other door or window locking devices provided by Council, all costs associated with securing the Kiosk, including but not limited to the installation of security systems and security controls, are at the expense of the Applicant.

## **23. Fire extinguishers**

Council will be responsible for the provision, repair and maintenance of any necessary fire extinguishers or other firefighting equipment required by any Laws to be contained in or on the Premises.

## **24. WH&S Law management system**

The Applicant will ensure that it has and maintains its own documented workplace health and safety system in respect of the Applicant's Business at the Premises, in accordance with WH&S Law, and will make such document available to Council on request.

## **25. Applicant not to impose liabilities upon Council**

The Applicant covenants with Council not to do or omit to do or permit or suffer to be done or omit to be done anything in or about the Premises whereby Council may be or become exposed to a liability to pay any penalty, damages, compensation, cost, charge or expense and to keep Council indemnified against all such liability. This covenant by the Applicant will be read in aid of and not in derogation of any of the other covenants or agreements on the part of the Applicant under this Consent.

## **26. Compliance**

- 26.1 The Applicant covenants with Council to duly and punctually comply with and observe all Laws relating to the Premises, or the Applicant's Business carried on therein or to the Applicant's use and occupation of the Premises and all requirements and orders lawfully given or made by any public body or authority relating to the Premises within the time required.
- 26.2 The Applicant is not obliged to affect any structural alterations to the Premises unless such structural work and or alterations are required in order to comply with clause 26.1 due to the nature of the Applicant's Business or the manner or method of carrying on the Applicant's



Business and any proposed structural alterations under this clause are subject to clause 10 of this Consent.

- 26.3 The Applicant will display evidence of this Consent in or on the Premises.
- 26.4 The Applicant will provide proof of identity whenever requested by Council or its authorised Personnel or by NSW Police.
- 26.5 A failure to comply with the conditions of this Consent is an offence under section 627 of the *Local Government Act 1993* and fines may apply.
- 26.6 Doing any act or thing in, on or in the vicinity of the Road that is beyond the scope of this Consent may amount to a failure to obtain approval as per section 626 of the *Local Government Act 1993* and fines may apply.

## **27. Risk**

- 27.1 The Applicant uses, keeps and occupies the Premises at its own risk.
- 27.2 If the Applicant is obliged to do anything under this Consent, it does so at its own risk.

## **28. Liability and indemnity**

- 28.1 Without limiting any of Council's other rights under this Consent or any Law, the Applicant must indemnify and keep indemnified Council from and against all Claims or Losses (of whatever nature) arising out of, caused by, relating to, in respect to, in connection with or as a consequence of:
  - a. the Applicant's use, operation from or occupation of the Premises, including the negligent use, misuse, waste or abuse of the water, gas, electricity, oil, lighting and other services and facilities of the Premises by the Applicant, its Personnel, its invitees, or any other person claiming through or under the Applicant;
  - b. any unlawful, wilful or negligent act, default or omission by the Applicant, its Personnel, its invitees or any person acting under the control or at the direction of the Applicant either in, on or in the vicinity of the Premises,
  - c. any failure to observe and perform any of the covenants or agreements contained or implied in this Consent by the Applicant, its Personnel, its invitees or any person acting under the control or at the direction of the Applicant,except to the extent that any such Claims or Losses are directly caused by the negligence or wilful act or omission on the part of Council.
- 28.2 Despite any other provision of this Consent, both Parties exclude, and agree that they will have no rights against the other for liability for consequential or indirect loss arising out of this Consent including (without limitation) in respect of loss of profits or loss of business. This clause 28.2 does not apply in respect of wilful acts by either Party.
- 28.3 The Applicant indemnifies and keeps indemnified Council from and against all Claims and Losses arising from the non-compliance by the Applicant with any Laws that may apply to the Applicant's use, occupation of and access to the Premises and the Applicant's operation of the Applicant's Business from and access to the Premises.
- 28.4 The Applicant releases and indemnifies Council from and against any Claim or Loss arising out of or in connection with any breach by the Applicant of its obligations under any Laws relating to work, health and safety including, as amended from time to time, the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2017*.
- 28.5 It is immaterial to the obligations of the Applicant under this clause 28 that a Claim or demand arises out of any act, event or thing that the Applicant is authorised or obliged to do under this Consent or that any waiver or other indulgence has been given to the Applicant in respect to any such obligation under this Consent.
- 28.6 Except to the extent prohibited by Law, Council has no responsibility or liability for any Loss of or damage to the Applicant's property, including to any property of the kind described in Item

13 of **Schedule A: Details**, except to the extent such Loss or damage is directly caused by the negligence or wilful act or omission on the part of Council or its Personnel.

