



Mansfield Shire

LEASE

Council:
Mansfield Shire Council (“Council”)

Licensee:
MACE Inc. (“the Licensee”)

Licensed Area:
Part Mansfield Family and Children’s Centre
10 Davies Street, Mansfield Victoria

Our Ref: AG976

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Item 1	Council	Mansfield Shire Council of 33 Highett Street, Mansfield, Victoria 3722.
Item 2	Tenant	MACE Inc. 10 Davies Street, Mansfield VIC 3722
Item 3	Land	The area shown as shaded on the plan attached to this Lease as Annexure C being part of the land described in Certificate of Title Volume 7374 Folio 786, being part of the property known as Mansfield Community Centre, 10 Davies Street, Mansfield Victoria 3722.
Item 4	Premises	Part of the land and building known as the Mansfield Family and Children Centre shown colored on the plan attached to the Lease at Annexure B
Item 5	Commencement Date	1 August 2023
Item 6	Expiry Date	31 July 2028
Item 7	Term	5 years
Item 8	Further Term	Three (3) further terms of three (3) years each
Item 9	Rent	Refer to clause 4.1
Item 10	CPI Adjustment Dates	Annually on the anniversary of the Commencement Date and the commencement date of each Further Term
Item 11	Permitted Use	Early Childhood Education and Care
Item 12	Special Conditions	As set out in Annexure A

The Council leases the Premises to the Tenant subject to the terms contained in this Lease.

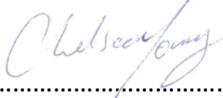
The Lease is executed as a deed on the first day of August 2023

Signed under delegation on behalf of
Mansfield Shire Council by:



.....
Chief Executive Officer
Kirsten Alexander

In the presence of



.....
Signature of witness

Chelsea Young

.....
Full name of witness

Signed by the
MACE Inc. by:



.....
Chief Executive Officer
Kylie Richards

1. Definitions

In this lease unless expressed or implied to the contrary:

Act means the *Retail Leases Act 2003 (Vic)*

Building Act means the *Building Act 1993 (Vic)*

Building Regulations means the *Building Regulations 2006 (Vic)*

Centre means the Mansfield Family and Children’s Centre, comprising approximately 734 square metres

Commencement Date means the date specified in Item 5.

Common Areas means those parts of the Land provided by Council from time to time for common use, including:

- (a) Access and egress roads, driveways and care parks within the Land.
- (b) Entrances, exits and corridors; and
- (c) The areas identified as ‘common circulation’ areas and coloured on the plan attached to this Lease as Annexure B

Contamination includes any solid, liquid, gas, radiation or substance which makes or may make the condition of the premises or groundwater beneath or part of the surrounding environment:

- a) Unsafe, unfit or harmful for habitation by persons or animals; or
- b) Unfit for any use permitted under the applicable planning scheme as amended from time to time

or which is defined as such in any Environmental Protection Legislation.

Council means the Council specified in Item 1 and includes the Council’s successors and assigns and where it is consistent with the context includes the Council’s employees and agents.

Council’s Fixture means all fittings, fixtures and chattels contained in the Premises at the Commencement Date or installed by Council during the Term

CPI means the Consumer Price Index – All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as Council reasonably determines.

CPI Adjustment Date means the date(s) (if any) described in Item 11

Current CPI means the CPI number for the quarter ending immediately prior to the CPI Adjustment Date

Environmental Protection Legislation means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment.

Essential Safety Measures has the meaning given to that term in the Building Regulations.

Excluded Area means that part of the Land shown not coloured on the plan attached to this Lease Annexure B

Expiry Date means the date specified in Item 6.

Further Term means the further term(s) specified in Item 8.

Hazardous Materials includes all hazardous substances and any pollutant or contaminant defined as such in (or for the purpose of) any Environmental Protection Legislation.

Insolvency Event means:

- (a) in the case of a natural person, if that person:
 - (i) becomes bankrupt;
 - (ii) assigns the person's estate; or
 - (iii) enters into a deed of arrangement or composition for the benefit of creditors.

- (b) In the case of a corporation, if that corporation:
 - (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisations;
 - (ii) is wound up or dissolve or has an application made for its winding up or dissolution;
 - (iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;
 - (iv) is placed under official management;
 - (v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets; or
 - (vi) has an inspector or investigator appointed under the *Corporations Act 2001* (Cth)

Item means an item in the Lease Particulars.

Land means the land specified in Item 3.

Lease means this lease and includes all annexures and schedules

Lease Particulars means the schedule of Items specified on the page at the front of this Lease.

Local Government Act means the *Local Government Act 1989 (Vic)*

OHS Act means the *Occupational Health and Safety Act 2004 (Vic)*

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulations or by-law that applies to work being carried out on the Premises

OHS Regulations means the *Occupational Health and Safety Regulations 2007 (Vic)*

Outdoor Area means the part of the Premises shown coloured on the plan attached in Annexure B

Owners Corporation has the meaning given to that term in the *Subdivision Act 1988 (Vic)*

Permitted Use means the use specified in Item 9.

Premises means the premises specified in Item 4 and includes Council's Fixtures

Previous CPI means the CPI number for the quarter ending immediately prior to the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later)

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the OHS Regulations

Rates and Taxes means the rates, taxes, charges and levies specified in clause 6.1

Rent means the amount specified in Item 9 as reviewed, adjusted or increased under this Lease

Small Business Commissioner means the Small Business Commissioner referred to in the Act.

Special Conditions means the conditions set out in Annexure A (if any)

Tenant means the Tenant specified in Item 2 and include the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, contractors, agents, invitees and persons the Tenant allows on the Land.

