

YARRIAMBIACK SHIRE COUNCIL EARLY YEARS SERVICE AGREEMENT

THIS AGREEMENT is made on ##

PARTIES

- 1 **YARRIAMBIACK SHIRE COUNCIL**
of 34 Lyle Street, Warracknabeal VIC 3393
("Council")
- 2 **HORSHAM AND DISTRICT KINDERGARTEN ASSOCIATION INC.**
Registration number A0039348B, ABN 65 670 142 871
Trading as Emerge Early Years Services
of 22 McLauchlan Street Horsham Vic 3400
("Tenant")

RECITALS

- A This service agreement supersedes all other service agreements that have been enacted, including the service agreement endorsed by Council on 26 February 2025.
- B Council and the Tenant are committed to supporting and providing access to quality early years' education and care for children in the municipality of Yarriambiack Shire Council.
- C Council is the registered proprietor of the Facilities.
- D Each Facility will have a separate Lease Agreement. A single Service Agreement will cover all services Emerge operates within Yarriambiack Shire.
- E The Tenant occupies or will occupy the Facility as tenant under a Lease between Council and the Tenant. The Tenant is to use the Facility in a manner consistent with the permitted use and obligations under the Lease, and to provide the Services.
- F The parties agree to enter into this Agreement to document the terms and conditions upon which the Services are to be provided.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this lease, unless the contrary intention appears:

- 1.1 "**Agreement**" means this agreement, including the parties, recitals, schedules and annexures to this Agreement.
- 1.2 "**Council**" means the Yarriambiack Shire Council.
- 1.3 "**CRES**" means the Yarriambiack Shire Council Central Registration and Enrolment Scheme.
- 1.4 "**Department**" means the Victorian Government Department of Education.
- 1.5 "**Facilities**" means the premises which are the subject of a Lease. Warracknabeal Early Years Centre, Hopetoun Early Years Centre, Rupanyup Early Years Centre, Minyip Early Years Centre.
- 1.6 "**Lease**" means the lease of the Facility between the Council as landlord and Tenant as tenant, dated on or about the date of this Agreement.

- 1.7** “**LGA**” means Local Government Area, which is the area of Yarriambiack Shire Council municipality.
- 1.8** “**Schedule**” means a schedule to this Agreement.
- 1.9** “**Services**” means kindergarten services and/or early childhood education services, as specified in the Permitted Use clause in the Lease.
- 1.10** “**Staff**” employees of the Tenant.
- 1.11** “**Term**” means the term of this Agreement as defined in clause 3 of this Agreement.

Any term defined in the Lease has the same meaning in this Agreement and if there is any inconsistency between the meaning in this Agreement and the meaning in the Lease, the terms of the Lease prevail.

2 COMPLIANCE WITH SERVICE AGREEMENT AND RELATIONSHIP WITH LEASE

- 2.1** In consideration for the Council granting the Lease to the Tenant, the Tenant enters into this Agreement.
- 2.2** At all times during the Term, the Tenant must comply with the Service Agreement (as amended from time to time) and by the time/s required by the Service Agreement.
- 2.3** The Tenant acknowledges and agrees that, pursuant to clause 19 of the Lease, Council may, from time to time, and with the agreement of the Tenant (which will not be unreasonably withheld), amend this Agreement. If Council amends this Agreement, it must provide a copy of the amended Service Agreement to the Tenant within 30 days after any such amendment.
- 2.4** The Tenant acknowledges and agrees that the Department may issue policy directives relating to funded kindergarten programs which could require amendments to this Agreement. In such an event, any amendments to reflect Department directives will be made in consultation with, and agreement between, Council and the Tenant. If Council amends this Agreement following consultation and agreement between the parties, it will provide a copy of the amended Agreement to the Tenant within 30 days after any such agreement is made. This Agreement will be deemed to have been replaced by the amended Agreement on the date Council provides a copy to the Tenant.
- 2.5** If the Lease ends or is terminated for any reason, then this Agreement will be terminated also and at the same time.

3 TERM

This Agreement commences on the Commencement Date of the Lease and ends when the Kindergarten Building Lease(s) expires.

