



**Date of Decision:** [REDACTED] 2020  
**File number:** STR0057

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**PANEL MEMBERS:** [REDACTED]

**APPLICANT:** [REDACTED]

**REGULATORY AUTHORITY:** Education Standards Board, South Australia

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### **Decision**

The Ratings Review Panel (the Panel) by consensus decided to confirm the rating of Element 1.1.3 as 'Not Met'.

Consequently, the rating levels for Standard 1.1, Quality Area 1 and the service's overall rating remain at 'Working Towards NQS'.

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### **Issues under review**

1. The approved provider (provider) sought a review of:
  - Quality Area 1, Standard 1.1, Element 1.1.3



2. The provider sought a review of the ratings for the above Element on the grounds that the regulatory authority, in making its determination, failed to take into account or give sufficient weight to special circumstances or facts existing at the time of the rating assessment.
3. After assessment and rating, the provider's service was rated as:
  - Quality Area 1: Meeting NQS
    - Standard 1.1: Working Towards NQS: Element 1.1.1 Met, Element 1.1.2 Met, Element 1.1.3 Not Met
    - Standard 1.2: Meeting NQS
    - Standard 1.3: Meeting NQS
  - Quality Area 2: Meeting NQS
  - Quality Area 3: Meeting NQS
  - Quality Area 4: Meeting NQS
  - Quality Area 5: Meeting NQS
  - Quality Area 6: Meeting NQS
  - Quality Area 7: Meeting NQS
4. The provider applied for first tier review on the basis that it believed the service should have received a rating of Meeting NQS for Element 1.1.3.
5. At first tier review, the regulatory authority confirmed all the ratings given at assessment and rating.
6. At second tier review the provider again submitted that it should be rated as Meeting NQS for Element 1.1.3.

### **Evidence before the Panel**

7. The Panel considered all the evidence submitted by the provider and the regulatory authority. This included:
  - the application for second tier review and its attachments;
  - the Assessment and Rating Instruments and the final Assessment and Rating Report;
  - the provider's feedback to the draft report;
  - the application for first tier review and its attachments;
  - the regulatory authority's findings at first tier review;



- the regulatory authority's submission to second tier review; and
  - the provider's response to the regulatory authority's submissions.
8. The Panel was also provided with advice from ACECQA on the Quality Area under review.

### The Law

9. Section 151 states 'Following a review, the Ratings Review Panel may:
- (a) confirm the rating levels determined by the Regulatory Authority; or
  - (b) amend the rating levels.'

### The Facts

10. [REDACTED] is a long day care service with [REDACTED] approved places. The service is based in [REDACTED] SA.
11. The assessment and rating visit took place on [REDACTED] 2019.
12. The provider received the draft report on [REDACTED] 2019, and a second version of the draft report on [REDACTED] 2019. The provider gave feedback to the draft reports on [REDACTED] 2019. The final report was sent to the provider on [REDACTED] 2019.
13. The provider applied for first tier review on [REDACTED] 2019. The regulatory authority made a decision on the review on [REDACTED] 2019. The provider received the decision on [REDACTED] 2019.
14. The provider applied for second tier review on [REDACTED] 2019.
15. Following the provider being given the regulatory authority's second tier review evidence in order to respond to it in writing, in accordance with section 150(5) of the National Law, the provider requested further information from the regulatory authority.
16. The regulatory authority advised that it would not be providing any further material for the review, and ACECQA advised the provider of their response.
17. By agreement between the provider and the Chair of the Ratings Review Panel, the decision date was extended from [REDACTED] 2020 to [REDACTED] 2020 to accommodate [REDACTED] and an extension to the deadline for the provider to submit their response to the regulatory authority's evidence.



### Element 1.1.3

18. Standard 1.1 is:  
*Program – The educational program enhances each child's learning and development.*
19. Element 1.1.3 is:  
*Program learning opportunities – All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.*

### Regulatory Authority's view

#### *Assessment and rating*

20. The A&R Evidence Data Report states in relation to Element 1.1.3:  
  
*Nursery: lunchtime routine a little chaotic and multiple children need support. Eat with hands or attempt to tip food out of bowl. Once child is placed in high chair with bib on before educator changing nappies, apologises, telling child she needs to do her nappy and removing her from chair to do nappy. Could this not wait until after.*
21. The First Tier Review Decision Notice contains the following evidence in relation to Element 1.1.3:  
  
*Although, as discussed with service leaders during the visit, the AO observed two children in the Nursery access the food of other children at lunchtime. This was a result of all children having lunch at the same time and the educators struggling to be able to support all their needs during this hectic routine. While it appeared none of these children had allergies the potential risk to children in this scenario if they had an allergy would be significant.*  
  
*There were times when the responses of educators in the Nursery may not have promoted children's dignity and rights. These situations were in response to the chaotic routine and educators attempting to comfort children who were distressed.*
22. The moderator's notes in A&R Moderator Evidence Rating Notes contain evidence relating to Element 1.1.3.
23. The regulatory authority also provided 16 photos as general evidence.