Tenant's Property means all property on the Land including all fixtures and fittings owned or leased by the Tenant but excluding the Council's fixtures.

Term means the term specified in Item 7.

Further Term means the term specified in Item 8.

2. Local Government Act 1989

This Lease is entered into pursuant to section 190 of the *Local Government Act*.

3. Duration of the Lease

3.1 Term

This Lease is for the Term starting on the Commencement Date.

3.2 Option of a Further Term

If a Further Term is specified in Item 8, Council will grant to the Tenant a new lease for the Further Term if the Tenant:

- 3.2.1 gives Council written notice asking for a new lease, not earlier than 18 months or later than 12 months, before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 9);
- 3.2.2 has remedied any breach of this Lease of which the Tenant has received written notice for Council;
- 3.2.3 has not persistently defaulted under the Lease and Council has given written notice of the defaults; and
- 3.2.4 complies with all reasonable requirements of Council including where the Tenant is a corporation, procuring such directors or shareholders of the Tenant as may be reasonably required by Council to execute the guarantee contained in this Lease.

The new Lease for the Further Term will commence on the day after this Lease ends and contain the same terms and conditions as this Lease but with no option for a further term where the last option for the Further Term has been exercised. The Rent or the method to be used to review, adjust or increase the Rent during the Further Term is specified in clause 5.

3.3 Execution of new Lease for Further Term

The Tenant (where applicable) must:

- 3.3.1 execute the new lease for the Further Term; and
- 3.3.2 sign any disclosure statement provided by Council to the Tenant

and return the above to Council within 14 days of receipt from Council.

3.4 Holding Over

If the Tenant continues to occupy the Premises after the Expiry Date with Council's consent, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

- 3.4.1 the Tenant will occupy the Premises as a monthly tenant at a total rental payable monthly in advance being an amount to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to Council under this Lease as at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;
- 3.4.2 as far as applicable, the monthly tenancy will otherwise continue on the terms and conditions of this Lease;
- 3.4.3 the Rent or any part of it for the monthly tenancy may be reviewed whenever Council determines it appropriate and any provisions in this Lease relating to calculation of, limitation on or right of review of the Rent or any part of it will not apply;
- 3.4.4 either party may terminate the monthly tenancy by giving to the other one month's notice to the other party expiring on any date; and
- 3.4.5 if the Tenant defaults in the performance of its obligations under the monthly tenancy. Council may terminate the monthly tenancy by giving the Tenant 24 hours notice.

4. Payment of Rent

4.1 Calculation of Rent

A fixed annual rent fee will be applied, calculated using the price per place method.

- 4.1.1 The Rent payable on the commencement of the initial term of this Lease will be

A fixed annual rent based on an amount of \$1,650 (plus GST) per fee-paying enrolment for 50 licensed places per annum.

4.2 Payment of Rent

The Tenant must:

- 4.2.1 pay the Rent to Council by equal quarterly instalments in arrears (and pro-rata for any period less than one quarter); and
- 4.2.2 adhere to the payment method specified by the Council and make rent payments based on the regular invoices provided by the Council.

5. CPI Adjustment of Rent

5.1 Calculation of Adjustment

If a CPI Adjustment Date is specified in Item 11, the Rent on the CPI Adjustment Date will be adjusted to an amount equal to the Rent payable immediately prior to the CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

5.2 Payment of Adjusted Rent

On the next due date of the Payment of the Rent, after the Tenant received notice of the adjusted Rent from Council, Council and the Tenant must make any necessary adjustment to apply on and from the CPI Adjustment Date, including payment of interest calculated in accordance with clause 10.2 on any money owing by either party calculated from the CPI Adjustment Date.

6. Outgoings

6.1 Rates and Taxes

If applicable, the Tenant must pay to the Council within 14 days of demand, an amount equal to 60% of:

- 6.1.1 usage/consumption charges for electricity, gas, water where applicable assessed in respect of the Centre;
- 6.1.2 all other rates, taxes, charges and levies assessed in connection with the Land if applicable.

For the avoidance of doubt, the Tenant will not be required to pay any municipal rates levied on the Land.

7. Other Expenses

7.1 Services

- 7.1.1 Council agrees to pay for 40% of:
 - (a) usage/consumption for electricity, gas and water services in connection with the Centre; and
 - (b) the cost of surveillance of the Centre
- 7.1.2 The Tenant must pay for:
 - (a) all information and communication technology (ICT) charges, fees, equipment, installation and maintenance in and to the Premises;

- (b) 60% of the cost of security surveillance of the Centre (excluding installation or maintenance of CCTV, or internal alarm system(s) by either Council or the Tenant); and
- (c) All waste charges levied in respect of the Premises.

7.2 Costs

The Tenant must pay to the Council within 14 days of demand:

- 7.2.1 the cost of carrying out any repairs to Council's Fixture, except to the extent that the Act applies and prohibits recovery;
- 7.2.2 the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure, as they apply to the Tenant's use of the Premises;
- 7.2.3 Council's architects or contractor's fees payable pursuant to clause 11.3.4; and
- 7.2.4 the Council's costs (including charges on a solicitor-own client basis) incurred because of a breach of this Lease by the Tenant.

8. GST

8.1 Definitions

In this clause:

8.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

8.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*

8.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under the Lease in relation to any supply is exclusive of GST.

8.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under the Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

8.4 Payment of GST

Subject to clause 8.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

8.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 8.4.

