

LEASE

SHIRE OF DENMARK
[Landlord]

and

MATTBEN PTY LTD
T/AS FREIGHT LINES GROUP
[Tenant]

Portion of Lot 300 on Deposited Plan 46811

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Parties

1. **Shire of Denmark** of 953 South Coast Highway, Denmark, Western Australia (**Landlord**)
2. **Mattben Pty Ltd** [ABN 63 104 515 568] [ACN 104 515 568] trading as Freight Lines Group of PO Box 274, Esperance, Western Australia (**Tenant**)

Agreed terms

1. Definitions and interpretation

1.1 Terms in Reference Schedule

Terms in bold type in the Reference Schedule have the meaning shown opposite.

1.2 Definitions

Claim includes any claim or legal action and all costs and expenses incurred in connection with it;

Commencing Date means the commencing date specified in the reference schedule;

Financial Year means 1 July to 30 June;

Landlord's Property means any property owned by the Landlord on the Premises including but not limited to the items specified in the reference schedule;

Land means the land described in the Reference Schedule;

Official Requirement means any requirement, notice, order or direction of any statutory authority and includes the provisions of any statute, ordinance or by-law;

Plan means the plan of the Land annexed to this Lease (if any);

Premises means the whole of the Land and includes the Landlord's Property;

Security Deposit means a Security Deposit in the amount set out in the Special Conditions;

Services means all utilities and services to the Premises;

Tenant's Employees means each of the Tenant's employees, contractors, agents, customers, subtenants, licensees or others (with or without invitation) who may be on Premises;

Tenant's Property includes all fixtures and other on the Premises which are not the Landlord's;

Term means the term of this Lease specified in the reference schedule and includes the further term as applicable;

Termination Date means the date of termination of this Lease specified in the reference schedule; and

1.3 Interpretation

(a) Reference to:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) a person includes a body corporate;
- (iii) a party includes the party's executors, administrators, successors and permitted assigns;
- (iv) "month" or "monthly" means calendar month or calendar monthly; and
- (v) a right includes a remedy, authority or power.

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

- (b) Headings are for convenience only and do not form part of this Lease or affect its interpretation.

2. Term and holding over

2.1 Term

The Landlord leases the Premises to the Tenant for the Term commencing on the Commencing Date as shown in Item 5.2 of the Schedule.

2.2 Monthly Tenancy

If the Tenant continues to occupy the Premises after the Term with the Landlord's consent then:

- (a) the Tenant does so as a monthly tenant on the same basis as at the last day of the Term; and
- (b) either party may terminate the monthly tenancy by giving to the other 1 month's notice expiring on any day.

3. Rent and Rent Reviews

3.1 Rent

The Tenant agrees with the Landlord to pay to the Landlord the Rent in the manner set out at Item 7 of the Schedule on and from the Commencement Date clear of any deductions whatsoever.

3.2 Rent to be Reviewed

The Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Tenant until the next Rent Review Date.

3.3 Methods of Review

The review will be either based on CPI Review or a Market Review. The basis for each rent review is as identified for each Rent Review Date in **Item 8** of the Schedule.

3.4 CPI Review

- (a) A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly Perth CPI published for the March quarter of each year.
- (b) Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the Parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a valuer appointed by the parties.

3.5 Market Review

A rent review based on market rent will establish the current market rent for the Land by agreement between the Parties and failing agreement, will be determined in accordance with the following provisions:

- (a) The Landlord shall notify the Tenant of the amount that it reasonably considers is the current market rent for the Land.
- (b) If the Tenant does not dispute the amount notified, that amount becomes the Rent.
- (c) If the Tenant disputes the current market rent as notified by the Landlord, it must notify the Landlord of that dispute (Dispute Notice) within 14 days after receiving the Tenant's notification. The Tenant must comply with this time limit to dispute the notified amount.
- (d) If the Tenant gives a Dispute Notice, then the current market rent for the Land will be determined at the expense of the Tenant by the Valuer General or a suitably qualified

and experienced valuer licensed under the Land Valuers Licensing Act 1978 (Valuer), to be appointed, at the request of either Party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).

- (e) The Valuer General or the Valuer (as the case may be) will act as an expert and not as an arbitrator and his or her decision will be final and binding on the Parties. The Parties will be entitled to make submissions to the Valuer General or the Valuer.
- (f) In this clause, "current market rent" means the rent obtainable for the Land in a free and open market on the basis that the Land is unoccupied and offered for rental for a use for which the Land is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
 - (i) any improvements made or effected to the Land by the Tenant; and
 - (ii) any rent free periods, discounts or other rental concessions.

3.6 Landlord's right to review

The Landlord may institute a rent review notwithstanding the Rent Review Date has passed and the Landlord did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

3.7 Rent Not to Decrease

If the reviewed Rent would be less than the Rent payable prior to the Review Date, then the Rent remains unchanged.