4 SERVICES

- 4.1** The Tenant must perform and deliver the Services during the Term in accordance with this Agreement and early years’ policies and directions of Council from time to time which relate to the provision of the central registration and enrolment scheme.
- 4.2** The Tenant will remain responsible for the performance of the Services notwithstanding the acceptance or review of the Services, or any element of the Services, by Council or by any employee or person acting on behalf of the Council.
- 4.3** The Tenant must:

- 4.3.1 manage all aspects of the performance and delivery of the Services, including the employment and management of all staff, the compliance with all laws and Department policies, the management of finances and budgets, the administration and implementation of this Agreement and the Lease, and all other administrative and operational matters;
- 4.3.2 take timely and corrective action where the Services are not being performed in accordance with any requirements of this Agreement or the Lease; and
- 4.3.3 ensure that the Services are delivered in accordance with the Lease, all Approvals, Laws and Relevant Legislation and all funding guidelines as applicable from time to time.

4.4 The Council will not be liable for any cost, liability, loss or damage incurred or suffered directly or indirectly by the Tenant or the Tenant's Agents in connection with the provision of the Services except to the extent it was caused or contributed to by a breach of this Agreement by, or the negligence of, Council.

5 PLANNING OF SERVICES

The Tenant must:

- 5.1** establish and promote a range of early years Services for children which meet community need;
- 5.2** actively work with Council to develop strategies and timetables to meet community demand for early years services, and facilitate eligible children to access two years of funded kindergarten in the two years prior to school entry;
- 5.3** prioritise the delivery of and access to kindergarten programs for children who are vulnerable or experiencing disadvantage in the two years prior to school entry;
- 5.4** offer a kindergarten group size that maximises the number of places offered based on licensed capacity;
- 5.5** annually review and provide to Council details of the kindergarten programs to be offered in response to identified supply and demand data, and set out:
 - 5.5.1 the number of 3-year-old and 4-year-old places to be offered; and/or
 - 5.5.2 the number of total places to be offered as a mixed age group;
 - 5.5.3 details of other kindergarten programs and activities to be offered including bush kinder, extended care or other regular sessions;
 - 5.5.4 session times for all kindergarten programs and activities;
 - 5.5.5 details of fees and charges (if not readily available on service website);
 - 5.5.6 kindergarten staff qualifications, where relevant;
 - 5.5.7 details of any improvement grant opportunities as identified in the service's quality improvement plan; and
 - 5.5.8 alarm code (if applicable) and key register listing all keys and allocations by name and contact number;
- 5.6** collaboratively work with Council to align with the goals of Council plans and policies to ensure community facilities are safe, accessible, adaptable, and highly utilised, providing high levels of value to meet community demand for kindergarten; and

- 5.7** respond to current and forecast enrolment needs and trends as provided by Council and the Department;
- 5.8** adopt a responsive approach to planning for additional places at the Facility within the parameters of licensed capacity and service viability when demand exceeds supply;
- 5.9** participate in and administer the CRES in collaboration with Council and in accordance with Council policies, procedures and guidelines;
- 5.10** annually review the CRES process in collaboration with Council; and
- 5.11** ensure that the Tenant's service management representative/s participate in all information sessions and meetings conducted by Council which relate to service management and networking, future planning, sector updates, and the CRES.

6 STAFFING OF SERVICES

- 6.1** The Tenant will proactively assess the Teacher and Educator staffing requirements now and into the future, and adopt workforce recruitment, retention and development programs to attract and retain personnel within the Yarriambiack Shire.
- 6.2** The Tenant is committed to supporting staff in developing the necessary skills to meet current and future demands.
- 6.3** The Tenant shall refrain from engaging Yarriambiack Shire Teachers and Educators in any manner that may adversely affect the opening or closing days and times of Yarriambiack early years centres.

7 MARKETING AND ADVERTISING

- 7.1** Council will promote all early years Services operating from Council owned facilities on Council's website, and through targeted marketing opportunities (for example, Open Weekend and Children's Week).
- 7.2** Subject to clause 7.1 of this Agreement, the Tenant is responsible for all marketing, promotion and advertising of the Services provided at the Facility.
- 7.3** The Tenant will work with Council to enable the online CRES process, so that CRES related content is reflected accurately on websites and/or other media (as applicable).