8.6 Reimbursements

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

8.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

8.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

8.7 Adjustment Events

If an adjustment event occurs in relation to a taxable supply under this Lease:

- 8.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment: and
- 8.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

9. Security Bond

Not applicable

10. Payment Requirements

10.1 No Deduction or Right of Set-off

The Tenant must pay all amounts due under this Lease to Council (including the Rent and Rates and Taxes without deduction or right of set-off.

10.2 Interest on Late Payments

The Tenant must pay to Council on demand interest at the rate per annum equal to the current rate fixed under section 2 of the *Penalty Interest Act 1983 (Vic)* plus 2% per annum on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

10.3 Payment after Termination

The Tenant must:

- 10.3.1 make all payments due under this Lease; and
- 10.3.2 provide all information to Council under this Lease to calculate any such payments, even if this Lease has ended.

10.4 Method of Payment

The Tenant must make all payments under this Lease in such manner as Council reasonable requires, which may include direct debit.

11. Repairs, Refurbishment and Alterations

11.1 Repairs and Maintenance

The Tenant must:

- 11.1.1 keep the Land and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed.
- 11.1.2 keep the Premises in the same condition as it was in at the date the Tenant first entered occupation of the Premises (fair wear and tear excepted) including repairing or replacing anything in the Premises (including all furnishings and floor coverings) which are damaged, worn or destroyed with items of at least the same quality;
- 11.1.3 repair, maintain and replace the Tenant's Property (including all loose indoor and outdoor furniture and outdoor play equipment);
- 11.1.4 paint and where appropriate paper, any parts of the Premises previously painted or papered whenever reasonably required by Council;
- 11.1.5 pay the costs (if any) for the removal of waste from the Premises;
- 11.1.6 maintain at its own cost the Outdoor Areas (including any gardens) in good condition and so that it is suitable for its intended purpose;
- 11.1.7 treat in a proper and professional manner (including polishing or varnishing as appropriate) all surfaces of the Premises (including wood, tile and metal surfaces) with the appropriate materials approved by Council when reasonably required by Council;
- 11.1.8 repair all defective lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Premises;
- 11.1.9 make good any damage caused to any adjacent property by the Tenant; and
- 11.1.10 take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises, the Building, or any person; and
- 11.1.11 give the Council prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person on the Premises.

11.2 Equipment in Premises

The Tenant must

- 11.2.1 repair and maintain Council's Fixtures exclusively serving the Premises (but excluding expenses of a capital nature) in accordance with Council's reasonable requirements; and
- 11.2.2 comply with Council's reasonable requirements concerning the use of Council's Fixtures, including air-conditioning and heating equipment

11.3 Alterations to Premises

The Tenant must ensure any alterations or works to the Premises, any services to the Premises or Tenant's Property are carried out:

- 11.3.1 strictly in accordance with plans and specifications approved by the Council:
- 11.3.2 by qualified tradespersons approved by the Council:
- 11.3.3 to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements (including the Council's requirements as to the standard, type, quality, size and colour of any of the Tenant's Property): and
- 11.3.4 under the supervision of Council's architects or consultant (the cost of which must be paid by the Tenant to Council within 14 days of demand); and
- 11.3.5 in accordance with all rules and requirements of any authorities having jurisdiction over the Premises.

The Tenant is not required to seek Council's consent to making any alterations to the display of the Tenant's merchandise in the Premises

11.4 Occupational Health and Safety

For the purpose of the OHS Law, the Tenant agrees that:

- 11.4.1 the Tenant has sole management and control of the Premises and has sole responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;
- 11.4.2 Council appoints the Tenant as Principal Contractor in respect of any works to be carried out by the Tenant on the Premises to which OHS Law applies;
- 11.4.3 the Tenant must carry out such works in accordance with the requirements of the OHS Law; and
- 11.4.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 11.4.2.

11.5 Not Interfere with Services

The Tenant must not interfere, misuse or overload any services to the Land, including electricity, gas and water.

11.6 Defacing Premises

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by Council in accordance with clause 11.2.

11.7 Failure to Repair and Maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from the Council, the Council may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to the Council on demand.

12. Insurance

12.1 Public Liability and Glass Insurance

12.1.1 The Tenant must maintain insurance with an insurer approved by Council for:

- (a) public liability for an amount of not less than \$20,000,000 in respect of any single occurrence; and
- (b) any windows and any other glass in the Premises for the full replacement value.

12.1.2 The Tenant must ensure that the policies effected under the clause 12.1.1 contain a cross-liability clause extending the policy so that the words 'the insured' are considered as applying to each party comprising the insured, as though a separate policy has been issued to each of the parties, in the same manner as if that party were the only party named as the insured.

12.1.3 For so long as the Tenant is MACE Inc. (Reg. No. A0048770V), the Tenant's obligation to maintain public liability and other insurances under this Lease will be satisfied if the Tenant is covered by the insurance scheme maintained by Victorian Managed Insurance Authority.

12.2 Tenant's Property

The Tenant must insure the Tenant's Property for loss and damage from risks including fire and water damage for its full replacement value

12.3 Condition in Policies

The Tenant must ensure that the insurance policies effected by the Tenant contain a condition that the insurer will notify Council at least 14 days before the policies lapse.

12.4 Payment and Production of Policies

The Tenant must pay all insurance premiums on or before the due date for payment and produce to the Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

12.5 Not Invalidate Policies

The Tenant must:

12.5.1 not do anything which may make any insurance effected by the Council or the Tenant invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium effected by the Council; and

12.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Premises.

12.6 Requirements by Insurer

The Tenant must comply with all reasonable requirements of the Council's insurer in connection with the Premises.

13. Release, Indemnity, Compensation and Liability

13.1 Release

The Tenant uses and occupies the Premises at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of the Council's negligence.