3.8 Failure to notify review

Any failure by the Landlord to notify the Tenant of the market rent pursuant to clause 3.5(a) of this Lease shall not prejudice the right of the Landlord to review the Rent or have the Rent reviewed retrospectively.

3.9 Costs of valuation

All costs incurred in any market valuation and determination of the reviewed Rent shall be paid by the Tenant.

4. Outgoings, Taxes and Charges

4.1 Outgoings

- (a) The Tenant agrees with the Landlord to pay directly to the provider of the outgoing or charge punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Land:
 - (i) local government services, rates and other charges, including but not limited to rubbish collection charges;
 - (ii) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (iii) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection;
 - (iv) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (v) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Tenant's use and occupation of the Land.
 - (vi) If the Land is not separately charged or assessed then during each lease year or other portion of the Term, the Tenant shall pay to the Landlord the same

proportion part of any charges or assessments referred to in clause (a) being the proportion that the Land bears to the total area of the land included in the charge or assessment.

4.2 Goods and Services Tax

(a) Consideration is exclusive of GST

The consideration for a Supply under this Lease is exclusive of any GST imposed on the Supply.

(b) Recovery of GST

If a Supply under this Lease is subject to GST:

- (a) the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
- (b) the Recipient must pay the additional amount to the supplier at the same time as the other consideration.

However, the Recipient need not pay the additional amount until the supplier gives the Recipient a Tax Invoice.

(c) Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier on the Supply:

- (i) the supplier must promptly issue an Adjustment Note to the Recipient; and
- (ii) an amount equal to the difference must be paid by the supplier to the Recipient, or by the Recipient to the supplier, as appropriate.

(d) Reimbursement

If any part is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a member is entitled to an Input Tax Credit.

(e) Definitions

In this clause, Adjustment Note, GST, GST Group, Input Tax Credit, Member, Recipient, Representative Member, Supply and Tax Invoice have the meanings given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

5. Use of the Premises

5.1 Permitted Use

The Tenant must only use the Premises for the Permitted Use as shown at Item 9 of the Schedule.

5.2 Restrictions on Use

The Tenant must not:

- (a) disturb tenants or owners of adjacent premises;
- (b) overload any Services;
- (c) damage the Landlord's Property;
- (d) alter the Premises, or do any building work without the Landlord's prior consent; or
- (e) do anything that may invalidate the Landlord's insurance or increase the Landlord's premiums.

5.3 No warranty as to Use

The Landlord does not warrant that the Premises:

- (a) is suitable for any purpose; or
- (b) may be used for the Permitted Use.

5.4 Official requirements and rules

At its expense, the Tenant must comply with any Official Requirement concerning the Premises, the Tenant's Property or the Tenant's use or occupation of the Premises or the sex, number, health and safety of persons on the Premises.

5.5 For sale signs etc.

The Landlord may:

- (a) put up signs on the Premises if it is for sale or lease; and
- (b) show anyone over the Premises after giving the Tenant 2 days' notice.

If the Premises is for lease, the signs may only be put up on the Premises within the last 3 months of the Term.

5.6 Caveats

- (a) The Tenant must not lodge or register any absolute caveat against the certificate of title to the land of which the Premises forms part to protect its interests under this Lease but the Tenant shall be entitled to lodge a "Subject to claim" caveat against the certificate of title to the land of which the Premises forms part.
- (b) The Tenant irrevocably appoints the Landlord and every officer of the Landlord, severally, the agent and attorney of the Tenant to execute and register at the office of titles in Western Australia:
 - (i) a withdrawal of any absolute caveat registered by, or on behalf of, the Tenant against any portion of the certificate of title to the land of which the Premises forms part at any time; and
 - (ii) a withdrawal of a "subject to claim" caveat registered by, or on behalf of, the Tenant at any time later than 7 days after the expiry or earlier determination of this Lease.

6. Maintenance and repair

6.1 Repair

- (a) The Tenant must:
 - (i) keep the Premises in good repair and condition except for fair wear and tear, inevitable accident and inherent structural defects;
 - (ii) repair and maintain such fences as exist on the Premises;
 - (iii) promptly, and if immediate action cannot be taken, as soon as is practicable, repair all damage to roads and fences on the Premises which results from use of the Premises by the Tenant; and
 - (iv) fix any damage caused by the Tenant or the Tenant's Employees.
- (b) The Landlord may do any repairs or maintenance to the Premises. The Landlord must give the Tenant reasonable notice before doing so and must cause as little disruption to the Tenant's business as is reasonably possible in the circumstances.

6.2 Cleaning and maintenance

The Tenant must:

- (a) do such things as may reasonably be required to eradicate, exterminate and keep the Premises free from rodents, vermin, noxious weeds and other pests of any kind, and will procure that pest exterminators are employed from time to time for that purpose;
- (b) keep the Premises clean and tidy and free of infectious diseases; and
- (c) keep the Tenant's Property clean and maintained in good order and condition.