- 28.7 Except to the extent prohibited by Law, Council has no responsibility or liability for any Claim, Loss or damage suffered by the Applicant caused by any malfunction, failure to function, blockage or interruption to:
- a. air conditioning or refrigeration equipment,
  - b. water, gas, electricity or other services to the Premises,
  - c. for the blockage of any sewers, wastes, drains, gutters, downpipes or stormwater drains, from any cause whatsoever, unless such malfunction, failure to function, blockage or interruption is caused or contributed to by the negligence or wilful act or omission on the part of Council or its Personnel.

## **29. Applicant's obligation to insure**

- 29.1 The Applicant must affect and keep current and in force in respect of the Applicant's Business and the Premises:
- a. a public liability insurance policy for an amount not less than twenty million dollars (\$20,000,000) in respect of each and every occurrence for any one period of cover, or such higher amount as Council may from time to time require,
  - b. workers' compensation insurance as required by Law; and
  - c. insurance of the Applicant's property against loss, damage or destruction from any insurable risk including loss, damage or destruction by fire, flood, theft, lightning, storm, tempest and impact (or any other insurable risk reasonably required by Council) for the full reinstatement cost thereof (including extra costs reinstatement); and
  - d. such other special insurances as may be appropriate and required by Council from time to time.
- 29.2 The policy or policies of insurance required to be maintained by the Applicant under clause 29.1 must:
- a. if possible, note Council as an interested party;
  - b. be maintained at all times throughout the Term; and
  - c. be produced to Council as evidence of the currency of such policy immediately upon execution of this Consent by the Applicant and thereafter upon request.
- 29.3 If any policy or policies of insurance required to be maintained by the Applicant under clause 29.1 is cancelled either by the Applicant or the insurer, the Applicant must notify Council immediately.
- 29.4 In default of the Applicant so doing, Council may elect to effect all or any insurances referred to in clause 29.1 and charge the Applicant for the costs of the premiums and the Applicant shall upon demand reimburse Council for the same.

## **30. Protection of insurance policies**

- 30.1 The Applicant covenants with Council not to do nor permit anything to be done in the Premises nor to bring nor keep anything therein that may in any way make void or voidable or lead to an increased rate of premium being payable in respect of any policy or policies of insurance on the Premises or on any property kept therein or that may conflict with any Laws relative to fires, health or otherwise or with any insurance policy upon the Premises or any part thereof or any contents therein.
- 30.2 If the Applicant commits a breach of this clause 30 then in addition to and without prejudice to any other rights and remedies vested in Council, the Applicant will forthwith without demand pay to Council any increased premium.

## 31. Confidentiality

- 31.1 Except as provided by clause 31.2, each Party must keep the Commercial Terms of this Consent confidential.
- 31.2 A Party may make a disclosure in relation to the Commercial Terms of this Consent:
- to any professional adviser or auditor where that person is obliged to keep the information confidential;
  - to comply with any Law (including the *Government Information Public Access Act 2009*) or any requirement of any regulator body (including any relevant stock exchange);
  - to any of its Personnel to whom it is necessary to disclose the information in order to give effect to this Consent;
  - to obtain the consent of any third party to any term of, or to any act pursuant to, this Consent, where disclosure is reasonably necessary to obtain such consent;
  - to enforce its rights or to defend any Claim or action under this Consent; or
  - to a related body corporate, on receipt of its undertaking to keep the information confidential.
- 31.3 A Party will not be taken to have breached clause 31.2 where the information has come to the public domain through no fault of that Party.
- 31.4 In this clause 31, “Commercial Terms” means clauses 4, 5, 6, 7 and 8 of the Consent, Items 4A, 4B, 5, 6, 7 and 8 of the Schedule to the Consent, clauses 3, 4 and 5 of this Consent and Items 3, 4 and 5 of **Schedule A: Details** to this Consent.