24. There was a slight change in the introductory comments of the regulatory authority's evidence in relation to Standard 1.1 between the first and second draft reports. The first paragraph of the Draft Report [REDACTED] 2019 reads:

*Through examples given in the Quality Improvement Plan (QIP) and from observations completed during the visit as well as discussions with service leaders, the service is Meeting all elements of Standard 1.1. In addition, the exceeding themes, Practice is informed by critical reflection and Practice is shaped by meaningful engagement with families and/or the community were evident and examples of this include:*

25. The regulatory authority's evidence in relation to Standard 1.1 did not change between the second draft and final reports. In the Draft Report [REDACTED] 2019 and Final Report in relation to Standard 1.1 the regulatory authority states:

*Through examples given in the Quality Improvement Plan (QIP) and from observations completed during the visit as well as discussions with service leaders, the service has been rated as Working Towards NQS in Standard 1.1.*

*Examples of practice that meets the Standard include:*

- Educators are guided by the Early Years Learning Framework (EYLF), the service philosophy and the Reggio Emilia approach to design play based programs which are also informed by professional research and critical reflection practices. Programs incorporate individual and group learning opportunities for children as well as inquiry projects which are informed by children's interests, abilities and strengths as well as from educator observations and input from families. This is gathered through enrolment and parent meetings, verbal and written communication. In the Toddler room and ELC, families are given the opportunity to contribute to their child's learning goal displayed on the planning tree. The previous ECT sent a letter to families, asking them to share their hopes and dreams to inform their child's goals for the year and to shape the program. Program evaluations were completed with the families' wishes in mind as well as educator reflection.*
- The QIP described how a family shared a desire for their child to know more about the world around them and this resulted in excursions to the local community and an inquiry project. During one of the excursions to [REDACTED] Park, children took notice of the art work within the park and this led to conversations and the current ELC project [REDACTED] [REDACTED] which was also informed by feedback from a member of the community (refer to Standard 6.2). The authorised officer (AO) had the opportunity to observe this project in action during the visit, facilitated by*



a specialist art teacher brought in by the management team, one day a week for three hours. The day the teacher attends the service has changed this term to enable multiple children to participate in the project, including younger children who have recently moved up from the toddler room and therefore encouraging and incorporating multiple perspectives and children's voices.

- Children working on the [REDACTED] project? were encouraged to build a wall using polystyrene and cardboard boxes. The teacher asked the children how they could stick the boxes together to make the wall, one child suggested sticky tape and the teacher responded this would probably work and 'Good thinking.' Children were also encouraged to make a road in front of the wall, the teacher informed them that it was [REDACTED] road, a very busy road with cars and trucks. She included details about their local context into their discussions and introduced multiple concepts into their learning. These included, but were not limited to, measurement, literacy and numeracy, road safety and problem solving. The teacher also reminded children they were working as a team. The project has previously involved children sharing their ideas for pictures to be included in a mural for the wall which surrounds the front and side of the service. These ideas were displayed in the foyer for families to view. The teacher also organised for children to put their ideas to life through drawing, although this was a more instructional experience and is described in Standard 1.2.
- Examples in the QIP, such as a child sharing a book about a Gruffalo and making Gruffalo bread demonstrated how family contributions had meaningfully contributed to planning decisions and children's learning and participation in the program.
- The lead educator in the Toddler room explained how educators had found previous program formats difficult to understand and manage and worked closely with the educational leader to develop a program format and processes which specifically met the needs of the age group of children and educators. This included the introduction of projects as part of this, the lead educator stated that their current processes which also made children's learning visible to parents were working. Projects are facilitated by a key educator and based on the interests of children in the key educator group. Projects are meaningfully displayed and organised in the room to support all children's learning and participation. The lead educator explained that one of the current projects was ocean life and habitat in response to children's interest in the song 'Baby shark'. One corner of the room was organised with props/resources to support the project including sea creatures, books and a sand tray. An educator was observed engaging with children within this space and they were heard sharing their knowledge of the ocean and their likes and dislikes.
- Planning templates and program displays were reviewed in the Nursery in [REDACTED] 2019. Previously educators were using the same processes implemented at [REDACTED], the other service operated by [REDACTED] but this was not working for educators who did not understand



*the systems. The lead educator and other educators in the Nursery, worked with the educational leader to come up with a monthly program which recorded children's planned learning opportunities and spontaneous play as well as extension possibilities and experiences. The lead educator introduced a visible learning display for each day of the week which is informed from the monthly program.*

- *Educators' critical reflection practices have led to the changes in the programming processes of both the Nursery and Toddler rooms as well as measuring their current effectiveness. Critical reflection also led to changes to the implementation of routines to improve outcomes for children in the Toddler room and ELC. For example, educators wanted to provide less interruptions to children's play to maximise their learning as well as support their agency. As a result, progressive meal times in the morning and afternoon were introduced. This was observed during the visit. In the Toddler room, an educator was heard informing her co-worker she was going to see if a child wanted some fruit before returning and explaining he was very engaged in his play outside and she would leave him a bit longer. Simultaneous inside/outside play was offered throughout the day in the Nursery and Toddler rooms while ELC children had some opportunities to engage in simultaneous inside/outside play. Group times were facilitated for children in the ELC with one in the afternoon incorporating the singing of songs as children are accompanied by an educator playing [REDACTED].*