13.2 Indemnity

The Tenant must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Premises and use and occupation of the Premises by the Tenant except to the extent that such claims arise out of the Council's negligence.

13.3 No Compensation

The Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

13.3.1 any damage to the Premises

13.3.2 the failure of Council's Fixtures or any plant and equipment (including air conditioning) to operate properly;

13.3.3 the interruption or damage to any services (including electricity, gas or water) to the Premises; or

13.3.4 the overflow or leakage of water in the Premises,

except to the extent to which the Council is liable where the Act applies.

13.4 No Liability

The Tenant acknowledges and agrees that:

13.4.1 nothing in this Lease in any way limits, fetter or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987* (Vic) or the Local Government Act or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and

13.4.2 Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of the Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 13.4.1,

except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Premises.

14. Use of Premises

14.1 Permitted Use

The Tenant must use the Premises for the Permitted Use and not use the Premises for any other purpose.

14.2 No Warranty

The Tenant:

14.2.1 acknowledges that the Council does not represent that the Premises is suitable for the Permitted Use; and

14.2.2 must make its own enquiries as to the suitability of the Premises for the Permitted Use.

14.3 Illegal Purpose

The Tenant must not use the Premises for an illegal purpose or carry on an noxious or offensive activity on the Premises.

15. Other Obligations Concerning the Premises

15.1 Compliance with Laws

The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

15.1.1 the negligent act or omission of the Tenant;

15.1.2 the failure by the Tenant to comply with its obligations under this Lease; or

15.1.3 the Tenant's use of the Premises.

15.2 Licences and Permits

The Tenant must maintain all licenses and permits required for the Tenant's use of the Premises and obtain the prior written consent of Council before varying any licence or permit or applying for any new licence or permit.

15.3 Nuisance

The Tenant must not do anything in connection with the Premises which may:

15.3.1 cause a nuisance or interfere with any persons; or

15.3.2 be dangerous or offensive in Council's reasonable opinion.

15.4 Security

The Tenant must keep the Premises secure at all times when the Premises are not being used by the Tenant and must not cut additional keys or install any security system without the prior written consent of Council.

15.5 Signs

The Tenant must seek the prior written consent of Council before displaying or affixing any signs, advertisements or notices to any part of the Premises where such signs, advertisements or notices are visible from outside the Premises.

15.6 No Vending Machines

The Tenant must not permit any vending or amusement machines in the Premises.

15.7 No Auctions

The Tenant must not conduct any auctions or fire sales in the Premises.

15.8 No Smoking

The Tenant must:

15.8.1 not permit smoking in the Premises; and

15.8.2 display 'no smoking' signs in the Premises if requested by Council.

15.9 Heavy Objects and Inflammable Substances

The Tenant must not:

15.9.1 store any inflammable or explosive substances in the Premises unless required for the Permitted Use; or

15.9.2 store any heavy objects in the Premises or anything likely to damage the Premises.

15.10 Television and Radio

The Tenant must not install any televisions, radios, music systems or other equipment in the Premises which can be heard outside the Premises without obtaining the prior written consent of Council.

15.11 Endanger Premises

The Tenant must not do or permit anything to be done in connection with the Premises which in the opinion of Council may endanger the Premises or be a risk to any person or property.

15.12 Tenant's Employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employs, agents, contractors and invitees observe and comply with the tenant's obligations under this Lease, where appropriate.

15.13 Tax Exempt

The Tenant must not undertake any activity or permit anything to be done which may cause it to cease being exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997*.

15.14 Tenant Reporting Obligations

The Tenant must give Council:

15.14.1 within 120 days of the end of each financial year, an audited financial report, including a statement of assets and liabilities and profit and loss statement for the Tenant for the financial year, including for the Tenant's Long Day Care business unit; and

15.14.2 within 14 days of the Tenant's annual general meeting, a written report detailing:

- (a) The activities conducted by the Tenant during the preceding year and, where applicable, a list of the groups which have used the Premises; and
- (b) The office bearers appointed to the Tenant.

15.15 Determination, Warranty and Obligations

15.15.1 the Tenant acknowledges that the Council has entered into this Lease on the basis that:

- (a) The Tenant is a body corporate that exists for the purposes of providing or promoting community or similar facilities or objectives that applies its profits in promoting its objects and prohibits payment of any dividend or amount to its members; and
- (b) Accordingly, pursuant to the Determination, the Act does not apply to this Lease.

16. Tenant's environmental obligations

16.1 Comply with Environmental Protection Legislation

The Tenant must, in its use of the Premises, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

16.2 Not permit Contamination

The Tenant must not spill or deposit, or carry out any activities on the Premises which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Premises or a breach of this clause by the Tenant.

16.3 Notify of and clean up Contamination

[Intentionally deleted]

16.4 Indemnity Council

In addition to any other indemnity in this Lease, the Tenant indemnifies Council against all claims for damages, loss injury or death caused by or arising out of or otherwise in respect of any Contamination being spilled, deposited or otherwise escaping into or on the Premises or a breach of this clause by the Tenant.

16.5 Obtain Reports, Surveys or Audits

The Tenant must immediately obtain any reports, surveys or audits which Council may reasonably require to enable Council to determine whether a breach of the terms of this clause has occurred. The Tenant will also pay Council on demand the reasonable costs of any such report, survey or audit which Council may obtain.