## 32. Revocation of Consent

- 32.1 Council may revoke this Consent and revoke the Applicant’s rights under this Consent immediately by notice in writing served on the Applicant in its absolute discretion upon the occurrence of any of the following events:
- the Applicant breaches a provision of this Consent that is capable of remedy and does not remedy that breach within ten (10) Business Days;
  - the Applicant breaches a provision of this Consent that is not capable of remedy;
  - Council considers the Applicant has provided intentionally misleading or incorrect information as part of or in connection with this Consent;
  - the Applicant or the Applicant’s Personnel breaches the Law or engages in any fraudulent activity in relation to this Consent;
  - Council considers it is necessary to revoke this Consent to protect its reputation;
  - Council considers the Applicant no longer viable;
  - Council forms the reasonable opinion that there is a Conflict of Interest as defined in clause 2;
  - Council considers there has been a material change in circumstances in the Applicant structure or identity;
  - Council or any other statutory authority withdraws, revokes or cancels any approval given to the Applicant for the Premises (such as under the *Food Act 1993*);
  - Council is of the opinion that it is necessary to do so because of a change in the traffic or other road safety circumstances affecting the Road;
  - the Applicant ceases to carry on the Applicant’s Business at the Premises for a continuous period of one (1) month, or Council is of the opinion that the Applicant has ceased to carry on the Applicant’s Business at the Premises for such period;
  - if Council receives what it determines in its absolute discretion an unacceptable number of complaints from patrons of the Applicant’s Business or its Personnel regarding the

- standard of food or service provided by the Applicant in the conduct of its business; or
- m. if the Applicant commits an Act of Bankruptcy.
- 32.2 This clause 32 does not exclude or reduce the rights of a Party to end the Consent or the rights of Council to revoke the Consent arising by operation of the common law or statute or the other terms of this Consent.

### **33. Extension of Consent**

- 33.1 If an Extended Term is stated in **Schedule A: Details**, no less than thirty (30) Business Days and no more than 60 Business Days prior to the Expiry Date, the Applicant may apply for an extension of this Consent for the Extended Term.
- 33.2 If an extension is granted pursuant to clause 33.1:
- the Applicant is bound by the terms and conditions of this Consent insofar as the terms and conditions are applicable, provided that Council may from time to time by notice in writing served on the Applicant direct that any clause does not apply or is amended in the manner set out in the notice;
  - the Applicant must continue to pay Council all Rent payable under the terms of this Consent at the rate(s) payable at the time of expiration of this Consent or at such rate or rates as may be agreed by Council and the Applicant; and
  - Council and the Applicant expressly agree that where any provision of this Consent confers any right, duty, power or obligation on a Party upon the expiration of this Consent the emergence of the right, duty, power or obligation will be postponed until such time as the Applicant ceases to be entitled to occupation pursuant to this clause 33.

### **34. Transfer of Consent**

- 34.1 The Applicant may at any time apply or give consent for another person (including Council) to apply to Council for the approval of the transfer this Consent, which approval may be withheld in Council's absolute discretion.
- 34.2 Other than in accordance with clause 34.1, the Applicant covenants with Council not to:
- assign or transfer its rights under this Consent; or
  - in any manner part with or dispose of the Premises or any part thereof; or
  - sublet, lease, underlease, licence or sublicense or in any other manner permit any other person to use or possess or occupy the Premises or any part thereof.
- 34.3 As a condition of giving approval under subclause 34.1, Council may require the Applicant to:
- pay all Council's legal costs on a solicitor/client basis in connection with or incidental to the giving of such approval;
  - obtain from the transferee, and/or the Applicant, a covenant (to be prepared by Council's solicitor at the expense of the Applicant) which shall bind the proposed transferee and/or the Applicant to perform and observe all the Applicant's covenants and agreements under this Consent; and
  - if the proposed transferee is a company, to obtain from such of the directors and shareholders of the company as Council thinks fit, a guarantee and indemnity by them of the company's covenants as aforesaid (such guarantees and indemnities to be prepared by Council's solicitors at the expense of the Applicant).
- 34.4 Where the Applicant is a corporation having shares not listed on a stock exchange in Australia, the following circumstances shall constitute an assignment of its rights under this Consent (which is prohibited under clause 34.2):
- any sale transfer or other disposition whatsoever of the shares in the capital of the Applicant or any issue or allotment of any new shares in the capital of the Applicant or the happening of any other matter or event whatsoever the effect of which is to transfer directly or indirectly the effective ownership, management or control of the Applicant; or

