



Major Land Transaction Business Plan

Proposed modifications to the existing Sub-lease with Kimberley Mineral
Sands

Submissions close at 4.30pm, 31 January 2022

17 December 2021

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Executive Summary

This Business Plan details the proposed review of the existing sub-lease between the Shire of Derby/West Kimberley and Sheffield Resources Ltd/Thunderbird Operations Pty Ltd (Sheffield/Thunderbird) for a portion of land and a portion of the jetty at the Derby Port Precinct.

Sheffield/Thunderbird is now seeking Council's endorsement to add a sub-lease participant and to extend the deadline of one of the milestones. The Shire is agreeable to these changes subject to other sub-lease modifications being put into place, like the Lessee taking responsibility in whole or in part for the management of selected assets, a higher jetty fee being applied, and additional payments being applicable if the Derby Jetty is not utilised by the Lessee.

In exchange for enabling the sub-lease changes, the Shire will receive additional payments from the Lessee in the sum of up to \$10,000,000 if the Derby Port is not used by the Lessee, or alternatively, an increased jetty usage fee if it does. The changes reflect a much improved outcome for the Shire.

The additional funds will be invaluable in assisting with meeting the Shire's asset management refurbishment responsibilities at the Derby Port Precinct, but can also be utilised to fund other improvements at the Derby Port, and indeed across the entire district of the Shire, as well as for district services improvements.

The project is incorporated in the Shire's current strategic planning documents, namely its Strategic Community Plan; Corporate Business Plan; and Strategic Resourcing Plan.

Council at its Ordinary Meeting of 9 December 2021, resolved that a business plan be prepared and advertised in accordance with sections 3.58 and 3.59 of the Local Government Act 1995. This Plan reflects mutually agreed modifications to the existing sub-lease.

Following the close of advertising, if there are any public submissions received, a further report to Council is to be prepared addressing the proposed transaction, and providing a recommendation as to whether Council should resolve to proceed (or to not proceed) with the transaction, and action steps for fully documenting the same.

The Shire of Derby/West Kimberley is therefore, inviting public submissions on the proposed transaction. Public Submissions close at 4.30pm, Monday 31 January 2022.

Amanda Dexter
CHIEF EXECUTIVE OFFICER

Business Plan Objectives

This Business Plan is designed to inform the public with respect to the Shire of Derby/West Kimberley's proposal to undertake a *'Major Land Transaction'* in respect to:

1. confirmation of the on-going sub-leasing of Derby Port precinct land to Kimberley Mineral Sands (KMS);
2. modifications to the existing sub-lease documents (participants, conditions and payments);
3. providing the opportunity for the public to make submissions regarding the Business Plan; and
4. Satisfy the requirements of Sections 3.58 and 3.59 of the Local Government Act 1995.

Major Land Transaction Overview

Background

The Shire of Derby/West Kimberley holds a Head-Lease with the WA State Government, providing the Shire with the right to manage the Derby Port Precinct and to operate and use the Jetty. The term of this lease is for 21+21 years from 1998, and expires on 29 June 2040. The Head-Lease provides the Shire with the ability (subject to the Head-Lessor's consent) to sub-lease any portion of the Head-Lease land or jetty area. Several sub-leases are already in existence, including a current sub-lease with Sheffield/Thunderbird, which is the subject of this Business Plan.

In November 2014 a state wide public *'expression of interest'* process was conducted to examine development options for the Derby Port. The sub-lease area proposed was unchanged from that occupied by Western Metals (1998 - 2003), Teck Cominco (2003 - 2009), and Rey Resources (2009 - 2015).

Council subsequently resolved (18/2015) that it:

"grants Sheffield Resources preferred proponent status for a bulk commodity handling area for a six month exclusive period to negotiate area and terms of sub-lease to the satisfaction of Council and the Minister for Transport. The area is to include part of the southern wharf abutment and parts of the main sub-lease area and car park as required."

The six months negotiation period was subsequently extended and the intention to dispose by sub-lease (S3.58 of the Local Government Act) was approved by Council to be advertised (160/2016) closing on 20 January 2017. At the 31 August 2017 Council Meeting, Council endorsed the sub-lease (101/2017) and authorised its execution.

The above process consequently resulted in Sheffield/Thunderbird entered into a sub-lease agreement with the Shire, which commenced 1 July 2018 and was to run until 29 June 2040 (the date the Shire's Head-Lease for its port precinct sub-lease with the Department of Transport expires).

Sheffield/Thunderbird entered into, with Shire endorsement, an Access Licence Agreement with Koolan Iron Ore Pty Ltd for part of this land from 1 April 2019.

The sub-lease also includes milestones that Sheffield/Thunderbird must meet, or otherwise the Shire of Derby/West Kimberley can withdraw from the arrangement. The sub-lessee has indicated that the requirement of sub-lease clause 10.1 (*vis. If the Sublessee has not substantially commenced the Development to the Sublessor's reasonable satisfaction by 31 December 2021, then the Sublessor may terminate this sub-lease by giving at least 14 days' Notice to the Sublessee*) is not able to be met. The sub-lessee is requesting Shire consideration to extend this milestone by up to five years.