6.3 Not to pollute

- (a) The Tenant must not cause pollution in or contamination of the Premises or any adjoining land by garbage, waste matter, oil and other pollutants whether by stormwater or other run-off or arising from use of the Premises.
- (b) The Tenant must collect and dispose of all garbage, waste matter, oil and other pollutants from the Premises at a place and in a manner required or approved by the Landlord and all relevant authorities having control over the disposal of waste matter and the protection of the environment.

6.4 Landlord's right to inspect and repair

- (a) The Landlord may enter the Premises for inspection or to carry out maintenance, repairs or building work at any reasonable time after giving notice to the Tenant. In an emergency, the Landlord may enter at any time without giving the Tenant notice.
- (b) The Landlord may carry out any of the Tenant's obligations on the Tenant's behalf if the Tenant does not carry them out on time. If the Landlord does so, the Tenant must promptly pay the Landlord's costs.

6.5 Notice of damage or defect in services

The Tenant must promptly give the Landlord notice of:

- (a) any damage to, defect or disrepair in the Services or the Landlord's Property; and
- (b) any circumstances likely to cause any risk to the Premises or any person.

7. Assignment and subletting

- (a) Subject to clause 17, the Tenant must obtain the Landlord's written consent before the Tenant assigns, sublets or deals with its interest in the Premises.
- (b) The Landlord may grant or withhold its consent in its discretion.

8. Insurances and indemnities

8.1 Tenant's insurance

The Tenant must maintain at its own cost insurance on usual terms with an insurer authorised under the *Insurance Act 1973* (Cth) for:

- (a) public risk for at least \$20,000,000;
- (b) damage to and loss of internal and external glass, doors, fittings, chattels, the Landlord's Property and the Tenant's Property that are on or in the Premises for the full replacement cost; and
- (c) employer's liability in respect of the Tenant's Employees (including worker's compensation insurance).

8.2 Tenant's policies

All policies under this clause 8 must be acceptable to the Landlord and with an insurer approved by the Landlord and endorsed to note the interest of the Landlord as landlord of the Premises.

8.3 Proof of insurance policies

The Tenant must give the Landlord evidence of its insurance if the Landlord asks for it.

8.4 Tenant's release and indemnity

- (a) The Tenant occupies and uses the Premises at its own risk. The Tenant also carries out building work on the Premises at its risk.
- (b) The Tenant releases the Landlord from and indemnifies it against all Claims for damages, loss, injury or death:
 - (i) whether or not it is caused by the Tenant's negligence or default if it:
 - A. occurs on the Premises;
 - B. arises from the use of the Services on the Premises; or
 - C. arises from the overflow or leakage of water from the Premises, except to the extent that it is caused by the Landlord's deliberate act or negligence; and
 - (ii) if it arises from the negligence or default of the Tenant or the Tenant's Employees, except to the extent that it is caused by the Landlord's deliberate act or wilful negligence.
- (c) The Tenant releases the Landlord from and indemnifies the Landlord against any Claim or costs arising from anything the Landlord is permitted to do under this Lease.

9. Occupational Safety and Health Act

- (a) The Tenant acknowledges and agrees that for the purpose of the Occupational Safety and Health Act 1984 (WA) (Act) the Tenant has the control of the Premises and all plant and substances on the Premises.
- (b) The Tenant releases and indemnifies the Landlord from and against any claim against or obligation or liability of the Landlord under any occupational health and safety legislation as defined in the Act, except to the extent that any breach of the Act is contributed to by the Landlord's deliberate act or negligence.

10. Default and termination

10.1 Default

The Tenant defaults under this Lease if:

- (a) the Rent or any money payable by the Tenant is unpaid for 7 days;
- (b) the Tenant breaches any other term of this Lease and such breach is unremedied within 10 business days of notice of breach having been served on the Tenant;
- (c) the Tenant assigns its property for the benefit of creditors; or
- (d) the Tenant becomes an externally-administered body corporate within the meaning of the Corporations Act 2001 (Cth).

10.2 Forfeiture of Lease

If the Tenant defaults and does not remedy the default when the Landlord requires it to do so, the Landlord may do any one or more of the following:

- (a) re-enter and take possession of the Premises and by notice to the Tenant, terminate this Lease;

- (b) by notice to the Tenant, convert the unexpired portion of the Term into a tenancy from month to month;
- (c) exercise any of its other legal rights; or
- (d) recover from the Tenant any loss suffered by the Landlord due to the Tenant's default.