*However, the following is evidence of Working Towards the Standard:*

- *Further critical reflection on routines is recommended for the Nursery. As discussed with service leaders during the visit, children's needs were not always met as effectively as they could have been and the lunchtime routine was very chaotic. Observations of practice by the AO during this routine had the potential to impact on outcomes for children including their sense of security and health and safety (refer to Standards 2.1, Standard 2.2 and 5.1).*

26. Two versions of the draft assessment and rating report were prepared by the regulatory authority. In the A&R Draft Report Feedback Template by Moderator, in response to the provider's feedback on regulatory authority evidence on Element 1.1.3 in the draft reports, the regulatory authority states:

*Incorrect lead in statement reflected in second draft report sent to AP. Evidence of exceeding themes remained in body of report but can be addressed in Standard rated as WT.*

*1.1.3 – rated as not met because of routines and transitions observed in nursery. Cross referenced in other areas rated as met. With considerations of practice – No evidence provided for [unintelligible] except explanations not*



*normal practice. No evidence provided to support this and not observed during visit.*

[Referring to provider evidence of meetings, ██████████] *These were not conducted on day of visit and do not reflect observations recorded.*

*Educator reflections confirm AO observations were not normal practice. Multiple examples of reflection provided for feedback. These re routines, predominantly about promoting self help skills. None address AO observations during visit.*

[Referring to critical reflection post visit that the practice observed was not usual practice, ██████████] *But this was the practice observed by AO during the visit.*

[Referring to critical reflection by the Toddler team ██████████] *Toddler room was not setting for issues re routine so not relevant.*

[Referring to example of child having nappy changed in the middle of eating lunch] *This example shared related to [unintelligible] and chaotic lunch routine. Not Met.*

*Did not say shouldn't have suggested more appropriate for child to finish eating before having nappy change. This does not infer an extended period of time.*

[Referring to regulatory authority statement in draft report that routine had potential to negatively impact children, and provider response this was mitigated by policies and procedures] *Policies and procedures were not effective in mitigating risk in this instance due to practice.*

[Referring to provider statement that, based on evidence and commentary in report, strongly of opinion that the element is met] *Opinion and not evidence.*

27. The regulatory authority stated the following as their response to provider feedback for Element 1.1.3 in the Draft Reports and Final Report:

*A review of the feedback sent following the draft assessment and rating report has been conducted with the following outcome reached:*

*Element 1.1.3 was rated as not met because of practices around the routine and transitions observed in the Nursery. This was cross referenced with Standards 2.1 and 5.1 as further evidence of practices within routines which do not meet the Standard. The intent of cross referencing was also to encourage the service to consider the potential impact these practices could have on outcomes for children in these Standards.*

*Some of the information provided as feedback had already been considered and used to determine the original rating while other information is new and*



*considered for the purposes of confirming/changing the rating. The new evidence explained that the observations of the AO during the visit were not 'normal' practice. Explanations were provided as to what 'normal' practice involved in the Nursery including children not all eating together at the same time and lunch organised across two tables. This was not observed during the visit and no further evidence to support this explanation provided as part of feedback. Furthermore, some of the information provided as feedback are statements and opinions and not based on evidence, as a result they could not be considered.*

*Therefore, feedback does not support changing the rating for this element or this Standard.*

28. The regulatory authority found that Element 1.1.3 was Not Met.

#### *First tier review*

29. The provider sought to have Element 1.1.3 changed from Not Met to Met.
30. The regulatory authority's response to provider evidence on Element 1.1.3 in the First Tier Review Decision Notice was:

*There was no further evidence provided with the first tier review application. The above evidence provided as part of the feedback application and evidence collected throughout the assessment and rating process were considered when reviewing Quality Area 1, Element 1.1.3. The evidence confirms that the service provides a quality child-led program, where educators extend children's learning through reflective and intentional teaching strategies. The panel noted that this has contributed to the remaining elements in Quality Area 1 being rated as Met, with some exceeding themes identified. It was also noted that although the lunch time routine in the Nursery was observed to be chaotic on the day of the assessment and rating visit, routines in the other two rooms supported children's learning.*

*Evidence provided by the approved provider during feedback to demonstrate that service leaders had audited educators' practices within the Nursery Room, showed a tick box list which included practices such as 'provide each child with opportunities to participate', 'children were unsettled but educators were responsive' and 'children were closely supervised particularly at mealtime, during bathing or nappy changing'. These lists indicated that the service leaders found that these practices were occurring on the day they observed. However, there was no time on the forms and no indication as to meal times in the Nursery room operating smoothly.*



*Evidence provided during feedback demonstrated that educators and service leaders reflect on routines throughout the service, however, this evidence demonstrates that the Nursery room meal time routine is still being established and is not an embedded practice.*