Negotiations have subsequently occurred between the Shire and Sheffield/Thunderbird and a 'without prejudice' but mutual agreement on a range of sub-lease changes has been reached (and endorsed by the Council of the Shire of Derby/West Kimberley on 9 December 2021).

The project is incorporated in a general sense, in the Shire's strategic planning documents, namely-

Strategic Community Plan 2021-2031

3.1 Industry and Business Development and Growth:

3.1.4 Support industries, service providers and businesses in attracting and retaining workers and their families.

3.2 Strong Economy:

3.2.1 Recognise and promote the economic potential of the district.

Corporate Business Plan 2019-2023

1.1 Local Business Development and Employment Opportunities:

1.1.1.1 Assess opportunities to attract businesses to the district.

3.3 Reliable and Safe Transport Infrastructure:

3.3.5 Maintain wharves and lobby for funding.

4.4. Financial sustainability and accountability for performance:

4.4.3 Actively pursue alternative sources of income to fund the Shire's services and infrastructure.

Strategic Resourcing Plan 2019 – 2034

Appendix B9 (Forecast Statement of fixed Asset Movements 2019 – 2034)

highlights that \$1,227,760 has been allocated from own source revenue for Derby Wharf expenditure over the period 2019 to 2034.

The Derby Port Precinct has been operated by the Shire since 1998 when the Head-Lease commenced, and this area continues to have its place in the ongoing financial planning of the Shire. Operational revenue and expenditure estimates are incorporated into long term financial planning, but the financial provision available for jetty and support infrastructure maintenance is not sufficient to meet expected asset management standards. This proposed agreement with Kimberley Mineral Sands will provide an additional source of funds

which will be more than sufficient to address the Derby Port Precinct's asset management needs.

The proponents of the Kimberley Mineral Sands Mine, situated mid-way between the town-sites of Derby and Broome, have outlined at numerous local community meetings over several years how employment and business will benefit from the mine's operations, both for the Derby/West Kimberley and the Broome districts. The district, and the Derby Port Precinct, has the capacity to service this commercial development.

Site Description

The sub-lease land area is shown in the below aerial view and description:



Land: The land, water and seabed the subject of the Head-Lease, which includes the land comprised in certificate of title volume LR3 I 57 folio 128.

Premises: That portion of the Land identified as "*Subject Land*" on the plan annexed to this sub-lease as Annexure I comprising an area of approximately 2.6947 hectares, including all improvements, equipment, plant, fixtures (including the ship-loader and the area of the Jetty and Jetty structure under the area to the seabed) and personal property of any kind existing upon or within the Premises but excluding that portion of the Land that is the Seabed.

Licensed Area: That portion of the Seabed which is directly underneath the Jetty and which comprises the area which is 10 metres either side of the Jetty, as shown in blue on the aerial view below.

Project

The project the subject of this Business Plan is to make adjustments to the sub-lease already in place over a portion of land and a portion of the jetty at the Derby Jetty precinct (currently between the Shire of Derby/West Kimberley and Thunderbird Operations Pty Ltd, with Sheffield Resources Ltd as the guarantor).

The Local Government Act does not differentiate between a "sale" and a "lease". Both are treated in the same manner as far as S. 3.58 and S. 3.59 are concerned.

Sub-Lease Modifications

The below table provides the detail of the core sub-lease modifications proposed:

Topic/Outline	Proposed Position
Term and Fee:	No change – term to remain unchanged at 29 June 2040. Current sub-lease fee is \$133,520/annum, excluding GST). Same sub-lease fee structure to continue (vis. plus annual CPI and commercial review every five years).
Parties: to add a new sub-Lessee party, resultant from a restructuring (organisationally and financially) of the original mining proposal corporate makeup.	To include a new party, YGH Australia Investment Pty Ltd ACN 642 889 067 of 175 Hay Street, East Perth, Western Australia (YGH).
Transition from sub-lease with Shire to lease with Department of Transport: In effect this would have happened with the existing sub-lease, but a clause requiring that a transition arrangement to be negotiated for the period post 29 June 2040 would be advantageous.	A clause similar to that included within another of the Shire’s existing Derby Port Precinct sub-leases (with a separate sub-lessee) would clarify the Shire’s role in that process. That is, that KMS will post 29 June 2040, have a lease directly with the WA State Government.
Port Precinct Infrastructure Capital Construction: Sub-lessee to meet the agreed cost of any capital works required to repair/upgrade the Port Precinct Infrastructure to a standard consistent with its requirements. Including the public road access from the end of Main Roads WA’s Loch Street, to the port’s internal access roads (vis. Jetty Road*). <i>(*) Note: The Shire has asked Main Roads WA to consider taking over responsibility for Jetty Road. Sub-lessee responsibility for this thoroughfare will not be required if that occurs.</i>	Appropriate clauses to be included in the revised sub-lease to clarify the proportions of sub-lessee and Shire responsibilities. These costs are not required to be met if the sub-lessee does not export from the Derby Port Precinct. In reference to the expression ‘to a standard consistent with its [sub-lessee’s] requirements’, this should be understood as including an objective ‘good neighbour’ and ‘good corporate citizen’ test appropriate to the particular environment. It is not just a matter of what the sub-lessee can make do with for its own requirements, but also to ensure that the infrastructure is at a standard where other users are not unreasonably impacted by the sub-lessee’s use and can make reasonable parallel use.
Port Precinct Infrastructure Capital Maintenance: Sub-lessee will need to take responsibility for its share of the maintenance/the accelerated	Sub-lessee to be responsible for its share of the maintenance of those civil works upgrades required to enable it to export. Appropriate clauses to be included in the revised sub-lease to clarify