10.3 Consequences of Default

(a) Repudiation

- (i) If the Tenant repudiates this Lease or breaches an essential term of this Lease the Landlord may recover all money payable by the Tenant under this Lease up to the end of the Term. However, the Landlord must minimise its loss.
- (ii) The essential terms are:
 - A. to pay Rent (clause 3.1);
 - B. to pay Outgoings (clause 4);
 - C. to use the Premises for only the Permitted Use (clause 5.1);
 - D. to comply with Official Requirements and Rules (clause 5.4);
 - E. to repair (clause 6); and
 - F. not to assign, sublet or deal with the Lease without consent (clause 7).

(b) Landlord's Entitlement to Damages

The Landlord's entitlement to damages is not limited or affected if:

- (a) the Tenant abandons the Premises;
- (b) the Landlord elects to re-enter the Premises or terminate this Lease;
- (c) the Landlord accepts the Tenant's repudiation; or
- (d) the parties' conduct constitutes or may constitute a surrender by operation of law.

(c) Liquidated Debt

The Landlord may remedy any default by the Tenant and recover its costs of doing so from the Tenant as a liquidated debt.

10.4 Waiver

- (a) No waiver by the Landlord is effective unless it is in writing;
- (b) Despite the Landlord's knowledge at the time, a demand for Rent or other money owing by the Tenant or the subsequent acceptance of Rent or other money does not constitute a waiver of any earlier default by the Tenant.

10.5 Interest on Overdue Money

The Landlord may charge daily interest to the Tenant on any late payment by the Tenant.

11. Termination of Term

11.1 Tenant's obligations

On termination the Tenant must:

- (a) vacate the Premises and give it back to the Landlord in good repair and condition in accordance with the Tenant's obligations in this Lease;
- (b) remove all the Tenant's Property from the Premises; and
- (c) repair any damage caused by removal of the Tenant's Property and leave the Premises in good repair and condition; and

- (d) return all keys, security passes and cards held by it or the Tenant's Employees.

11.2 Failure to Remove Tenant's Property

If the Tenant does not remove the Tenant's Property at the end of the Term, the Landlord may:

- (a) remove and store the Tenant's Property at the Tenant's risk and expense; or
- (b) treat the Tenant's Property as abandoned, in which case title in the Tenant's Property passes to the Landlord who may deal with it as it thinks fit without being liable to account to the Tenant.

12. General

12.1 Notices

(a) In Writing

Any notice given under this Lease must be in writing. A notice by the Landlord is valid if signed by an officer or solicitor of the Landlord or any other person nominated by the Landlord.

(b) Notice of Address

The Tenant must promptly notify the Landlord of its address and/or email address and update the notice if any changes occur.

(c) Service of Notice on Tenant

The Landlord may serve a notice on the Tenant by:

- (i) giving it to the Tenant personally;
- (ii) sending it to the Tenant's email address; or
- (iii) posting it to the Tenant's last known registered office, place of business or residence.

(d) Service of Notice on Landlord

The Tenant may serve a notice on the Landlord by leaving it at, or posting or emailing it to the Landlord's office set out in Item 1 of the Schedule.

12.2 Costs

The Tenant must pay the Landlord:

- (a) duty (if any) on this Lease; and
- (b) The Landlord's reasonable legal fees and outlays:
 - (i) for the preparation and negotiation of this Lease;
 - (ii) relating to any assignment or subletting;
 - (iii) arising from any breach of this Lease by the Tenant;
 - (iv) for any Landlord's consent under this Lease; and
 - (v) for obtaining the Landlord's mortgagee's consent to this Lease.

13. Option of Renewal

- (a) The Landlord hereby grants to the Tenant the option to renew this Lease for the further term or terms (if any) specified in Item 6 of the reference schedule upon the terms, covenants, conditions and restrictions of this Lease (excepting any exercised right of renewal). The Tenant may exercise such option if and only if:

- (i) the Tenant has first given to the Landlord written notice of such exercise of option not less than 3 months and not more than 6 months prior to the expiration of the Term; and
 - (ii) the Tenant is not, at the time of giving the notice under this clause in breach of any of the terms, covenants or conditions of this Lease.
- (b) If the Tenant validly exercises the option to extend under subclause (ii) then prior to the expiration of the then current Term, the Tenant must execute a deed recording the extension of lease, such deed to be prepared by the Landlord's solicitors at the reasonable expense of the Tenant in all respects including all duty;
- (c) Upon such extension of lease commencing and during any extended term the Tenant shall pay such rent as is agreed or determined in accordance with the provisions of this Lease.

14. Damage and destruction

14.1 Definitions

In this clause:

- (a) **abatement** notice means a notice given under clause (a);
- (b) **reinstatement notice** means a notice given by the Landlord to the Tenant of the Landlord's intention to carry out the reinstatement works; and
- (c) **reinstatement works** means the work necessary to:
 - (i) reinstate the Premises; and
 - (ii) make the Premises fit for occupation and use and accessible by the Tenant.