- b. if any of the events referred to in the above clause occur to any holding company (as defined in *Corporations Act 2001*) of the Applicant or any ultimate holding company of the Applicant.

### **35. Effect of revocation, expiration, transfer or other determination**

- 35.1 Unless otherwise provided for in this Consent or directed in writing by Council, at the revocation, expiration, transfer or other expiration of this Consent, the Applicant must:
- a. reinstate the Premises to a condition equivalent to the state of the Premises when the Applicant first occupied the Premises (with reference to a Condition Report, if any);
  - b. remove all improvements erected by the Applicant whether under this Consent or prior to the Commencement Date;
  - c. remove or clean off any advertising or other sign, advertisement or hoarding painted, erected or placed in or on the Premises (other than a notice displayed by Council and any signage required by Law) and in doing so restore the Premises to their condition immediately before such advertisement or sign was erected or set up;
  - d. remove any property belonging to the Applicant or its Personnel from the Premises, on the condition that any such property not removed becomes the property of Council who can keep it, store it, or remove and dispose of it in its absolute discretion;
  - e. give to Council any keys or other security devices in respect of the Premises;
  - f. peaceably give vacant possession of the Premises;
  - g. immediately make good, to a standard approved by Council, any damage to the Premises caused by compliance with this clause 35.1, with the Rent and any other money payable under this Consent continuing to be payable by the Applicant until such time as the Applicant has made good to Council's satisfaction; and
  - h. pay Council for any costs it incurs that are associated with any removal, storage, making good or disposal pursuant to this clause 35.1.
- 35.2 Upon revocation of this Consent by Council under clause 32:
- a. Council may, besides any other rights and remedies it might have, recover from the Applicant the amount of any damages suffered by Council and any enforcement costs incurred by Council in enforcing its rights under this Consent including, without limitation, legal costs (on a solicitor-own client basis) and court costs;
  - b. the Applicant will not be released from liability for any prior breach of this Consent and other remedies available to Council to recover any outstanding monies or for breach of this Consent will not be prejudiced; and
  - c. the Parties' accrued rights and obligations are not affected.

### **36. Applicant to pay for Loss occasioned by late determination**

If the Premises are not surrendered at the expiration, revocation or other determination of this Consent, the Applicant covenants with Council to reimburse Council for all Loss Council may suffer by reason thereof and indemnify Council against all Claims by any succeeding user or occupier or operator arising as a result of the Applicant delaying and delivering up possession of the Premises or otherwise.

### **37. No lease or licence of Road**

- 37.1 Nothing in this Consent grants any leasehold or other interest in the Road to the Applicant.
- 37.2 This Consent does not constitute a licence of the Road.

### 38. Acceptance of monies not waiver

Demand for, or acceptance of, any monies due under this Consent by Council after forfeiture does not operate as a waiver of forfeiture.

### 39. No fettering

- 39.1 Nothing in this Consent fetters Council's powers and discretions as a roads authority under the *Roads Act 1993*, as a consent authority under the *Environmental Planning and Assessment Act 1979*, or as a council under the *Local Government Act 1993*, or in any other capacity under any other Law, in respect of the Road or the Premises.
- 39.2 Nothing in this Consent prevents Council from using the Road in the exercise of any function conferred on it by the *Roads Act 1993* or the *Local Government Act 1993* or any other Law so long as the function is exercised in a way that will not unduly interfere with the rights of passage and access that exist with respect to the Road.

### 40. Amendment, variation and waiver

- 40.1 A condition of this Consent or a right created under it may not be amended, waived, varied or supplemented except by written notice of Council.
- 40.2 If a Party fails to exercise any of its rights under this Consent, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect stop a Party from relying on the terms of this Consent to their full force and effect.

