

YARRIAMBIACK SHIRE COUNCIL

and

LIL BEARS FAMILY DAY CARE

ABN: 60 756 502 699

**Licence Agreement (PART OF
BUILDING)**

Licence Area: **DUNMUNKLE LIBRARY
PRECINCT, 59 Cromie Street,
Rupanyup, Victoria 3388**

THIS AGREEMENT is made on 26 March, 2025

PARTIES

- 1 **YARRIAMBIACK SHIRE COUNCIL**
of 34 Lyle Street, Warracknabeal, Victoria 3393
("Licensor")

- 2 **LIL BEARS FAMILY DAY CARE**
ABN: 60 756 502 699
59 Cromie Street, Rupanyup, Victoria 3388
("Licensee")

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this Licence:

- 1.1 **"Agents"** means a relevant party's directors, officers, employees, agents, servants, contractors, clients, customers, visitors or invitees or, where the context permits, any person for whom the relevant party is responsible.
- 1.2 **"Access Hours"** means the time periods specified in Item 5 of the Schedule.
- 1.3 **"Commencement Date"** means the date specified in Item 1 of the Schedule.
- 1.4 **"Expiry Date"** means the expiry date of this Licence as set out in Item 2 of the Schedule.
- 1.5 **"Licence"** means this agreement, including the Schedule and any annexures to this agreement.
- 1.6 **"Licence Area"** means the area described in Item 7 of the Schedule.
- 1.7 **"Licence Fee"** means the licence fee specified in Item 3 of the Schedule (as increased from time to time in accordance with this Licence).
- 1.8 **"Licensee's Proportion"** means:
 - 1.8.1 In relation to outgoings relating to the Licence Area only and capable of separate assessment: 100%;
 - 1.8.2 In relation to all other outgoings not referred to in clause 1.8.1, the proportion that the lettable area of the Licence Area bears to the lettable area of the land or the building upon which the outgoings are assessed.
- 1.9 **"Permitted Use"** means the use specified in Item 4 of the Schedule.
- 1.10 **"Schedule"** means the schedule to this Licence.
- 1.11 **"Term"** means the period commencing on the Commencement Date and ending on the Expiry Date.

Licence Agreement between Warracknabeal Playgroup Inc and Yarriambiack Shire Council		Responsible Officer: Chief Executive Officer	
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2 LICENCE

Subject to the terms and conditions set out in this Licence, the Licensor grants the Licensee a non-exclusive licence to use the Licence Area for the Permitted Use during the Access Hours for the Term.

3 NATURE OF INTEREST

The Licensee acknowledges that:

- 3.1 this Licence does not exclude the right of the Licensor to possession of the Licence Area and it does not confer on the Licensee any tenancy or interest in the Licence Area or any part of it; and
- 3.2 this Licence confers upon the Licensee a personal right only and is not capable of being transferred or otherwise dealt with either in whole or in part, provided always that nothing in this clause is deemed to prevent the Licensee's Agents from exercising the rights conferred by this Licence.

4 LICENCE FEE

The Licensee must pay the Licence Fee to the Licensor without any deduction, counterclaim or set-off in the manner set out in item 3 of the Schedule.

5 LICENSEE COVENANTS

- 5.1 The Licensee must only use the Licence Area for the Permitted Use and must not at any time use the Licence Area in a manner which results in the Licence Area being a 'retail premises' as that term is defined in the *Retail Leases Act 2003* (Vic).
- 5.2 The Licensee must at all times and at its own expense comply with all laws, by-laws, regulations and any other legal requirements concerning the Licensee's use of the Licence Area.
- 5.3 The Licensee must not do or cause anything to be done on the Licence Area which damages the Licence Area, or which causes or may cause nuisance, damage, disturbance or danger to the Licensor or its Agents, or any occupiers or owners of any other property.
- 5.4 Except for fair wear and tear, the Licensee must at its own cost keep the Licence Area in the same condition as at the Commencement Date (excluding capital repairs).
- 5.5 Despite any other provision of this Licence, the Licensee is responsible for and must promptly carry out any repairs (including capital repairs) and maintenance required to the Licensed Area because of damage caused by the act, omission or default of the Licensee or the Licensee's Agents.
- 5.6 The Licensee must promptly report to the Licensor any damage to or defect in the Licence Area and promptly give written notice to the Licensor of any hazards within the Licence Area or the service by any authority of a notice or order affecting the Licence Area.