14.2 Abatement

- (a) If at any time the Premises are wholly or partly:
 - (i) unfit for occupation and use by the Tenant; or
 - (ii) inaccessible having regard to the nature and location of the Premises and the normal means of access to them,
 as a result of destruction or damage then from the date that the Tenant notifies the Landlord of the relevant event, the Rent and any other money payable by the Tenant are to abate according to the circumstances.
- (b) If clause (a) applies, the remedies for:
 - (i) recovery of the Rent and any other money or a proportionate part falling due after the damage or destruction; or
 - (ii) enforcement of the obligation to repair and maintain,
 are suspended from the date of the abatement notice until the Premises are reinstated or otherwise made fit for the Tenant's occupation and use and fully accessible.

14.3 Either party may terminate

If clause (a) applies, then at any time after 2 months from the date the abatement notice is given either party may terminate this Lease by notice to the other unless the Landlord has within that period of 2 months:

- (a) given the Tenant a reinstatement notice; and
- (b) started to carry out the reinstatement works.

14.4 Tenant may terminate

If the Landlord gives a reinstatement notice to the Tenant and does not commence the reinstatement works within a reasonable time, the Tenant may terminate this Lease by giving not less than 2 month's notice to the Landlord and, at the expiration of the notice period, this Lease terminates.

14.5 Dispute resolution

- (a) Any dispute arising under this clause is to be determined by a properly qualified member of the Australian Property Institute appointed by the president at the request of either the Landlord or the Tenant.
- (b) In making a determination, the appointed member must act as an expert and not as an arbitrator.
- (c) The appointed member must make a written determination containing reasons as soon as possible after appointment, but the member must give each party the opportunity to make written submissions.
- (d) The Rent and any other money remain abated pending the determination. Any necessary adjustment is to be made immediately after the determination is made.
- (e) The Cost of the determination must be paid by both parties in equal shares unless otherwise decided by the member.

15. Severability

- (a) As far as possible all provisions of this Lease must be construed so as not to be invalid, illegal or unenforceable.
- (b) If anything in this Lease is unenforceable, illegal or void then it is severed and the rest of this Lease remains in force.
- (c) If any provision cannot be read down, that provision will be void and severable and the remaining provisions of this Lease will not be affected.

16. Entire Understanding

This Lease:

- (a) Contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

17. Landlord's Consent

Unless otherwise stated, if the Landlord's consent or approval is required:

- (a) the Landlord must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- (b) the Landlord may require the Tenant to comply with any reasonable conditions before giving its consent; and
- (c) it is not effective unless in writing.

18. Property Law Act

The following sections of the Property Law Act 1969 (WA) do not apply to this Lease:

- (a) Section 80; and
- (b) Section 82.

Schedule 1 - Reference Schedule**1. Landlord**

Shire of Denmark
of 953 South Coast Highway, Denmark, Western Australia

2. Tenant

Mattben Pty Ltd trading as Freight Lines Group
of PO Box 274, Esperance, Western Australia

3. Details of any Trust

Not applicable

4. Land

Lot 300 on Deposited Plan 46811 being a portion of the land comprised in Certificate of Title Volume LR2741 Folio 297 as marked on Appendix A.

5. Term**5.1 Period**

5 years 0 months

5.2 Commencing Date

1 July 2024

5.3 Termination Date

30 June 2029

6. Further term**6.1 Period**

Nil

6.2 Commencing Date

Not applicable

7. Rent

\$26,000.00 per annum (plus GST) payable in advance by equal monthly instalments, subject to review in accordance with the Lease.

8. Rent review dates**8.1 Market Review Dates**

Not applicable due to short term lease

8.2 CPI Review Dates

Annually

9. Permitted Use

Truck maintenance/transport

10. Landlord's Property

Not applicable.

11. Special conditions

The following special conditions (if any) form part of this Lease and in the event of any inconsistency between the foregoing provisions of this Lease and the special conditions, the special conditions prevail:

Nil

DRAFT

Executed as a Deed on _____ day of _____ 20 _____

The Common Seal of
Shire of Denmark
 was hereunto affixed in the
 presence of:

 Shire President

 Chief Executive Officer

 Print Name

 Print Name

Executed by Mattben Pty Ltd [ABN 63 104 515 568] and [ACN 104 515 568] trading as Freight Lines Group in accordance with section 127 of the Corporations Act 2001 (Cth):