8 SERIOUS INCIDENTS

- 8.1** The Tenant will notify Council as soon as practicable if any of the following incidents occur at the Facility:
 - 8.1.1** A child dies while attending the Facility;
 - 8.1.2** A child cannot be accounted for or appears to have been taken or removed from the Facility without parental or guardian authorisation; or
 - 8.1.3** Other incidents where Emergency services including police, fire, and state emergency services attend the Facility.
- 8.2** Where reasonably appropriate or as requested by the Tenant, the Council will provide practical assistance (e.g. stakeholder management, support to the Tenant's staff) in managing the incident.

9 KEY PERFORMANCE INDICATOR REPORTING

- 9.1** Each February, the Tenant must submit a report to Council on the following Key Performance Indicators:
- 9.1.1 Number of closure days within a calendar year above those permitted by the Department of Education, legislation and regulations.
 - 9.1.2 Number of closure days that have resulted from LGA staff being assigned to other LGA centres.
 - 9.1.3 Number of staff being provided with upskilling professional development to increase the number of suitability qualified teachers and educators within the LGA.
 - 9.1.4 Centres within the LGA, operated by the Tenant, facing financial risk due to insufficient enrolment revenue to meet operational costs.
 - 9.1.5 Number of non-compliance reports and risk mitigation measures implemented to address the matters that have arisen, whilst maintaining Data Protection and Privacy legislative requirements.
 - 9.1.6 Details of ground improvements made over the last 12 months; and
 - 9.1.7 Key risks, challenges or concerns related to service delivery that are anticipated in the next 12 to 18 months.

10 COUNCIL SERVICE PROVISION

- 10.1** Council will provide in-kind support in either December and/or January each year, at the request of the Tenant with the following matters, in-lieu of a financial contribution:
- 10.1.1 Top up of suitable sand, as requested by the Tenant for the sand pits located at the Minyip, Rupanyup, Warracknabeal and Hopetoun Early Years Centres.
 - 10.1.2 Top up of suitable soft fall as requested by the Tenant for playground areas located at the Minyip, Rupanyup, Warracknabeal and Hopetoun Early Years Centres.

11 FUNDING APPLICATIONS

- 11.1** The Tenant is not required to obtain Council approval for funding applications unless the applications involve structural changes to the building that require a building permit and must be performed by a Commercial Builder.
- 11.2** The Tenant is required to ensure that all costs related to the works and/or services are thoroughly considered and incorporated into the funding application. The Council accepts no responsibility for any funding shortfalls.
- 11.3** The Tenant is responsible for all obligations associated with funding agreements including milestone reporting and acquittals.

12 PROCUREMENT

The Tenant is exempt from adhering to the Council's Procurement Policy when overseeing, maintaining, or delivering services and/or works within their designated area of responsibility. For details regarding the designated area of responsibility refer to the Maintenance and Servicing Guidelines for Yarriambiack Shire Council owned Kindergartens included in the Lease Agreement for each site. Refer Schedule 1 - Plans

13 PROJECT MANAGEMENT AND OCCUPATIONAL HEALTH AND SAFETY

- 13.1** Where the Tenant undertakes services and/or works through staff, contractors, or volunteers, the Tenant must adhere to all legislative requirements applicable to the activity, including, but not limited to, compliance with the Occupational Health and Safety Act 2004. The Council shall remain indemnified against any liability arising from the Tenant's engagement of a contractor, employee, or volunteer to execute works and services on its behalf.
- 13.2** The Tenant is assigned responsibility for the project management of services and works within their designated area, as outlined in the Maintenance and Servicing Guidelines for Yarriambiack Shire Council owned Kindergartens provided in conjunction with the Lease Agreement for each site. For clarification, this includes any services and works carried out in the licensed playground area and its surroundings, the building surrounds, and within the building itself where a building permit is not required and where the structural integrity of the building remains unaltered and uncompromised.