*The approved provider submitted feedback regarding the AO's comment 'that the routine had the potential to impact on outcomes for children including their sense of security and health and safety', stating that there was 'no impact on outcomes for children, as a result of the policies and procedures in place at the time and at the point of assessment.' However, the policies and procedures were not observed and does not influence the practice seen during the meal time routine on the day of the assessment and rating visit. The panel noted that the observations of the meal time routine in the Nursery impacted other quality areas and compromised children's health and safety and sense of security. These quality areas were still assessed as Met as it was identified by the authorised officer that it was the routine that required improvement.*

*The panel decided that the approved provider had not submitted evidence to show it has met the element and confirm the assessment of element 1.1.3 as Not Met.*

31. The regulatory authority upheld their decision that the Element was Not Met.

### **Approved Provider's view**

#### *Assessment and rating feedback*

32. The provider's feedback on the regulatory authority's evidence on Element 1.1.3 from the draft report is set out in [REDACTED]. They refer to exhibits and evidence in their feedback.

33. In the [REDACTED], the provider gives the following feedback in relation to Element 1.1.3:

*There was extensive commentary with respect to evidence of the service meeting this standard, which in our opinion deems this very evidence to be sufficient to support this area to be rated at least as MEETING NQF.*

*Following discussions with the AO on the [REDACTED] 2019, we were advised that the report issued on Friday [REDACTED] 2019 had been updated, a new*



report was subsequently re issued by the ESB on [REDACTED] 2019. The following text was removed and replaced with the text on the left.

*“Through examples given in the Quality Improvement Plan (QIP) and from observations completed during the visit as well as discussions with service leaders, the service is Meeting all elements of Standard 1.1. In addition, the exceeding themes, Practice is informed by critical reflection and Practice is shaped by meaningful engagement with families and/or the community were evident and examples of this include:” The first dot point (in both versions of the report) states “Educators are guided by the Early Years Learning Framework (EYLF), the service philosophy and the Reggio Emilia approach to design play based programs which are also informed by professional research and critical reflection practices”*

*We concur with the assessment as articulated in the original report, which is consistent with the evidence outlined in the report, and the verbal advice given to [REDACTED], [REDACTED] and [REDACTED] at the end of the assessment visit that “This service is a high quality service and your philosophy is evident across all areas”. [as recorded in diary note on the day by [REDACTED]].*

*It was further clarified in the phone conversation with the AO on the [REDACTED] 2019 that the observations by the AO which resulted in the “working towards” are those noted in the relevant observations detailed in 2.1, 2.2, 5.1. We respond to those in the relevant sections below, supporting our argument that the service is at least MEETING the requirement of the NQS area 1.1 in all areas including element 1.1.3.*

*Relevant evidence is detailed and attached in sections 2.1, 2.2 and 5.1 that demonstrate the service is meeting NQS in Standard 1.1. This includes documentation and evidence to support our argument that was made available to the AO during the assessment (whilst some of these were sighted they were not necessarily reviewed by the AO).*

*We respond to the issues noted within those specific areas in the relevant sections of this feedback, whilst noting that areas 2.1 and 2.3 and 5.1 were overall all rated as Meeting NQS. We now provide additional information that was in existence and available on the day of assessment to support element 1.1.3 to be rated at least meeting NQS in Standard 1.1. This information is*



*provided in response to the issues highlighted by the AO in the draft report (version 2).*

*Relevant evidence is detailed and attached in sections 2.1, 2.2 and 5.1 that demonstrate the element is meeting.*

*Past observations by the management team (the Educational Leader, the [REDACTED], the past and present Directors) identify practices of the Nursery team that were meeting the NQS for the standard 1.1. In each element. These observations of educator practice and critical reflections by the Nursery team, show that there were no potential impacts on the outcomes for children, including their sense of security and health and safety. [REDACTED]*

*Educator observations on [REDACTED], [REDACTED] and [REDACTED] by the Educational Leader and [REDACTED] meetings, audits and Directors notes [REDACTED], show that there were no potential impacts on the outcomes for children, including their sense of security and health and safety.*

*Critical reflection is an embedded practice across all of the service and is particularly evident in Area 1 of the NQS. The report shows we have demonstrated the exceeding theme of critical reflection in standards 1.2 and 1.3. The AO gave examples of critical reflections which occurred in the Nursery room (as well as the Toddler and ELC) in standard 1.1. Specific examples of critical reflection referred to the Nursery team reflecting on and changing programming processes and measuring their current effectiveness. Some examples of the Nursery critically reflecting are in their journal reflections which show them reflecting on a parent's concern regarding the positioning of a couch (see report Standard 3.1) and at another time on underlay in the sandpit being a hazard. [REDACTED] These concerns were investigated, reflected on and dealt with. Another example of critical reflection by the Nursery team is about the lunch time routine, which identified the food not coming on time from the kitchen and the trolley being in the room as a risk. [REDACTED].*

*The ability for the Nursery team to critically reflect is not exclusively on physical risks, but also on opportunities to address relationships and emotional wellbeing. In [REDACTED] the Nursery reflection journal shows that they were focusing on relationships and "finding educators are sitting engaging in a relaxed unhurried way especially when the spaces outside are set up in a way that this is possible" Other reflections on routines and transitions in [REDACTED] show*