 Director Signature

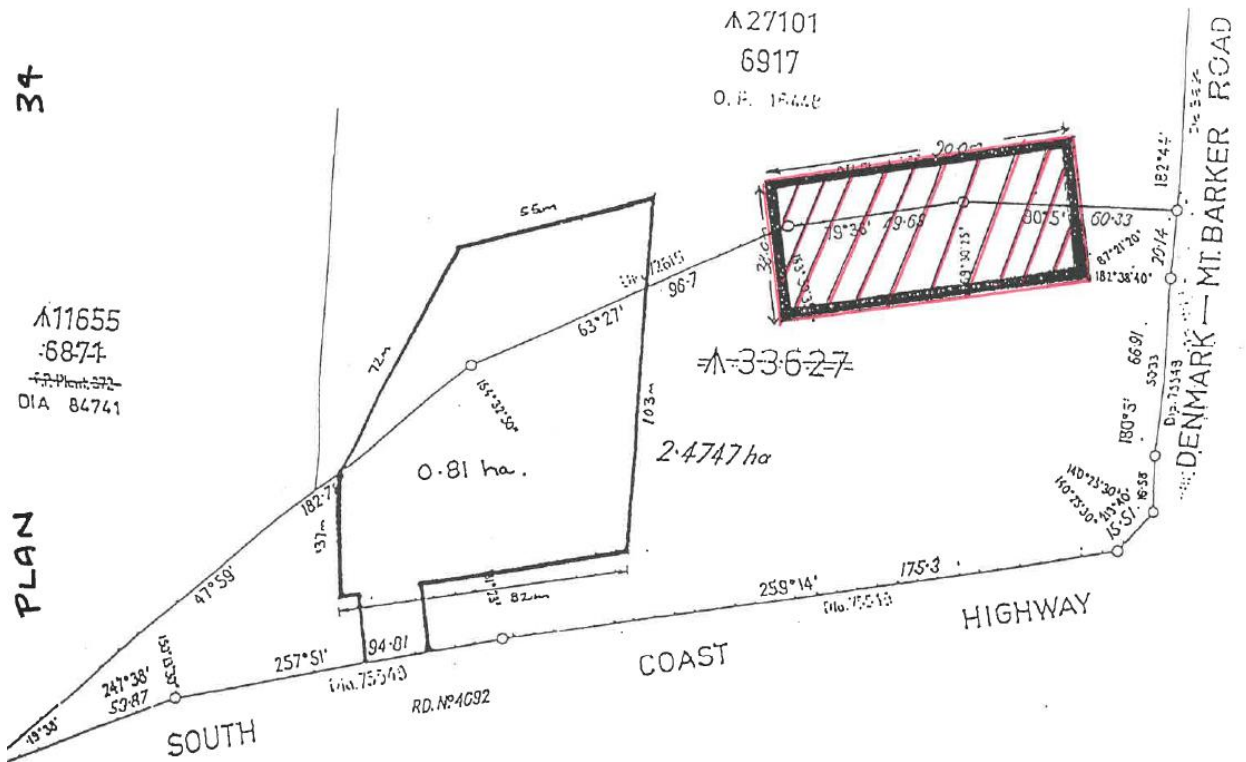
 Director/Secretary Signature

 Print Name

 Print Name

Appendix A – Aerial Map of Leased Land & Surveyed Plan

Portion of Lot 300 on Deposited Plan 46811, 832 South Coast Highway, Denmark



9.3 GOVERNANCE

9.3.1 LEASES OF PORTIONS OF LOT 300, CORNER OF SOUTH COAST HIGHWAY AND DENMARK-MOUNT BARKER ROAD – DENMARK CONCRETE, SOIL SOLUTIONS AND DE CAMPO TRANSPORT

File Ref:	LEA.10, LEA.18 and LEA.52
Applicant / Proponent:	1. Denmark Concrete Pty Ltd 2. Soil Solutions Pty Ltd 3. De Campo Transport Pty Ltd Portions of Lot 300 on Deposited Plan 46811
Subject Land / Locality:	1. 832 South Coast Highway, Denmark 2. 13 Denmark-Mount Barker Road, Denmark 3. 9 Denmark-Mount Barker Road, Denmark
Disclosure of Officer Interest:	Nil
Date:	16 May 2024
Author:	Claire Thompson, Governance Coordinator
Authorising Officer:	David King, Chief Executive Officer 9.3.1a – draft Denmark Concrete Lease 9.3.1b – draft Soil Solutions Lease
Attachments:	9.3.1c – draft De Campo Transport Lease 9.3.1d – Market Rent Valuations (confidential for councillors)

IN BRIEF

- Council is asked to approve new leases for the current tenants of portions of Lot 300 on Deposited Plan 46811.
- Should Council agree to the leases, the disposals are required to advertised for public comment.