17. Dealing with Interest in the Premises

17.1 No Parting with Possession

The Tenant must not give up possession of the Premises including this Lease, sub-lease the Premises or granting to any person a licence or concession in respect of the Premises, subject to clause 17.2

17.2 Conditions of Assignment

Council will not unreasonably withhold its consent to an assignment of this Lease if the Tenant:

- 17.2.1 requests Council in writing to consent to the assignment of the Lease to a new tenant which is an entity which is registered on the Australian Charities and Not-for-profits Commission Register;
- 17.2.2 has remedied any breach of this Lease of which the Tenant has received written notice from Council;
- 17.2.3 provides to Council the name and address of the new tenant and proves to Council's reasonable satisfaction that the new tenant is solvent and able to comply with its obligations under this Lease by providing at least 2 references as to the financial circumstance of the new tenant and at least 2 references as to the business experience of the new tenant;

- 17.2.4 executes and procures the new tenant to execute an assignment of lease which must include a condition by which the Tenant releases Council from any claims arising under or in connection with the Lease and otherwise in a form approved by Council;
- 17.2.5 where the new tenant is a corporation procures such directors or shareholders of the new tenant, as may be reasonably required by Council, to execute a guarantee and indemnity in a form required by Council;
- 17.2.6 pays Council's reasonable costs in connection with approving the new tenant and the costs of the preparation, negotiation and stamping of any document required under this clause; and
- 17.2.7 where the Act applies to this Lease, provides the new tenant with a copy of the disclosure statement as required by section 61(3) of the Act.

17.3 No Assignment if Act to Apply

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease would result in the Act applying to this Lease (either during the Term or as a result of the grant of a lease for the Further Term), Council may grant or withhold its consent to an assignment of this Lease at its absolute discretion or impose any conditions it considers reasonable on an assignment.

17.4 Change in Shareholding

If the Tenant is a corporation (other than a corporation listed to any stock exchange in Australia) a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Lease.

17.5 Mortgage of Lease

The Tenant must not create any security over this Lease or the Tenant's Property.

18. Tenant's obligation at the end of this Lease

18.1 Tenant's obligations

At the end of this Lease, the Tenant must:

- 18.1.1 vacate the Premises and give them back to Council in a condition consistent with the Tenant having complied with its obligations under the Lease;

18.1.2 remove the Tenant's Property (including all signs and lettering) and reinstate the Premises to the condition the Premises were in prior to the installation of the Tenant's Property including making good any damages caused by the removal of the Tenant's Property; and

18.1.3 give to Council all keys and other security devices for the purposes of obtaining access to the Premises.

18.2 Tenant's Property Left in Premises

Anything left in the Premises after 14 days of the end of this Lease will be deemed to be abandoned by the Tenants and will become the property of Council and may be removed by Council at the Tenant's cost and at the Tenant's risk and the parties agree that this clause 18.2 is an agreement about the disposal of uncollected goods for the purposes of section 56(6) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic)

19. Council's Right and Obligations

19.1 Quiet Enjoyment

As long as the Tenant does not breach this Lease, Council must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease.

19.2 Alterations to the Improvements

19.2.1 Tenant shall not make any alterations, additions, or improvements to the premises or any part thereof without obtaining the prior written consent of the Council. Any requested alterations, additions, or improvements shall be submitted to the Council in writing, detailing the nature and scope of the proposed changes.

19.2.2 If the Council grants consent for the requested alterations, additions, or improvements, such work shall be performed by qualified professionals, licensed contractors, or individuals approved by the Council. The Tenant shall bear all costs associated with the alterations, including design fees, construction costs, and any required permits or approvals.

19.2.3 Upon completion of the alterations, additions, or improvements, the Tenant shall the Council with a written record of the work performed, including any relevant warranties or guarantees. The Tenant shall be responsible for maintaining and repairing any alterations, additions, or improvements made to the premises throughout the term of this lease.

19.2.4 The Tenant shall not make any structural alterations to the premises without the express written consent of the Council. Non-structural alterations that do not impact the integrity or safety of the premises may be made by the Tenant with the Council's

prior written approval, provided that such alterations comply with all applicable laws, regulations, and building codes.

- 19.2.5 All alterations, additions, or improvements made by the Tenant shall become the property of the Council and shall remain on the premises at the expiration or termination of this lease. The Tenant shall not be entitled to any compensation or reimbursement for the value of such alterations, additions, or improvements.
- 19.2.6 The Tenant shall promptly remove any alterations, additions, or improvements upon the Council's request, or upon the expiration or termination of this lease, unless otherwise agreed in writing by the Landlord.
- 19.2.7 The Tenant shall be liable for any damage caused by the alterations, additions, or improvements and shall be responsible for restoring the premises to its original condition, reasonable wear and tear excepted.
- 19.2.8 This clause shall be binding upon the Tenant and its successors, assigns, and representatives, and shall survive the expiration or termination of this lease.

19.3 Entry by Council

Council may enter the Premises at any reasonable time after giving the Tenant reasonable notice of at least 3 business days to:

- 19.3.1 inspect the condition of the Premises;
- 19.3.2 rectify any default by the Tenant under this Lease;
- 19.3.3 undertake an environmental inspection or accreditation or monitor the environmental management of the Premises , including energy and water use; or
- 19.3.4 carry out any inspection, repairs, maintenance, works or alterations in the Premises which Council decides to or it required to carry out by any law or authority

Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the premises in exercising Council's rights under this clause.

Council may enter the premises following the Entry Procedure provided by MACE as per Annexure C

19.4 Emergency Entry

Council may enter the Premises at any time without giving notice to the Tenant in case of an emergency.

19.5 Council's Consent

Unless otherwise provided for in this Lease, where Council is required to give its consent under this Lease, Council must not unreasonably withhold its consent, but may give its consent subject to such conditions may reasonably determine.