Licence Agreement between Lil Bears Family Day Care and Yarriambiack Shire Council		Responsible Officer: Chief Executive Officer	
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- 5.7 The Licensee must not make any alterations, additions or improvements to the Licence Area without the approval of the Licensor.
- 5.8 The Licensee must ensure that any equipment installed on or within the Licence Area by or on behalf of the Licensee is maintained in good condition.
- 5.9 The Licensee occupies and uses the Licence Area at the Licensee's own risk.

6 LICENSEE TO MAINTAIN INSURANCE

The Licensee must take out and maintain insurance for:

- 6.1 public liability, which notes the interests of the Licensor, for the amount specified in Item 6 of the Schedule in respect of any single occurrence; and
- 6.2 employers' liability, workers' compensation and/or Workcover which covers any damage, loss or liability suffered or incurred by any person engaged by the Licensee arising by virtue of any statute relating to workers' or accident compensation or employers' liability or at common law.

7 RELEASE AND INDEMNITY

The Licensee releases and indemnifies the Licensor and its officers, members, contractors and employees from all legal liability arising from this Licence and the use or occupation of the Licence Area by the Licensee or any of the Licensee's Agents except to the extent that any claims for injury, illness, loss or damage are caused or contributed to by the negligence of the Licensor.

8 COSTS

- 8.1 The Licensor and Licensee must each pay their own costs associated with the preparation, negotiation and execution of this Licence.
- 8.2 The Licensee must pay or reimburse the Licensor on request all reasonable costs (including legal costs and disbursements) incurred by the Licensor in connection with:
 - 8.2.1 Any breach of this Licence by the Licensee; and
 - 8.2.2 The exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, by the Licensor of any rights or remedies under this Licence.

9 END OF LICENCE

- 9.1 The Licensor may terminate this Licence prior to the Expiry Date if the Licensee is in breach of the terms of this Licence and has failed to rectify the breach after receiving from the Licensor at least 14 days' written notice to do so.
- 9.2 Upon the expiration or termination of this Licence, the Licensee must:
 - 9.2.1 remove from the Licence Area the Licensee's property and any equipment installed by or on behalf of the Licensee;

- 9.2.2 if required by and to the extent required by the Licensor, remove from the Licence Area any alterations, additions or improvements made to the Licence Area by the Licensee during the Term of this Licence;
- 9.2.3 repair any damage to and reinstate the Licence Area to the condition it was in as at the Commencement Date; and
- 9.2.4 deliver to the Licensor all keys passes and other security devices giving access to the Licence Area.
- 9.3 Any Licensee’s property and equipment left at the Licence Area after this Licence ends may be treated by the Licensor as abandoned and dealt with or disposed of by the Licensor as the Licensor deems appropriate. Any costs the Licensor incurs in removing or disposing of any abandoned Licensee’s property and equipment must be reimbursed by the Licensee to the Licensor on demand. The parties intend that this clause operates in relation to the Tenant’s property and equipment in place of any legislation that might otherwise apply to goods remaining at the Licence Area.

10 NOTICES

Any notice or other document required to be given to a party under this Licence is deemed to be given to that party if it is delivered or sent by pre paid post to the address of that party as set out in this Licence and the notice or other document must be addressed to the following persons:

- 10.1 If given to the Licensor: Governance Officer, Yarriambiack Shire Council
info@yarriambiack.vic.gov.au
- 10.2 If given to the Licensee: Katie Holmes, Lil Bears Family Day Care Incorporated
katie.holmes11@outlook.com

11 GST

- 11.1 The consideration payable by any party under this Licence is the GST exclusive amount of the taxable supply for which payment is to be made.
- 11.2 If a party makes a taxable supply in connection with this Licence for a consideration, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the taxable supply. A party’s right to payment under this clause is subject to a Tax Invoice being delivered to the party liable to pay for the taxable supply.
- 11.3 Where this Licence requires a party (“**First Party**”) to pay, reimburse or contribute to an amount paid or payable by the other party (“**Other Party**”) in respect of an acquisition from, or a transaction with a third party for which the Other Party is entitled to claim an input tax credit, the amount for payment, reimbursement or contribution must be the GST exclusive value of the acquisition by the Other Party plus any GST payable in respect of the Other Party’s recovery from the First Party.