VOTING REQUIREMENTS

1. Simple majority.

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 9.3.1a
MOVED: CR PHILLIPS	SECONDED: CR CARMAN
That with respect to a portion of Lot 300 on Deposited Plan 46811, being 8,100m ² , Council:	
<ol style="list-style-type: none"> 1. AGREE to enter into a new lease with Denmark Concrete Pty Ltd, as per Attachment 9.3.1a; and 2. ADVERTISE the intended disposal as per statutory requirements; and 3. AUTHORISE the Chief Executive Officer and the Shire President to execute the lease, should there be no adverse submissions received or third party interest in the property, noting that should this not be the case, the submissions and/or interest will be brought back to Council for consideration. 	
CARRIED: 9/0	Res: 080524
TOTAL VOTES FOR: 9	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Devenport, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 9.3.1b
MOVED: CR CARMAN	SECONDED: CR YOEUL
That with respect to a portion of Lot 300 on Deposited Plan 46811, being 9,804m ² , Council:	
<ol style="list-style-type: none"> 1. AGREE to enter into a new lease with Soil Solutions Pty Ltd, as per Attachment 9.3.1b; and 2. ADVERTISE the intended disposal as per statutory requirements; and 3. AUTHORISE the Chief Executive Officer and the Shire President to execute the lease, should there be no adverse submissions received or third party interest in the property, noting that should this not be the case, the submissions and/or interest will be brought back to Council for consideration. 	
CARRIED: 9/0	Res: 090524
TOTAL VOTES FOR: 9	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Devenport, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

COUNCIL RESOLUTION & OFFICER RECOMMENDATION	ITEM 9.3.1c
MOVED: CR PHILLIPS	SECONDED: CR ORMSBY
That with respect to a portion of Lot 300 on Deposited Plan 46811, being 7,600m ² , Council:	
<ol style="list-style-type: none"> 1. AGREE to enter into a new lease with De Campo Transport Pty Ltd, as per Attachment 9.3.1c; and 2. ADVERTISE the intended disposal as per statutory requirements; and 3. AUTHORISE the Chief Executive Officer and the Shire President to execute the lease, should there be no adverse submissions received or third party interest in the property, noting that should this not be the case, the submissions and/or interest will be brought back to Council for consideration. 	
CARRIED: 9/0	Res: 100524
TOTAL VOTES FOR: 9	
Cr Campbell, Cr Wiggins, Cr Youel, Cr Gibson, Cr Devenport, Cr Ormsby, Cr Carman, Cr Lewis and Cr Phillips.	
TOTAL VOTES AGAINST: 0	

LOCATION

2. There are three commercial leases on portions of Lot 300 on DP46811, the general location of each is shown in the diagram below.



Figure 1 - Tenants of Lot 300 on DP46811

3. Denmark Concrete Pty Ltd – located at 832 South Coast Highway, Denmark. Leased area is 8,100m², delineated in red on the aerial below.



Figure 2 - Denmark Concrete lease area.

4. Soil Solutions Pty Ltd – located at 832 South Coast Highway, Denmark. Leased area is 9,804m², delineated in the survey plan below.

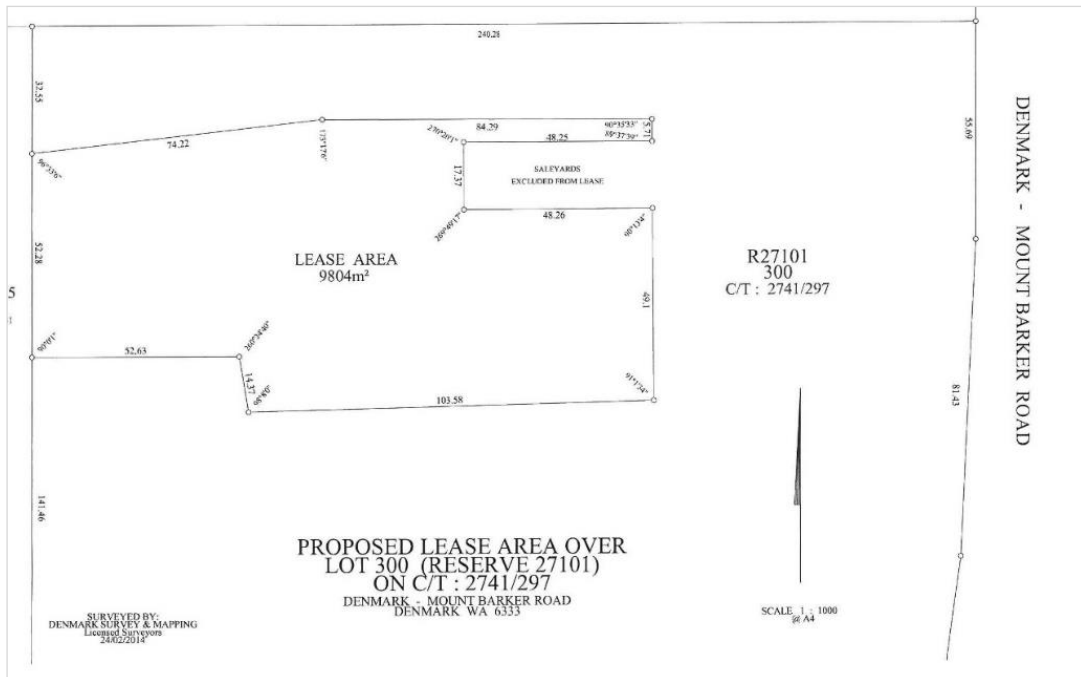


Figure 3 – Soil Solutions lease area.