*the team thinking about making transitions to meal times clear, and considered "self-efficient" (self-help) goals for older children in the group to support agency and focused on sleep routines for them "allowing children to get to transition to sleep on mattresses and think this will help the sleep routine in the next room move more smoothly. Their sleeps haven't been as long with the extra noise but are still happening with no stress".* [REDACTED]

*The [REDACTED] teams regularly critically reflect on the program and practices within the service.* [REDACTED]

*What can be gleaned from the evidence provided here, is that historically any issues or potential risks to children in the Nursery are identified through critical reflection and dealt with promptly by the educators, Director, Educational Leader and the Director of Operations. Practice was deemed as meeting the NQS for element 1.1.3 by the [REDACTED] team.*

*These examples show that the Nursery and [REDACTED] teams regularly critically reflect, and that this practice is embedded for them. The following documents support this fact.*

- *Critical reflection on area 1 self assessment [REDACTED] 19]* [REDACTED]
- *Nursery Journal reflection [REDACTED] 2019] of [REDACTED]*
- *Nursery Journal reflection [REDACTED]*
- *Educator Observations of [REDACTED]*
- *Interaction audit [REDACTED]*
- *Supervision audit and Guidelines [REDACTED]*
- *Nursery Journal reflection on focusing on relationships [REDACTED]*
- *Nursery Journal reflection on routines and transitions [REDACTED]*
- *Critical Reflection [REDACTED] [Nursery team Leader] [REDACTED]*
- *Critical Reflection Programme Meetings [REDACTED] 19 and [REDACTED] 19]* [REDACTED]

*The AO did not witness the reflective conversation the Nursery educators had in their room after she left, which identified their feelings of stress at having the assessor in the room, coupled with the [REDACTED] babies starting that week including 1 on the day which may have added to the perception of "chaos" as noted by the AO. Managing a number of new children commencing in the Nursery can be challenging by its very nature, none the less the Nursery staff*



were able to manage this atypical day without compromising the potential impacts on the outcomes for children, including their sense of security and health and safety. The children in the room did calm down later in the day which was not witnessed by the AO. [REDACTED]

These facts, and the circumstances that impacted on the practice of the educators at the time of the AO observing (the AO being present in the room and the new children) and the fact that educators critically reflected on this and re-grouped, which calmed down the situation after the AO left the room, shows there was no potential risk to the children, or impact on their sense of security. The AO in standard 4.1 noted "The director commenced her position approximately three months ago, with a comprehensive handover facilitated between her and the previous director to support consistency. Two new educators were present in the ELC commencing a week prior to the visit, one an ECT and the other a diploma qualified educator studying a teaching qualification. Despite their recent recruitment, both the educators and the children appeared to be comfortable with each other. A relatively new educator team was present in the Nursery and this may have contributed to some of the observations recorded by the AO. As well as this, an educator who predominantly works in the Toddler room, assisted in the Nursery during the visit, as multiple children were new and quite distressed."

The Critical reflection post the Assessment [REDACTED] supports the fact that the observations on the day by the AO did not reflect usual practice.

Evidence of issues being identified and addressed is also supported by the examples of the room observations by the Educational leader and critical reflection by the Toddler team [REDACTED] and [REDACTED]. The Educational Leader, Director and the [REDACTED] discussed critical reflection with the AO, which she acknowledged in the report "Critical Reflection also led to changes to the implementation of routines to improve outcomes for children in the Toddler and ELC" (report Standard 1.1). In our QIP under element 1.1.3 we provided a story regarding the introduction of the [REDACTED] and subsequent progressive meal times for the Toddler and ELC. [REDACTED]. In the meeting with [REDACTED] the AO commented on an observation of a routine which she queried as "not showing the child at the centre of decision making". Her observation as recalled by [REDACTED] was as follows: [REDACTED] remember the AO giving an example of an educator taking a child (who had woken from sleep) and placing the child in a high chair for lunch. The primary carer then removed the child from the high chair to change her nappy. The AO said that the child



*was happily eating her lunch and shouldn't have been interrupted from this for a routine such as changing a nappy. This practice occurred for the following reasons and should not have been seen as a negative:*

*1. Because that particular child had toileting issues requiring her to be free of a wet nappy in order for her not to be distressed. This practice was in response to that child's parent asking for the educators to make sure she was changed regularly. This evidence was available on the day to the AO.*

*2. We are of the opinion that It is an unacceptable health and safety practice to leave a child in a soiled nappy for an extended time.*

*Evidence in support:*

- *Room observations, and Critical Reflection notes [redacted] 2019, [redacted] 2019, and [redacted] 2019 [redacted]*
- *QIP 1.1.3 [redacted]*

*This was met by as the educator placed the health, safety and wellbeing of the child above interrupting their lunch as opposed the recommendations that this should have been compromised to allow the child not to be interrupted during lunch.*

- *Journal entry Nursery parent conversation re [redacted] 2019]*

*In the content from the draft report issued (version 2), the AO referred to the fact that a routine had POTENTIAL (the capacity to develop or happen in the future) to impact, we maintain that whilst the AO noted it had potential to impact, it in fact did not impact on outcomes for children including their sense of security and health and safety as a result of policies and procedures in place at the time and at the point of assessment.*