### 41. Costs

Except as otherwise provided in this Consent, each Party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Consent.

### 42. Notices

- 42.1 Any notice, consent or other communication under this Consent must be in writing and signed by or on behalf of the person and/or Party giving it, addressed to the person to whom it is to be given and:
- emailed before 4pm of the close of business, requesting a delivery receipt;
  - delivered to that person and/or Party's address;
  - sent by pre-paid mail to that person's address; or
  - transmitted by facsimile to that person's address.
- 42.2 A notice given to a person in accordance with this clause is treated as having been given and received:
- if emailed before close of business and evidenced by a delivery receipt for that date and time;
  - if delivered by hand to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
  - if sent by pre-paid mail, on the third Business Day after posting; and
  - if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- 42.3 For the purpose of this clause, the address of a person is the address set out in **Schedule A: Details** to this Consent or another address of which that person may from time to time give notice to each other person.
- 42.4 The Applicant must immediately give to Council a copy of any notice relating to the Premises or relating to any neighbouring property that is given to them by Council or a third party.

42.5 Any notice to be given under this Consent by Council may be signed by an authorised officer.

#### **43. Entire Consent**

This Consent states all the express conditions of consent and approval as to the matters referred to in this Consent. It supersedes all prior contracts, obligations, representations, conduct and understandings between the Parties relating to the subject matter of this Consent.

#### **44. Severability**

Any provision of this Consent which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability and will not invalidate the remaining provisions of this Consent nor affect the validity or enforceability of that provision in any other jurisdiction.

#### **45. No merger**

Nothing in this Consent merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a Party may have against another Party or any other person at any time.

#### **46. Cooperation**

Each Party must sign, execute and deliver all notices, documents, agreements, instruments and act reasonably and effectively to carry out and give full effect to this Consent and the rights and obligations of the Parties under it.

#### **47. Governing law**

The Laws of New South Wales govern this Consent, and the Parties submit to the non-exclusive jurisdiction of the courts in that State.

#### **48. Privacy**

Any personal information collected by Council will be used, disclosed, stored, destroyed and otherwise managed in accordance with its Privacy Management Plan available on its [website](https://www.maitland.nsw.gov.au/sites/default/files/documents/2023-11/Privacy%20Management%20Plan%202023.pdf)<sup>1</sup>.

#### **49. Power of Attorney**

Each attorney who executes this Consent on behalf of a Party declares that the attorney has no notice of the revocation or suspension of the power of attorney by the grantor or the death of the grantor.

#### **50. Warranties**

50.1 The Applicant warrants that, at the date of this Consent, it:

- a. has all requisite legal and corporate power to enter into and execute this Consent;
- b. has taken all action necessary for the authorisation, execution and delivery of this Consent;
- c. has entered into this Consent based on its own investigations, interpretations, deductions, information and determinations; and
- d. is not aware of any actual, potential or perceived Conflict of Interest associated with the Applicant, the Applicant's Business or this Consent or anything associated with or in connection with them.

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<sup>1</sup> <https://www.maitland.nsw.gov.au/sites/default/files/documents/2023-11/Privacy%20Management%20Plan%202023.pdf>

50.2 The Applicant agrees to notify Council in writing immediately if it becomes aware that any of the warranties provided under clause 50 are false or misleading.

## **51. Negation of employment etc.**

This Consent does not create a relationship of employment, agency, partnership, joint venture or any form of fiduciary relationship between the Parties, and neither the Applicant (nor its Personnel) is to represent itself as being Council's employee or agent or otherwise able to bind or represent Council.

## **52. Survival**

The following clauses survive termination, expiry or other determination of this Consent:

- 52.1 Documents and inconsistencies:** This Consent comprises the following documents: the **Schedule A: Details**, then the Special Conditions (if any), then the Operative Part, then the Schedules (if any), then any annexures, then any other document expressly incorporated into this Consent. If there is any inconsistency between any of the above Consent documents, then the document listed higher in the list will prevail over the document listed lower in the list to the extent of such inconsistency
- 52.2 Survival:** The following clauses survive termination or expiry of this Consent: clause 8 (Insurances), clause 9 (Indemnities), clause 10 (Disclosure of Information), clause 12 (Dispute Resolution), clause 13.4 (Termination), clause 15 (Intellectual Property), and this clause 43.