5. De Campo Transport Pty Ltd – located at 9 Denmark-Mount Barker Road, Denmark. Leased area is 7,600m², delineated in red on the aerial below.



Figure 4 - De Campo Transport lease area.

BACKGROUND

6. Denmark Concrete Pty Ltd – have sub-let a portion of the 8,100m² since 2015, and purchased the lease from the former Lessee in 2020. Denmark Concrete currently sub-let a portion of the leased premises to MCC Contractors.
7. De Campo Transport Pty Ltd – purchased the lease, and transport business, from Denmark Haulage in 2021. Denmark Haulage have occupied the lease area since 1998.
8. Soil Solutions Pty Ltd – have been leasing the site since 2014.
9. All of the leases expired in March 2024 and the tenants have continued occupancy on a monthly basis.

DISCUSSION / OFFICER COMMENTS

10. All three businesses have expressed a desire to enter into a lease.
11. The terms of the attached draft leases for Soil Solutions and De Campo Transport are the same as they are currently.
12. The Special Condition in Denmark Concrete’s draft lease has been modified to a remove the specific reference to MCC Contractors. This will enable the tenant to sub-let to any business during the term of the lease, providing that the conditions are met, and they obtain approval from the Shire beforehand.

CONSULTATION AND EXTERNAL ADVICE

13. Should Council agree to the new leases, the disposals will be advertised, calling for public submissions on the intended disposals, in accordance with statutory requirements.

STATUTORY / LEGAL IMPLICATIONS

Local Government Act 1995

- 14. Section 3.58 – relates to disposal of property, including to lease.
- 15. Section 3.58(3) and (4) – details the requirements to dispose other than by public auction or public tender.

STRATEGIC / POLICY IMPLICATIONS

- 16. Lot 300 was purchased by the Shire from the State Government in 2011.
- 17. The 2011 Local Planning Strategy (LPS) suggested a review of the potential development of Lot 300 for use as a service commercial estate. Currently, Lot 300 is designated as Public Use under the Shire’s Town Planning Scheme 3 (TPS3) but is leased to three industrial/commercial businesses, effectively supplementing the industrial land supply due to historical shortages.
- 18. Through the LPS process, the investigation into the possible development of Lot 300 revealed conflicts between the desired commercial visibility and the impacts on visual amenity, as well as the need to preserve remnant vegetation.
- 19. Considering the projected demand for service commercial floor space and the objective to consolidate and encourage land use changes in the Local Industrial Area (LIA), the LPS has decided not to proceed with the development of a Service Commercial Park on Lot 300. Instead, the relocation of the current lessees to the East Denmark Industrial Estate is recommended for the future, recognising Lot 300's potential as a future Shire depot or other public use as indicated in the Draft LPS. However, due to the ongoing scarcity of service commercial and industrial land, this relocation is not considered immediate.
- 20. Given these factors, Lot 300 is deemed a strategic asset, and thus, capping the lease term at five years is deemed prudent.

FINANCIAL IMPLICATIONS

- 21. Independent Market Valuations for the three leases were obtained in April 2024 and have been provided to councillors as a confidential attachment to this report.
- 22. The last valuation was done in 2020 and CPI has been applied each year thereafter. The current market rent and rates for the properties are as follows:

Tenant	2023/2024 Rates	2023/2024 Rent (ex GST)	New Rental Valuation (ex GST)
Denmark Concrete	\$3,338.00	\$26,077.31	\$34,500.00
Soil Solutions	\$3,629.70	\$36,620.84	\$41,500.00
De Campo Transport	\$2,405.95	\$20,972.18	\$26,000.00

OTHER IMPLICATIONS

Environmental

23. There are no known significant environmental implications relating to the report or officer recommendation.

Economic

24. Each of the existing tenants operate commercial businesses that have employees. Two of the tenants have previously indicated that, at this point in time, it would be financially detrimental for them to relocate.

Social

25. There are no known significant social considerations relating to the report or officer recommendation.

RISK MANAGEMENT

26. A risk assessment has been undertaken per the Shire's Risk Management Governance Framework, and no risks have been identified in relation to the officer recommendation or the report.

9.4 COMMUNITY SERVICES

Nil

9.5 INFRASTRUCTURE SERVICES

Nil

10. MATTERS BEHIND CLOSED DOORS

Nil

11. NEW BUSINESS OF AN URGENT NATURE

Nil

12. CLOSURE OF MEETING

5.36pm – The Shire President declared the meeting closed.

The Chief Executive Officer recommends the endorsement of these minutes at the next meeting.

Signed: _____
David King – Chief Executive Officer

Date: _____

These minutes were confirmed at a meeting on the _____.

Signed: _____
(Presiding Person at the meeting at which the minutes were confirmed.)