*Based on the evidence and commentary in this report we are strongly of the opinion that this element is MET.*

#### *First tier review*

34. The provider did not submit any of their first tier review documents or evidence to ACECQA.
35. In relation to the provider's first tier review application, in the First Tier Review Decision Notice the regulatory authority states:



### ***Issue under review***

*The approved provider set out the following grounds on which the review is sought:*

- We disagree with a rating based on the evidence described in the final report.*
- We have additional background information about the evidence described in the final report.*
- We believe the authorised officer(s) did not take into account all of the relevant evidence available at the time.*
- We believe the service was not given adequate opportunity to demonstrate how it meets an element or standard.*

*The panel considered all the evidence collected as part of the assessment and rating and all information submitted by the approved provider. This included the:*

- Application for review*
- Service's Quality Improvement Plan*
- Assessment and Rating Final Report*
- Assessment and Rating Draft Report*
- Assessment and Rating Instrument and its attachments*
- Provider feedback following the Assessment and Rating Draft Report*

### ***Review of rating levels***

*Evidence submitted by the approved provider*

#### ***7.STATEMENT:***

- We disagree with a rating based on the evidence described in the final report.*
- We have additional background information about the evidence described in the final report.*
- We believe the authorised officer(s) did not take into account all of the relevant evidence available at the time.*
- We believe the service was not given adequate opportunity to demonstrate how it meets an element or standard.*

#### ***EVIDENCE:***

- No further evidence provided for the first tier review*
- Assessment and Rating Draft and Final Reports*



- *Assessment and Rating Instrument and attachments*
- *Provider feedback following the Assessment and Rating Draft Report*
- *Service's Quality Improvement Plan*

*Second tier review*

36. The provider sought to have Element 1.1.3 changed from Not Met to Met.
37. The provider stated in their application that:

*We were issued with a draft Assessment and Rating Report from the ESB on [REDACTED] 2019. Following discussions with the relevant AO on the [REDACTED] 2019, we were advised that the report issued on [REDACTED] 2019 had been updated, a new report was subsequently re-issued by the ESB on [REDACTED] 2019. The following text was removed and replaced "Through examples given in the Quality Improvement Plan (QIP) and from observations completed during the visit as well as discussions with service leaders, the service is Meeting all elements of Standard 1.1. In addition, the exceeding themes, Practice is informed by critical reflection and Practice is shaped by meaningful engagement with families and/or the community were evident and examples of this include:" The first dot point (in both versions of the report) states "Educators are guided by the Early Years Learning Framework (EYLF), the service philosophy and the Reggio Emilia approach to design play based programs which are also informed by professional research and critical reflection practices".*

*We concur with the assessment articulated in the original report, which is consistent with the evidence outlined in the report, and the verbal advice given to [REDACTED], [REDACTED] and [REDACTED] at the end of the assessment visit that "This service is a high quality service and your philosophy is evident across all areas". [as recorded in diary note on the day by [REDACTED]]. There was extensive commentary in the draft report with respect to evidence of the service meeting this standard, which in our opinion deems this very evidence to be sufficient to support this area to be rated at least MEETING NQF.*

*Whilst we believe that the evidence provided in our previous feedback (in response to the draft Assessment and Rating report version 2 attached) supports our conviction that we are meeting the National Quality Standard in relation to Element 1.1.3 'Program Learning Opportunities', we now offer further evidence to strengthen our case. Our additional evidence primarily*



*focuses on the Nursery, and we have provided examples of child observations and documentation which show typical practice in Element 1.1.3.*

*Element 1.1.3 is about more than just routines. The evidence captures in the report in QA 1 is only about one routine (lunch time in the Nursery) as opposed to many routines that occurred across the day, as well as other aspects of the program that maximise opportunities for learning. We provide examples of practice that demonstrate all aspects of this Element.*

*We believe that the documentation provided herewith, demonstrated that the Nursery children engaged in all aspects of the program, including routines, in organised ways, that maximised opportunities for their learning. So too has the documentation demonstrated the educators approach to planning and facilitating learning. They were alert to learning opportunities and they supported children to follow their interests and to engage in uninterrupted play. The documentation we have provided demonstrates that Element 1.1.3 is meeting the National Quality Standard.*

38. The provider prepared a letter, Tier 2 Review – Attachment A Submission and Evidence, accompanying their second tier review application. In that letter they state:

*As previously cited in our feedback to ESB, the Nursery room leader [REDACTED] and the two other Nursery educators ([REDACTED]) had been observed by the Educational Leader (EL). These observations by the EL showed that the educators understood and showed their understanding of Element 1.1.3 in their practice ([REDACTED]). In [REDACTED] 2019 it was documented in the Nursery Critical Reflection diary that [REDACTED] and [REDACTED] had a “deep conversation about collaborating with children about routine and experiences, providing opportunities for decisions and choices” [REDACTED]. An Interaction Audit undertaken by the [REDACTED] on [REDACTED] 2019, showed that the educators (who were the same on the day of assessment) were meeting the list of indicators for interactions with children, some of which refer to indicators similar to those for educators in the Element 1.1.3. NQS Guidelines e.g. “learning environments inviting and relaxed”, “educators talk about children’s interests with them”, “educators teach children how to use materials and activities” ([REDACTED]).*