Executed as a CONSENT

COUNCIL

Signed, sealed and delivered for and on behalf of the **Maitland City Council (ABN 11 596 310 805)** by the authorised delegate pursuant to the *Local Government Act 1993* (NSW):

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Full name of authorised delegate

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date:

APPLICANT

Signed, sealed and delivered for and on behalf of Click or tap here to enter text. (ABN/ACN Click or tap here to enter text.) in accordance with its constitution and, if applicable, any requirements for execution contained in the statute that establishes the Organisation by or in the presence of:

\_\_\_\_\_  
Signature of Person 1

\_\_\_\_\_  
Full name and position of Person 1

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signature of Person 2 (if applicable)

\_\_\_\_\_  
Full name and position of Person 2

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date:

## Schedule A: Details

Item No.	Description	Details	
1.	Party 1: Council	Name	Maitland City Council
		Address	263 High Street, Maitland NSW 2320
		ABN	ABN 11 596 310 805
2.	Council Nominated Project Officer	Position	Property Officer
		Phone	4934 9700
		Email	propertymanagement@maitland.nsw.gov.au
3.	Party 2: Applicant	Name	
		Address	
		Telephone	
		ABN and ACN (if applicable)	
4.	Applicant's Nominated Person	Name	
		Position	
		Address	
		Telephone	
		Email	
5.	Commencement Date		
6.	Expiry Date		
7.	Extended Term	Starting the day after the Expiry Date and ending on [date].	
8.	Applicant's Business	General goods, food and beverage service	
9.	Rent per week	\$250.00 (inc gst) payable in monthly instalments in advance of \$1,083.00 (inc gst)	
10.	Outgoings	Without limiting any other terms of this Consent, the Applicant must pay for all electricity, telephone, separately metered water, tenancy cleaning, fluorescent tube replacement, trade wastewater charges or other services supplied to or consumed on the Premises that are separately metered or separately charged in respect of the Premises or the Applicant's use and occupation of the Premises. Further details on approximate costs are found in Schedule B: Maintenance Responsibility.	
11.	Core Trading Hours	The Premises is to remain open six days per week (Monday to Saturday inclusive) with minimum daily trading hours of Monday to Friday 8.00am to 3.00pm and Saturday 8.00am to 2.00pm.	

Item No.	Description	Details
12.	The Kiosk – Council’s Fittings and Fixtures - Inclusions	<ul style="list-style-type: none"> <li>a. Refrigerator with top compartment featuring a glass door for drink storage and display, and the lower compartment a solid door for food storage</li> <li>b. Under counter refrigerator</li> <li>c. High efficiency commercial glass/dishwasher</li> <li>d. 3 phase power</li> <li>e. Sink for cleaning (hot and cold water)</li> <li>f. Under counter hands free sink</li> <li>g. Central floor waste connected to the sewer</li> <li>h. Overhead storage cupboards</li> </ul>
13.	The Kiosk - Exclusions	<p>The Kiosk does not include a grease trap. Basic cooking facilities such as a microwave, contact griddle, coffee machines, juicers and other similar items not requiring a grease trap are permitted, but are to be sourced by the Applicant and require facility compliance and conformance to Hunter Water Trade Wastewater conditions.</p> <p>Furniture and fittings associated with the Footway Dining Area will be the responsibility of the Applicant and will need to conform to Council standards and guidelines.</p>
14.	Interest rate	The rate fixed by the Supreme Court of NSW from time to time for interest on judgment debts.