12 GENERAL

- 12.1 Any special conditions in Item 8 of the Schedule bind the parties and, if inconsistent with any other provisions of this Licence, will override them.
- 12.2 A provision of or a right created under this Licence may not be waived or varied except in writing signed by the party to be bound.
- 12.3 A reference to a party includes that party's executors, administrators and successors.
- 12.4 A covenant, undertaking, representation, warranty, indemnity or agreement made or given by two or more parties, or a party comprised of two or more persons, is made or given and binds those parties or persons jointly and severally.
- 12.5 A reference to a state or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them.
- 12.6 A recital, schedule, annexure or description of the parties forms part of this Licence.
- 12.7 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.
- 12.8 A party that is a trustee is bound both personally and in its capacity as trustee.
- 12.9 This Licence is governed by the laws of Victoria.
- 12.10 The parties consent to this Licence being executed, witnessed and exchanged by way of electronic means.

SCHEDULE

Item 1	Commencement Date	26 March 2025
Item 2	Expiry Date	25 March 2032 Term: 7 years
Item 3	Licence Fee	\$ 1.00 + GST p.a. (Deemed as Paid)
Item 4	Permitted Use	Family Day Care
Item 5	Access Hours	6am – 6pm Monday to Friday 10am – 4pm Saturday & Sunday for set ups
Item 6	Public Liability Insurance	\$20,000,000.00 – A copy of the Certificate of Currency is required prior to the Commencement Date and thereafter on the anniversary of the Commencement Date
Item 7	Licence Area	The area of the building as shown on the Plan attached to this Licence and located at 59 Cromie Street, Rupanyup, Victoria 3388 and known as Dunmunkle Library Precinct.
Item 8	Special Conditions	<p>1. Outgoings and Services</p> <p>The parties acknowledge that the Licence Fee is inclusive of costs associated with all outgoings relating to and services to the Licence Area, and outgoings and services are not separately payable by the Licensee, excluding consumables utilised in kitchen area above and beyond what is currently available to community as part of Library service.</p> <p>Insurance premiums and other charges and excesses in connection with public risk and contents insurance policies taken out by the Licensor for the amounts which the Licensor reasonably thinks are appropriate in connection with the Licence Area and this Licence.</p> <p>The Parties acknowledge that the Licensor does not take responsibility for property owned by Licensee should there be instances of theft or damage. Items owned by the Licensee that require protection must be covered in the Licensee insurance and suitable storage of items is to be confirmed with both parties.</p>