The Council will be responsible for Project Management in instances where a building permit is necessary for work on the building, in cases involving structural modifications or upgrades to the building, or when permanent fixtures and fittings are being upgraded or replaced within the building. Refer Schedule 1 - Plans

14 SOIL MANGEMENT PLAN (SMP)

- 14.1** The Rupanyup Kindergarten, Cromie Street Rupanyup has an active Soil Management Plan in place. The Tenant is required to ensure that:
- 14.1.1 Staff complete the weekly SMP checklist;
 - 14.1.2 That the children are not allowed to dig in raw soil at the Rupanyup site;
 - 14.1.3 That staff, contractors and volunteers who are engaged to provide services, maintenance or works at the Rupanyup site are aware of and have read the SMP.
 - 14.1.4 The Tenant shall ensure that the SMP is included in the induction process for all staff members, volunteers, and contractors engaged at Rupanyup Kindergarten.

Refer Schedule 1 - Plans

15 FUNDING CONTRIBUTION AND IN-KIND SUPPORT

High-quality education and care constitute a vital service for the LGA. It is essential that the quality of this provision remains uncompromised and that funds allocated to the LGA are not diverted to support services in other LGAs. In instances where service standards may be adversely affected, the Tenant must submit a written request to the Council for supplementary support, either through additional funding or in-kind assistance. These requests may include, but are not limited to:

- 15.1.1 Funding to support the Provision of a highly experienced and skilled Early Years Manager to the standard acceptable by the Council.
 - 15.1.2 In-Kind support with the provision of Caravan Park Cabin accommodation.
 - 15.1.3 Funding to support the upskilling of staff to achieve Diploma and/or Teaching qualifications.
- 15.2** Early Years staff servicing the LGA will be invited to participate in Councils skin check and annual immunisation program.

- 15.3** Upon execution of the lease, all non-fixed equipment within each Early Years building, with the exception of equipment in the Maternal Child Health Rooms and the Uniting Vic Tas Rooms, will be transferred to Emerge Early Years Services as a gift.

16 MEETINGS BETWEEN PARTIES

- 16.1** The Manager Early Years, responsible for the oversight of the Yarriambiack Shire Council Local Government Area will be invited to attend the monthly Yarriambiack Shire Extended Leadership Meeting.
- 16.2** The Chief Executive Officers of both organisations will meet quarterly with their respective delegates to review early childhood education and care matters relating to Yarriambiack Shire.
- 16.3** Parties will alternate responsibilities for the Agenda and Minutes of the meeting scheduled in 16.2.

17 SERVICE MANAGEMENT REPRESENTATIVE

17.1 Appointment

The Tenant must:

- 17.1.1 appoint the person or persons with Management or Control as defined by the *Education and Care National Regulations* as the representative at all times during the Term;
- 17.1.2 ensure that the representative as defined in clause 8.1.1 is available and able to be contacted by Council during Business Hours and in the event of an emergency; and
- 17.1.3 notify Council immediately if a new representative as defined in 8.1.1 is appointed.

17.2 Contact details

The Tenant must:

- 17.2.1 provide Council with:
 - 17.2.1.1 the name, address and contact details of the person or persons with Management or Control during Business Hours;
 - 17.2.1.2 a telephone number on which the person or persons with Management or Control may be contacted outside Business Hours; and
 - 17.2.1.3 notify Council immediately of any change of contact details of the person or persons with Management or Control.

17.3 Directions to Representative

Any direction, instruction, notice, determination, approval or other communication given to the person or persons with Management or Control is deemed to have been given to the Tenant.

17.4 Knowledge of Representative

Any matter within the knowledge of the person or persons with Management or Control is deemed to be within the knowledge of the Tenant.

18 NOTICES

A notice required or permitted to be given by one party to another under this Agreement must be given in accordance with the method of giving notices under the Lease, and will be treated as having been duly given and received in accordance with the notice provisions of the Lease.

19 INTERPRETATION

In this Agreement, unless inconsistent with the context:

19.1 the singular includes the plural and vice versa;

19.2 other grammatical forms of defined words or expressions have corresponding meanings;

19.3 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;

19.4 a reference to any Act, law, regulation, proclamation, planning scheme, local law or by-law includes any amendment, consolidation or replacement of any of them;

19.5 a reference to an Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act;

19.6 a reference to a party includes that party's successors, permitted assigns, receivers, receivers and managers, liquidators, administrators and legal personal representatives;

19.7 a reference to a document includes a reference to that document as amended, rectified or replaced from time to time and the document which amends, rectifies or replaces that document; and

19.8 headings are for convenience only and do not affect interpretation.