**Additional Documentation**

*The documented learning observations that we now refer to, were in the children’s portfolios and in the [REDACTED] Diary” on the day of assessment. Additional photographs and jottings, which were done on the day of assessment, have also been included. This documentation demonstrates*



*the children having opportunities to contribute to decisions and engaging in a range of play experiences, being given choices during routines and transition times, directing and initiating learning experiences, having opportunities to extend their interests, experiences and activities, such as being able to continue playing. All of these are indicators in the National Quality Standard Assessment and Rating Guide.*

*The documented observations now provided, show the educators considering routines as learning opportunities and their consideration of agency in future planning. These also show educators using all aspects of the program to undertake intentional teaching and support child directed learning, making decisions based on the best learning outcomes for the children rather than convenient options suited to educators, planning and implementing transitions and routines that support individual children's preferences and requirements, minimising the times during which children are expected to do the same thing at the same time, or to wait for long periods without engaging in play or interactions, using routines and play experiences to build attachments, initiating one-to-one interactions with children during daily routine activities to ensure these provide opportunities for positive interactions and learning. All of these are indicators in the National Quality Standard Assessment and Rating Guide. Additionally, the photographs and observations that were taken on the day of assessment in the Nursery depict children happily playing and being supported in caring and respectful ways by educators, showing that children's needs and learning opportunities were effectively met during this time.*

**Examples of children meeting Element 1.1.3:**

•participating collaboratively in events and experiences

██████████ 2019-██████████, ██████████ and ██████████ observation (relationship with peers and educator ██████████)

██████████ ██████████ 2019 –Ball pit fun (██████████ Diary)

██████████ ██████████ 2019 -Smelling jars (██████████ Diary)

██████████ ██████████ 2019 (day of assessment) –██████████, ██████████ and ██████████ pasta play photo

•having opportunities to contribute to decisions

██████████ ██████████ 2019 ██████████ observation and photos (agency)

██████████ ██████████ 2019 ██████████ observation and photos (agency)

██████████ ██████████ 2019 ██████████ observation and photo (agency)

•engaging in a range of play experiences

██████████ July 2019 ██████████ observation (engagement and choice)





██████████ 2019 ██████████ observation (plans to continue using routines to bond)

██████████ 2019 – ██████████ observation and photo with broom

•Using routines and play experiences to build attachments

██████████ 2019 – ██████████ observation (relationship with peers and educator ██████████)

██████████ 2019 (day of assessment). ██████████ singing to the children to settle and engage.

██████████ 2019 (day of assessment) ██████████ supporting ██████████ to engage with her and with ██████████ using string 'pasta' activity.

██████████ . 2018 ██████████ routines and cues being followed.

•initiating one-to-one interactions with children during daily routine activities to ensure these provide opportunities for positive interactions and learning

██████████ 2019 ██████████ observation

██████████ 2019 – ██████████ observation

*We believe that the documentation provided herewith, demonstrated that the Nursery children engaged in all aspects of the program, including routines, in organised ways, that maximised opportunities for their learning. So too has the documentation demonstrated the educators approach to planning and facilitating learning. They were alert to learning opportunities and they supported children to follow their interests and to engage in uninterrupted play. The documentation we have provided demonstrates that Element 1.1.3 is meeting the National Quality Standard.*

39. The provider submitted a separate document with the supporting evidence, ██████████.

40. Following the decision of the regulatory authority not to submit any further evidence at the request of the provider, described at paragraphs 12-13 above, the provider submitted further evidence in the form of a second letter, Tier 2 Review additional response ██████████ 2020. In that letter they state:

*With regards to element 1.1.3 we are of the opinion that due process was not followed for the final assessment with regards to the following:*

- 1. Not collecting additional information by further observation, discussions with educators or sighting documentation.*
- 2. Inappropriately determining the influence on the child.*
- 3. Inappropriately determining the impact on the rating.*



*We believe the evidence for 1.1.3, which the AO documented on the day of assessment, across the service (in all rooms) should include all parts of the element 1.1.3 and not just focus on routines. Furthermore, the routines witnessed by the AO over the centre, did not show consistent poor practice for element 1.1.3 across the service, the basis was made on a questionable isolated observation in the nursery and should not have had impact on the overall rating. We do not believe in light of the documentation provided by the ESB, that there is sufficient evidence in the data collected by the AO, on the day of assessment, to conclude that our service has not met the element 1.1.3, the Standard 1.1. or is it a service that is Working toward the National Quality Standard. We have provided significant evidence to support our service as meeting element 1.1.3.*

*In addition, we refer to the initial report on 20.9.19 stating that we were Meeting Standard 1.1 with exceeding themes "Through examples given in the Quality Improvement Plan (QIP) and from observations completed during the visit as well as discussions with service leaders, the service is Meeting all elements of Standard 1.1. In addition, the exceeding themes, Practice is informed by critical reflection and Practice is shaped by meaningful engagement with families and/or the community were evident and examples of this include:" We then received an updated report to say we are Working Towards Standard 1.1.*