20. Termination of Lease

20.1 Re-entry

Council may enter the Premises and terminate this Lease if:

20.1.1 If any portion of the Rent remains unpaid for a period of 14 days or is in arrears; or

20.1.2 an Insolvency Event occurs in relation to the Tenant; or

20.1.3 the Tenant breaches this Lease and does not remedy the breach within 14 days of receipt of written notice from Council

20.2 Damages Following Determination

If this Lease is terminated by Council, the Tenant agrees to compensate Council for any loss or damage Council suffers arising in connection with the Tenant's breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term.

20.3 Essential Terms

The essential terms of this Lease are clauses 4, 6.1, 7.1, 7.2, 8, 11.1, 11.2, 11.3, 12, 14.1, 14.3, 15, 16, 17 and 18. The breach of an essential term is a repudiation of this Lease.

20.4 No Deemed Termination

If the tenant vacates the Premises, Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the premises for any purpose, or the showing of the Premises to prospective tenants or purchaser. This Lease will be deemed to continue until such time as Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

21. Destruction or damage of Premises

21.1 Reduction in Rent

If the Premises, or any part of the Premises is destroyed or damaged to the extent that the Tenant cannot use or have access to the Premises (except if the Tenant causes or contributes to the destruction or damage, or Council's insurer is not legally required to

reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then Council will reduce the Rent and other amounts due under this Lease by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Premises.

21.2 Reinstatement of Premises

If the Premises or any part of the Premises are destroyed or damaged. Council may, within 3 months from the date of such damage or destruction, give notice to the Tenant:

21.2.1 terminating this Lease, where Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or

21.2.2 that Council will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

Council does not have to reinstate the Premises.

21.3 Tenant's Right of Termination

Where the Tenant has not caused or contributed to the damage or destruction of the Premises and the payment of the insurance for the Premises is not refused due to the act or default of the Tenant, the Tenant may give written notice to Council terminating this Lease where Council does not:

21.3.1 give notice to the Tenant pursuant to clause 21.2; or

21.3.2 commence reinstatement within 12 months of the date of damage or destruction. Upon termination of this Lease, each party is released from all further obligations under this Lease except nothing in this clauses releases either party from any breach of this Lease arising prior to the date of termination.

21.4 Dispute Resolution

If a dispute arises under this clause about the amount of the Rent or Outgoings other amounts payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

21.5 No Compensation

The Tenant acknowledges that if the Premises are destroyed or damaged, the Tenant is not entitled to receive any compensation from Council, except this clause does not apply where the Act applies to this Lease.

22. General

22.1 Notices

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

22.1.1 The Tenant at its address set out in this Lease, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and

22.1.2 Council at its address set out in this Lease or any other address notified in writing to the Tenant by Council.

22.2 Time of Service

A notice or other communication is deemed served:

22.2.1 if served personally or left at the person's address, upon service;

22.2.2 if posted, 2 business days after posted;

22.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and

22.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

22.3 Entire Understanding

This Lease and the disclosure statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

22.4 Waiver

If Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of Council's rights under this Lease.

22.5 Special Conditions

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.

23. Interpretation

23.1 Governing Law and Jurisdiction

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

23.2 Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

23.3 Joint and Several

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

23.4 Legislation

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

23.5 Clauses and Headings

In this Lease:

23.5.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Lease; and

23.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Lease.

23.6 Severance in This

Lease:

23.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

23.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

23.7 Number and Gender

In this Lease, a reference to:

23.7.1 the singular includes the plural and vice versa; and

23.7.2 a gender includes the other genders.

23.8 No Relationship

No party to this Lease has the power to obligate or bind any other party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between Council and the Tenant. Nothing in this Lease will be deemed to authorise or empower the Tenant to act as agent for or with Council.

23.9 Exclusion of Statutory Provisions

The following statutory provisions are excluded from this Lease:

23.9.1 Section 144 of the *Property Law Act 1958* (Vic); and

23.9.2 Division 7 of the *Transfer of Land Act 1958* (Vic).

Annexure A

Special Conditions

1. Common Areas

1.1 Grant of Licence

The Council grants the Tenant a licence to use the Common Area for the Term starting on the Commencement Date:

1.1.1 in common with the Council and all persons authorised by the Council;

1.1.2 in accordance with the terms and conditions of this Lease, and the terms contained in Special Condition 1.2; and

1.1.3 subject to Special Condition 1.3.

1.2 Terms of Licence

The Tenant must:

1.2.1 only use the Common Area for the purposes for which they were constructed;

1.2.2 keep the Common Area clean and tidy;

1.2.3 not obstruct the Common Area or interfere with any services in the Common Area;

1.2.4 comply with any reasonable direction of Council in relation to the Common Area; and

1.2.5 pay or refund to Council, within 14 days of demand. 50% or such other proportion as the Council determines in its absolute discretion of:

(a) all rates, taxes (including land tax assessed on the basis that the Common Area is the only land owned by Council) and all other charges and levies assessed in connection with the Common Area; and

(b) all electricity, water, cleaning, security costs incurred by Council in connection with the Common Area.

This Special Condition 1.2 is an essential term of this Lease.

1.3 End of Licence

The licence granted to the Tenant pursuant to this Special Condition automatically terminates when this Lease ends.

2. Reception Station

Council acknowledges and agrees that nothing in this Lease requires the Tenant to provide staff, or fund the provision of staff, for the purposes of operating the Centre's reception service.