19.9 Severance

If any provision or part of a provision of this Agreement is illegal or unenforceable for any reason, then the provision or part of the provision shall be severed from this Agreement and the remaining provisions or parts of the provisions will continue in full force and effect.

19.10 Governing law

The law of the State of Victoria governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

19.11 Act on next Business Day

If an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day.

19.12 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together constitute the same instrument.

19.13 No partnership

Nothing in this Agreement shall operate or be deemed to create a partnership between any of the parties to this Agreement.

19.14 Several and joint liability

If the Tenant consists of two or more parties, this Agreement binds each of them severally and jointly.

19.15 Agency

The Tenant must not:

19.15.1 hold itself out as being an agent of Council or being in any other way entitled to make any contract on behalf of Council or to bind the Council to the performance, variation, release or discharge of any obligation; or

19.15.2 hold out its personnel and agents or allow its personnel and agents to hold themselves out, as employees or agents of the Council.

19.16 No restriction of Council's powers

This Agreement does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Services, the Tenant or the Municipality.

19.17 No waiver

Any waiver must be in writing signed by the party giving that waiver. The following will not amount to a waiver of Council's rights under this Agreement or at law:

19.17.1 time or other indulgence granted by Council to the Tenant;

19.17.2 variation of the terms and conditions of this Agreement; or

19.17.3 judgment or order obtained by the Tenant against Council.

SCHEDULE 1 – PLANS

Emerge Early Years Services are responsible for (areas shaded yellow) :

- a) Project management and works undertaken in licenced playground area
- b) Safety
- c) Procurement
- d) Soil Management Plan (if applicable)
- e) Exempt from Procurement Policy (all areas outside of buildings)
- f) Legislation Compliance

Note: Council are responsible for the main building and fire services infrastructure
Minyip Kindergarten



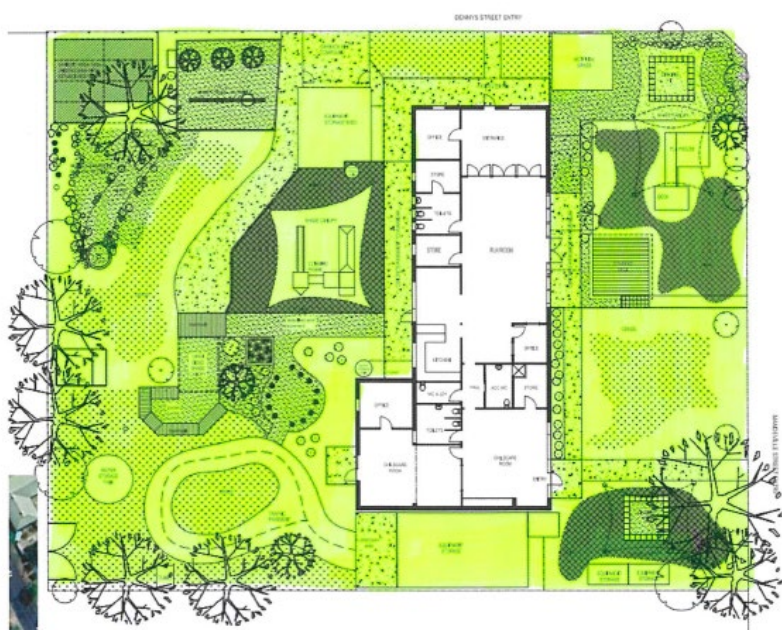
Rupanyup Kindergarten



Warracknabeal Kindergarten



Hopetoun Kindergarten



EXECUTED as an Agreement.

Council:

THE COMMON SEAL of)
YARRIAMBIACK SHIRE COUNCIL was)
hereunto affixed on the day of)
..... 2025)
in the presence of:)

..... Councillor/Mayor

..... Full name

..... Councillor

..... Full name

Tenant:

THE COMMON SEAL of **HORSHAM AND**)
DISTRICT KINDERGARTEN)
ASSOCIATION INC. (Registration)
number A0039348B) was affixed in
accordance with its rules in the presence
of:

.....
Elicia Napoli – Chief Executive Officer

.....
Krystal Osborne – Finance Manager