*The confusing reports suggests to us that the AO initially thought we were Meeting standard 1.1, hence the inclusion of this rating in the first report and after moderation it became Working Towards. The notes in the Assessment and Rating Report QA Moderation Template conducted by [REDACTED] on [REDACTED].19 and [REDACTED].19 and on [REDACTED].19, says "Discuss rating for 1.1.3". Was the rating to be discussed for 1.1.3, Meeting or Working Towards? There are no details pertaining to the discussion about the rating for 1.1.3. In the same document the following statement; "The wording in 1.1.3 highlighted would suggest not met?" infers there is information in highlighted text which suggests 'not met'. The highlighted text we have received from ESB is found in the Assessment and Rating Evidence Data [REDACTED]" [REDACTED] (written at [REDACTED] during meeting with [REDACTED]). The highlighted text about 1.1.3 refers to projects in the toddler room guided by children's interests, projects meaningfully displayed and organised in the environment to support children's learning and participation, an educator observed engaging with children in this project space, the introduction of the [REDACTED] curriculum into the day, progressive meal times in the Toddler and ELC rooms and critical*



*reflection upon improved outcomes for both groups. These examples do not suggest 'not met', but rather 'met'.*

*We draw your attention to the "Assessment and Rating Evidence Data [REDACTED] [REDACTED]" page 3. The (un highlighted) comment about the Nursery lunch time routine was entered by the AO, 3 hours after witnessing the routine (the lunch time routine occurred at approx. [REDACTED]). The AO wrote "Nursery: lunchtime routine a little chaotic and multiple children need support". The words change from "a little chaotic" to "very chaotic" in the final report, as a justification of the rating of Working Towards the standard. The addition of the word "very" instead of the words "a little" changes the 'image' of the routine considerably. We have provided photographs of the Nursery children and educators taken on the day of assessment, which show the children calm, settled and engaged. The AO only witnessed the lunch time routine in the Nursery room and did not go back into the Nursery room to see their other routines.*

*We maintain that we have provided sufficient evidence to support that the isolated observation of the AO did not have an influence on outcomes for children and should have had limited impact on the overall rating. On this basis the rating for element 1.1.3 should be changed to met and thus the overall rating of our service changed to Meeting.*

## **Panel considerations**

41. The Panel determined that there were two questions for it to answer in considering whether the service was Meeting NQS in Element 1.1.3: whether or not the practice described in the evidence in the babies' room during the lunch routine is typical practice, and the impact that this practice should have on the assessment of whether this Element is Met or Not Met.
42. The Panel noted that the lunchtime routine in the babies' room was described as 'chaotic' in the evidence collected by the authorised officer during the assessment and rating, and that this description was changed to 'hectic' during the moderation process.
43. The Panel noted the service's reflection on its routines and transitions, from [REDACTED] the previous year up until the time of the assessment and rating, including audits that were carried out. The Panel also noted the service gathered a large amount of information from the parents of children at the



service. However, it was not clear to the Panel how this reflection and information gathering had translated into changes to practice.

44. The Panel noted the limited evidence available on how the 'chaotic' lunchtime routine, and more specifically taking a baby out of their high chair mid-meal to have their nappy changed, impacted the children. They noted the authorised officer considering the potential risk of children sharing food when children have allergies, but this did not appear to be an actual risk at this service.
45. The Panel considered there was evidence showing that the service demonstrated aspects of meeting practice for this Element in other routines and practices observed. However, they noted that the observation of the lunchtime routine counteracted this, and that when authorised officers identify inconsistent quality it is expected that they will collect additional information by observation, discussion and sighting in order to assess the impact of the inconsistent quality on any child at the service. This will in turn help inform their on balance judgement regarding the impact of the inconsistency on the overall rating. The Panel noted that they did not find any additional evidence collected in relation to the lunch time routine in the babies' room, and that it was also difficult on the evidence available to make a decision about the impact of the inconsistent practice on the children.
46. The Panel noted the service affirmed that the circumstances impacting the lunch routine, including that three new children had started at the service the week of the visit, including one on the day of the visit, two new educators had started a week prior to the visit, and the child whose nappy had been changed mid-meal had toileting issues prompting their parents to request that they have their nappy changed regularly. However, the Panel expressed its view that these issues would not have been unforeseen on the day of the visit, and the service should have systems or processes in place to manage their impact.
47. The Panel noted the evidence that the educator apologised to the child whose nappy was changed mid-meal, from which they inferred that the educator was aware the decision to do this was not best practice.
48. Ultimately, the Panel determined that, on balance, the practice observed during the lunch time routine in the babies' room was not consistent with meeting practice for this Element. The Panel acknowledged the amount of critical reflection in relation to routines and transitions that the service had undertaken in the lead-up to the assessment and rating visit, but was of the



view that this had failed to translate into responsive practice in relation to this particular routine. The Element was therefore Not Met.

**Panel decision**

49. The Panel decided by consensus to confirm the rating of Element 1.1.3 as Not Met.