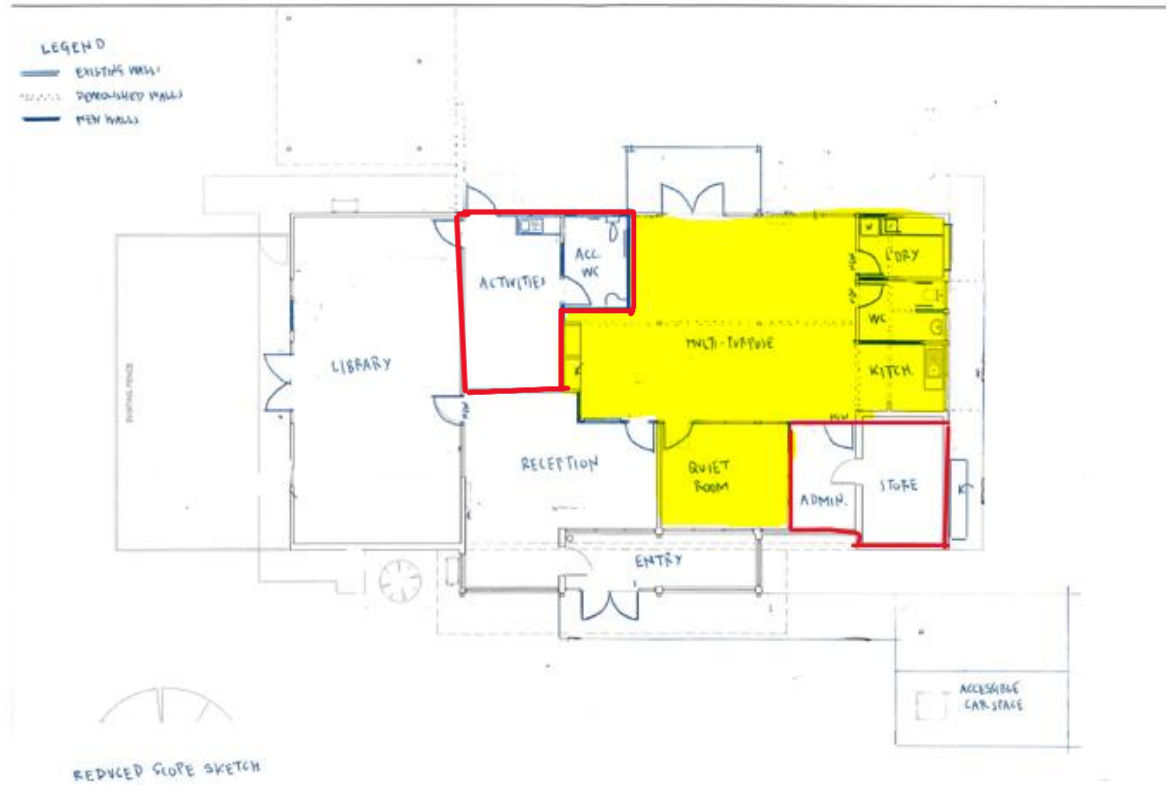
		<p>2. Working with Children</p> <p>(a) Without limiting clause 5.2, if the Licensee’s activities at the Licence Area involve persons engaged in “child related work” within the meaning of the <i>Worker Screening Act 2020 (WS Act)</i>:</p> <p>(i) The Licensee must and must ensure that all of the Licensee’s employees and volunteers, hold a current and valid WWC Clearance (Working with Children Check) as referred to in the WS Act (or any such certificate or check which replaces the WWC Clearance in the future), before working with children at the Licence Area.</p> <p>(ii) The Licensee must ensure that no employee nor volunteer with a WWC Exclusion under the WS Act works with children at the Licence Area.</p> <p>(iii) A copy of the WCC Clearance for each of the Licensee’s employees and volunteers must be provided to the Licensor upon request.</p> <p>(b) Without limiting clause 5.2, the Licensee must, and must ensure that the Licensee’s Agents, comply with and implement the Victorian State Government Child Safe Standards, as amended from time to time. Upon request, the Licensee must provide the Licensor with information regarding how the Licensee has adopted and applied the Child Safe Standards in the form requested by the Licensor.</p> <p>3. Council Policies</p> <p>The Licensee must ensure that the Licensee’s Agents comply with all policies of Yarriambiack Shire Council in place from time to time, as published on the Council website</p> <p>4. Condition Report</p> <p>The Licensee agrees that the Licensed Area is in ‘As Is’ condition and can request a Condition Report prior to the signing of this agreement if the would like a detailed report prior to Commencement Date.</p> <p>5. Other Parties Accessing Building</p> <p>The Rupanyup Historical Society Incorporated will also be under a Licence Agreement for use of an office and the storeroom (Vault) within the Library Precinct Building, which are accessed off the Family Day Care areas. They will have access to the kitchen and/or toilets located in the middle of the Library Precinct Building (not the kitchen and toilets in the Family Day Care areas). The Rupanyup Historical Society</p>
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		<p>Incorporated must abide by conditions regarding access by their Executive Committee Members only and across the following times:</p> <p>Building Access: 7am – 10pm Monday to Sunday</p> <p>Historical Society Executive - Vault & Office (in the Childcare area)</p> <p>6pm – 10 pm Monday to Friday</p> <p>7am – 10pm Saturday and Sunday</p> <p>Their Licence Agreement also outlines that they will not interfere with or alter any set ups in the Family Day Care areas</p> <p>The Library itself has separate zones which have no crossover with the Family Day Care areas</p>
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PLAN OF LICENCE AREA

Dunmunkle Library Precinct is located at 59 Cromie Street, Rupanyup





The areas highlighted yellow are for use by Lil Bears Family Day Care

Lil Bears Family Day Care will also have exclusive access to the Backyard/Play area during operating hours

The areas outlined in red are for use by the Rupanyup Historical Society Inc

EXECUTED as an agreement.

Licensor:

THE COMMON SEAL of **YARRIAMBIACK SHIRE COUNCIL** was affixed hereto by authority of the Council in the presence of:

Signature of Mayor / Councillor

Name

Signature of Councillor

Name

Date _____

Licensee:

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EXECUTED by LIL BEARS FAMILY)
DAY CARE ABN: 60 756 502 699 in)
 accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by being)
 signed by authorised persons:)

.....
Director/Sole Trader

.....
Full Name – Katie Holmes

.....
Usual Address

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