## Schedule B: Maintenance Responsibility

EXTERNAL			
DETAILS OF ITEM	FREQUENCY	RESPONSIBLE PARTY FOR REPAIRS	
		COUNCIL	KIOSK OPERATOR
<b>Cleaning – External Building &amp; Grounds</b> (e.g. under awnings, eaves, light fittings, sweep hard surfaces, wash windows, remove litter from outside premises)	As required		✓
<b>Doors, roller doors, doors furniture and door closers</b> – maintenance & repairs (not including cleaning)	As required	✓	
<b>Electrical – Minor Maintenance</b> (e.g. replacement of light globes and fluorescent tubes, safety covers)	As required		✓
<b>Fixtures, Fittings &amp; Equipment</b> Maintenance, repairs and replacement  Including furniture and fittings associated with the Footway Dining Area which will be the responsibility of the Kiosk Operator and will need to conform to Council standards and guidelines. This is excluding the fixed outdoor umbrellas which are the responsibility of Council.	As required by Australian Standards and Regulations		✓
<b>Garbage Removal</b> – Weekly garbage collection by Council and the scheduled organic and recycling waste	Weekly		✓
<b>Guttering &amp; Downpipes</b> – maintenance, repairs & replacement	As required	✓	
<b>Guttering &amp; Downpipes</b> – Cleaning including leaf and debris removal	As required	✓	
<b>Keys, locks, cylinders, padlocks</b> – Installation of original locks and keys	Prior to Occupancy	✓	
<b>Keys, locks, cylinders, padlocks</b> – Repair and maintenance	As required		✓
<b>Roof (including skylights)</b> – maintenance and repairs	As required	✓	
<b>Security – Grilles, screens and doors</b> – maintenance and repair due to age, structural fault or vandalism	As required	✓	
<b>Security – Lighting</b> – Attached or wired to the building	As required	✓	
<b>Security – Alarms</b> – Maintenance of any Council installed system only	As required	✓	
<b>Security – Alarms</b> – System monitoring fees, call out costs	As required		✓
<b>Security – Systems and Controls</b> – Installation, repair, operating and monitoring by Kiosk Operator	As required		✓
<b>Structure</b> – maintenance & repairs	As required	✓	
<b>Vandalism (including break-ins) repairs</b> – Repairs to the building structure and external doors, windows and/or locks.	As required	✓	
<b>Vandalism</b> – Removal of graffiti from external areas	As required	✓	

EXTERNAL			
DETAILS OF ITEM	FREQUENCY	RESPONSIBLE PARTY FOR REPAIRS	
		COUNCIL	KIOSK OPERATOR
<b>Air Conditioning Maintenance</b> for Ducted or Fixed System owned by Council	As required	✓	
<b>Air Conditioning Maintenance</b> for other systems (portable and fixed) installed by Kiosk Operator with Council approval	As required		✓
<b>Cleaning</b> – Internal Surfaces (e.g. all general internal)	As required		✓
<b>Electrical – Earth leakage circuit breaker</b> installation and maintenance	As required	✓	
<b>Electrical – Supply mains, submains and switchboards</b> - maintenance, repair & replacement if faulty	As required	✓	
<b>Electrical – Upgrade</b> due to demand or alterations to equipment as installed	As required		✓
<b>Electrical – Wiring, Power Points and Light Fittings</b> Replacement of faulty fixtures, fittings and wires	As required	✓	
<b>Electrical – Minor Maintenance</b> (e.g. replacement of light globes and fluorescent tubes, safety covers)	As required		✓
<b>Electrical – Testing &amp; Tagging of electrical equipment</b> installed by Council	Annual	✓	
<b>Electrical – Testing &amp; Tagging of electrical equipment</b> installed by Kiosk Operator	Annual		✓
<b>Fire Safety General Compliance</b> – Inspection & equipment testing as per legislation	Twice a year	✓	
<b>Fire Safety Portable Firefighting Equipment</b> – Inspections, testing and servicing as required by legislation	Twice a year	✓	
<b>Fire Safety Replacement</b> – items that are missing or stolen during agreement term	As required		✓
<b>Fire Safety Recharging</b> – after fire related incidents	As required	✓	
<b>Fire Safety Recharging</b> – after non-fire related incidents	As required		✓
<b>Fire Safety Smoke Detectors</b> – Testing, installation and repairs	Annual	✓	
<b>Fire Safety Smoke Detectors</b> – Replacement of batteries, if not hard wired	Annual		✓
<b>Fixtures, Fittings &amp; Equipment</b> Maintenance and repair of free standing or permanent built-in equipment, furniture and appliances. Including but not limited to: <ul style="list-style-type: none"> <li>Refrigerator with top compartment featuring a glass door for drink storage and display, and the lower compartment a solid door for food storage (Waterman – Serial # 14884);</li> <li>Under counter refrigerator (Waterman – Serial # 14885);</li> </ul>	As required		✓