3. Excluded Areas

3.1 Nothing in this Lease grants to the Tenant the right to use, access or occupy the Excluded Area (or any part of it).

3.2.1 The Tenant acknowledges and agrees that:

3.2.1 the Council may, in its absolute discretion, make the Excluded Area (and the Common Areas) available to third parties including but not limited to local community groups and consultants for a variety of short and long term uses; and

3.2.2 if, at any time during the Term or Further Terms, the Tenant wishes to use the Excluded Area (or part thereof):

(a) the Tenant must submit its request through Council's central booking system for the Excluded Area; and

(b) Council may hire out the Excluded Area (or part thereof) to the Tenant on such terms and conditions as Council sees fit (in its absolute discretion) which may include charging a reasonable hire fee.

4. Approvals and Compliance

4.1 Definitions

In this Special Condition 4:

Education and Care Services Act means the Education and Care Services National Law Act20^0 (Vic);

Education and Care Services Regulations means all regulations made under the Education and Care Services Act;

Education and Care Service has the meaning given to that term in the Education and Care Services Act;

Nominated Supervisor has the meaning given to that term in the Education and Care Services Act;

Provider Approval means a provider approval to provide Education and Care Services pursuant to Part 2 of the Education and Care Services Act;

Regulatory Authority has the meaning given to that term in the Education and Care Services Act. As at the Commencement Date, the Regulatory Authority is the Secretary of the Department of Education and Early Childhood Development;

Serious Incident has the meaning given to that term in section 174 of the Education and Care Services Act; and

Service Approval means a service approval to operate a kindergarten pursuant to Part 3 of the Education and Care Services Act;

Show Cause Notice has the meaning given to that term in the Education and Care Services Act.

Words and expressions that are not defined in this Lease but which have a defined meaning in the Education and Care Services Act or the Education and Care Services Regulations have the same meaning as in the Education and Care Services Act or the Education and Care Services Regulations.

4.2 Application of Special Condition

This Special Condition 4 applies in relation to any Education and Care Service conducted at the Premises as part of the Permitted Use.

4.3 Approval Requirements

Without limiting any of the Tenant's obligations under this Lease, the Tenant must obtain and maintain throughout the Term, all approvals required to engage in the Permitted Use at the Premises.

4.4 Tenant's Obligations

The Tenant must, at all times:

- 4.4.1 provide a copy of the Service Approval and the Provider Approval to the Council, on demand;
- 4.4.2 ensure that a Nominated Supervisor is appointed for the Education and Care Service;
- 4.4.3 without limiting clause 15.5, display on a visible part of the Premises, the prescribed information in accordance with section 172 of the Education and Care Services Act; and
- 4.4.4 comply with the Service Approval, the Provider Approval, the Education and Care Services Act and the Education and Care Services Regulations, including, without limitation, ensuring that:
 - (a) all children being educated and cared for by the Tenant are adequately supervised;
 - (b) children are not subject to any form of corporal punishment or discipline that is unreasonable in the circumstances;
 - (c) every reasonable precaution is taken to protect children from harm and any hazard is likely to cause injury; and
 - (d) prescribed staffing levels are maintained at all times.

4.5 Notification to the Council

- 4.5.1 The Tenant must notify the Council of any complaint which the Tenant is required to report to the Regulatory Authority under the Education and Care Services Act, within 24 hours of reporting the complaint to the Regulatory Authority.
- 4.5.2 The Tenant must notify the Council of any Serious Incident which the Tenant is required to report to the Regulatory Authority under the Education and Care Services Act, within 24 hours of notifying the Regulatory Authority of the Serious Incident.
- 4.5.3 The Tenant must immediately notify Council if it is charged with, or convicted of, an offence under Part 6 of the Education and Care Services Act.
- 4.5.4 The Tenant must immediately notify the Council if a Show Cause Notice is served on the Tenant by the Regulatory Authority, or if the Tenant's Service Approval or Provider Approval is suspended (even if voluntarily), cancelled or surrendered.