EXTERNAL			
DETAILS OF ITEM	FREQUENCY	RESPONSIBLE PARTY FOR REPAIRS	
		COUNCIL	KIOSK OPERATOR
<ul style="list-style-type: none"> <li>High efficiency commercial glass/dishwasher (SMEG: Serial #: CWG411MDAUS-2 Type; 3014);</li> <li>Split System Air Conditioner;</li> <li>Portable &amp; Wheeled Fire Extinguisher (1.5kg Powder Brand: Firebox)</li> <li>Smoke Alarms &amp; Heat Alarms (240V with 9V B/backup Model: Eib186p)</li> <li>A sink for cleaning (hot and cold water);</li> <li>Under counter hands free sink;</li> <li>A central floor waste connected to the sewer;</li> <li>Overhead storage cupboards;</li> </ul>			
<b>Fixtures, Fittings &amp; Equipment</b> If any of the above are deemed irreparable the Kiosk Operator is to contact Council to request replacement. If it is determined the issue is due to the misuse by the Kiosk Operator the responsibility of replacement will be that of the Kiosk Operator.	As required	✓	
<b>Floor Coverings</b> – maintenance & repair	Ongoing		✓
<b>Floor Coverings</b> – Replacement (with Council's approval)	As required		✓
<b>Floor Coverings</b> – When identified in building condition report and maintenance program	As required	✓	
<b>Keys, locks, cylinders, padlocks</b> – Installation of original locks and keys	Prior to Occupancy	✓	
<b>Keys, locks, cylinders, padlocks</b> – Repair and maintenance	As required		✓
<b>Outgoings –</b> <ul style="list-style-type: none"> <li>Electricity: Invoice on-charged to Kiosk Operator by Council. Kiosk Operator can create their own account with preferred provider. Approximate quarterly invoice of \$750</li> <li>Water: Invoice on-charged to Kiosk Operator by Council after requesting photo of water meter on site. Approximate quarterly invoice of \$75</li> <li>Trade Waste Charges: Approximate quarter invoice added to water \$42.00 per quarter</li> <li>Preventative maintenance of Equipment. Approximately \$600 per service</li> <li>Telephone, Cleaning, Rubbish Removal, Ongoing maintenance requirements or other services supplied to, or consumed, on the Kiosk.</li> </ul>	Quarterly  Quarterly  Quarterly  Bi-annual  As required		✓  ✓  ✓  ✓  ✓
<b>Pest Control</b> – General Inspection, treatment and eradication of general pests (e.g. Cockroaches, spiders, mice)	Annual		✓

EXTERNAL			
DETAILS OF ITEM	FREQUENCY	RESPONSIBLE PARTY FOR REPAIRS	
		COUNCIL	KIOSK OPERATOR
<b>Plumbing – hot water service, roof plumbing, storm water and water</b> – connections and replacement of faulty fixtures, fittings and piping	As required	✓	
<b>Plumbing – hot water service, roof plumbing, storm water and water</b> – minor maintenance (e.g. replacement of washers on taps, cisterns)	As required		✓
<b>Plumbing</b> – general sewer blockages	As required	✓	
<b>Plumbing</b> – sewer blockages as a result of misuse by, or the conduct of the Kiosk Operator	As required		✓
<b>Telephone and Internet Wiring, Antennas</b> – Repairs, maintenance, installation (with prior approval of Council)	As required		✓
<b>Vandalism (including break-ins) repairs</b> – Repairs to internal fixtures, fittings or locks (unless covered by Council's Insurance policy)	As required		✓

Note:

- Any part of the property that requires repair/replacement that is due to the misuse by the Kiosk Operator is the responsibility of the Kiosk Operator regardless of the table above.
- Specific clauses in the Executed Agreement can override or provide further information on the above details.

Annexure A: Plan