4.6 This Special Condition 4 is an essential term of this Lease.

5. Working with Children Checks

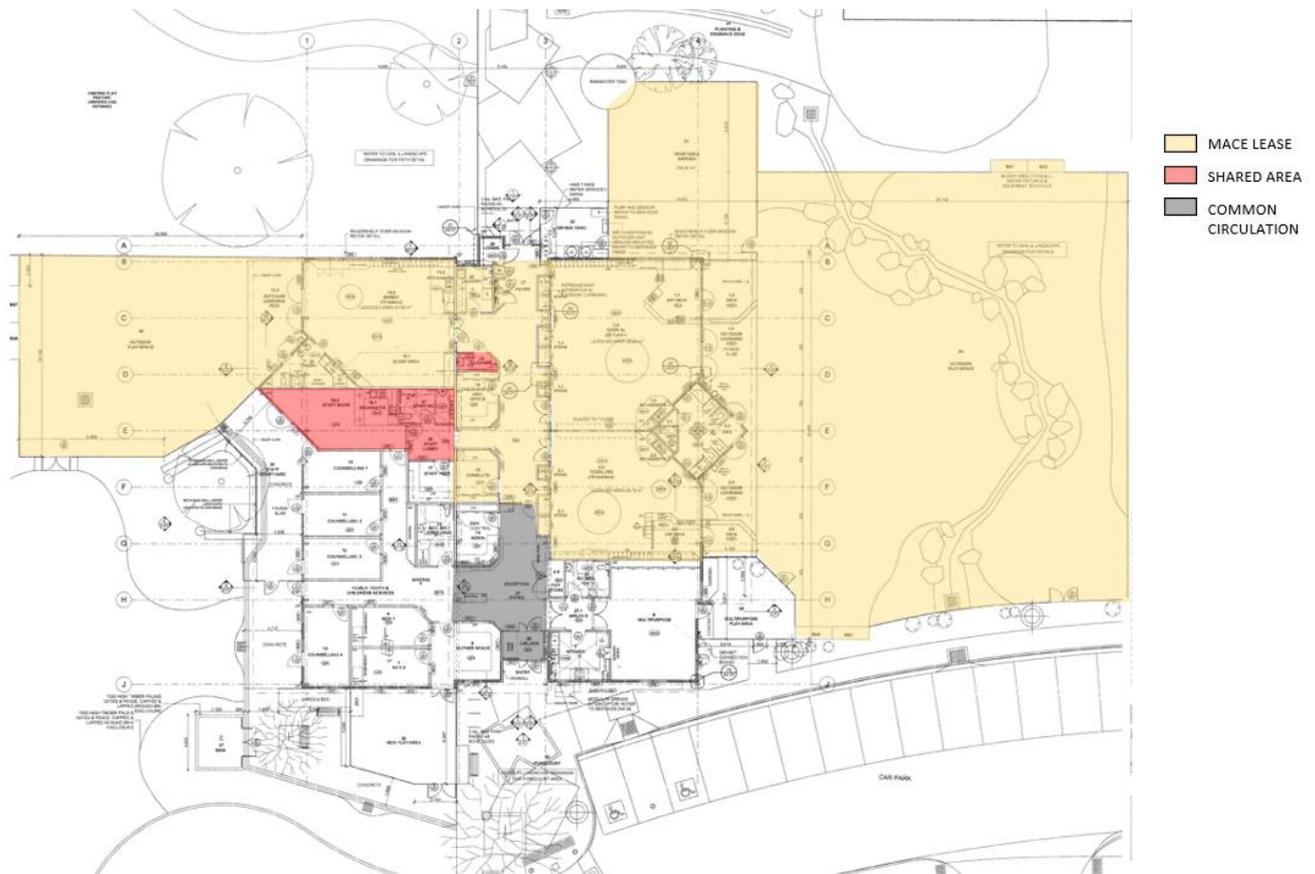
- 5.1 Without limiting clause 15.1, the Tenant must:
 - 5.1.1 ensure that all employees and volunteers who are required to apply for a Working with Children Check (WWC) under the Working with Children Act 2005 (Vic) (WWCA) have done so, before working with children at the Premises;
 - 5.1.2 provide a copy of the WWC card of each of the Tenant's employees and volunteers working at the Premises to the Council, on demand;
 - 5.1.3 ensure that any employee or volunteer that is given a negative notice (within the meaning given to that term in the WWCA) does not work with children at the Premises; and
 - 5.1.4 subject to Special Condition 5.2, ensure that the information in any WWC of the Tenant's employees and volunteers which is provided to the Council, is kept confidential.
- 5.2 The Tenant agrees that the Council may disclose the information in any WWC of the Tenant's employees and volunteers for the purpose of administering or enforcing this Lease or if required by law.
- 5.3 This Special Condition 5 is an essential term of this Lease.

6. Playground Equipment

Any playground equipment erected on the Premises by the Tenant must comply with Australian Standards AS1924.1 - 1981 and AS1924.2 - 1981, and industry best practice in design, provision and maintenance, including the under-surfacing component contained in AS/NSZ4422-1996.

Annexure B

Plan of Premises



Annexure C

Visitor Policy & Property Entering Visitor Sign In/Out Record

Visitor Policy

The purpose of this policy is to ensure Mansfield Community Cubby House has measures in place to effectively screen, manage and supervise all visitors

Summary

The Centre must:

- effectively screen, manage and supervise all visitors – refer to Working with Children Checks and Other Suitability Checks for Centre Volunteers and Visitors
- ensure it has policies and procedures in place to meet the requirements of the Child Safe Standards
- refer to Members of Parliament and Candidates Visiting Centres for additional considerations when a member of parliament or a candidate for an election is proposing to visit the Centre

Details

The Early Childhood Director:

- is responsible for all visitors to the Centre

- must develop policies and procedures to manage visitors to the Centre
- must ensure the policies and procedures address safety requirements and ascertain the appropriateness of visitors
- must ensure the policies and procedures are implemented

At a minimum, these policies and procedures must:

- require all visitors arriving and departing during Centre hours to use a visitor's record to record their name, signature, the date and time, and the purpose of the visit
- include procedures for assessment and verification of the suitability of visitors to be in a location where children freely move about, learn and play — refer to Working with Children and Other Suitability Checks for Centre Volunteers and Visitors
- ensure that Centre policies and procedures that are relevant to visitors are available/visible to the visitor, including the requirement to abide by the Centre's child safety code of conduct
- ensure that emergency exits and emergency procedures are available/visible to visitors
- ensure that a record of all visitors to the Centre is kept in the event of a Centre emergency or any future investigation
- align with relevant department policies and procedures.
- meet the requirements of the Child Safe Standards

Procedures

- communicate policies and procedures to staff, visitors and community
- impose conditions on visitors, if required
- manage and maintain a written record of all visitors
- determine whether visitors will be required to wear a distinguishing badge
- circumstances for visitors to be accompanied by a member of staff
- familiarisation with Centre routines, including the emergency management plan, required for regular visitors
- when relevant, parents will be notified in advance about visitors to the Centre

Safety Needs

- The Early Childhood Director has the authority to permit or deny entry to the Centre grounds, will consider the safety of all children and staff and access potential risks posed by visitors

Types of Visitors

Visitors may include, but are not limited to:

- prospective parents and employees
- trades people
- council employees
- those who are addressing a learning or developmental need, such as:
 - parent and community volunteers
 - invited speakers
 - sessional instructors
 - representatives of community, business and service groups
- those who are conducting business such as:
 - uniform suppliers