<p>depreciation of Port Precinct Infrastructure, like entrance roads and jetty access-ways within the port precinct proper. Sub-lessee to meet the agree portion of costs of any capital works required to maintain/repair the Port Precinct Infrastructure to a standard consistent with its requirements.</p>	<p>the proportions of sub-lessee and Shire responsibilities.</p> <p>In reference to the expression ‘to a standard consistent with its [Sub-lessee’s] requirements’, this should be understood as including an objective ‘good neighbour’ and ‘good corporate citizen’ test appropriate to the particular environment. It is not just a matter of what the sub-lessee can make do with for its own requirements, but also to ensure that the infrastructure is at a standard where other users are not unreasonably impacted by sub-lessee’s use and can make reasonable parallel use.</p>
<p>Jetty Infrastructure Capital Construction: Sub-lessee to meet the full cost of any capital works required to repair/upgrade the Jetty Infrastructure to a standard consistent with its requirements (this includes the entire southern abutment area, conveyor and the area outside of the sub-lease like the jetty road/access-way and abutment support legs).</p>	<p>This is essentially what the current arrangement is, but clarity could be improved within the sub-lease documentation.</p>
<p>Jetty Infrastructure Capital Maintenance - Sub-lessee to take responsibility for its share of the maintenance/accelerated depreciation of Jetty Infrastructure, like the abutment area, conveyor and the area outside of the sub-lease like the jetty roadway and abutment support legs.</p>	<p>This is essentially what the current arrangement is, but clarity could be improved within the sub-lease documentation.</p>
<p>Removal of Port and Jetty Infrastructure – The existing ship-loader and any other built infrastructure needs to be removed prior to the conclusion of the sub-lease, unless otherwise approved by Council.</p>	<p>Unless otherwise instructed by the Shire, sub-lessee to remove the Ship-Loader in an appropriate fashion (including ship-loader infrastructure on the land and the jetty structure) and leave the site suitably clean and safe.</p>
<p>Risk: this needs to accommodate normal commercial risk clauses, plus accommodate the risk responsibilities placed on the</p>	<p>Change the sub-lease to pass on to sub-lessee, the Head-Lease risk clauses that are currently accommodated by the Shire.</p>

Shire by the State Government through the Head-Lease.		
Sub-leasing and “Permitted Use” definition: Sub-leasing/sub-licensing is permitted but the term “Permitted Use” requires modification if the land is to continue to be “sub-let” (e.g. to Koolan Iron Ore Pty Ltd).	Minor modification to the term “Permitted Use” required, to enable Mt Gibson/Koolan Iron Ore Pty Ltd licence to continue.	
Shire Rates: This provision is included in the sub-lease, but has been complicated by the Koolan Iron Ore Pty Ltd Access Licence sub-lease issue.	Rates are to be payable from the date of the Koolan Iron Ore Pty Ltd Access Licence (1 April 2019). The rates would apply to the whole sub-lease area (not just to the Koolan Iron Ore access area).	
<p>Insurance Level and Contribution: Lessee contributes towards Shire’s insurance costs for the Jetty commensurate with its sub-leased area proportion of the entire jetty surface area. This matter is currently chargeable but complicated by the Koolan Iron Ore Pty Ltd Access Licence sub-lease issue.</p> <p>Note: 25 November 2021 Council Meeting resolved to allow a change of the insurance type for the Derby Jetty from “Replacement”, to “Removal of Debris”.</p>	<p>As per current sub-lease wording, sub-lessee to pay a share of the jetty insurance premium relative to its sub-leased area (approximately 25%) with contributions to commence from 1 January 2022.</p> <p>Shire to write off the insurance contribution charges levied up to 31 December 2021.</p> <p>If practical, a provision to be incorporated into the sub-lease under which sub-lessee acknowledges that the sub-lessor’s (Shire’s) insurance type is <i>Removal of Debris</i> only, not Replacement; and that catastrophic damage or destruction of the jetty by cyclone or other severe storm or tide event is to be considered as a Force Majeure event, resulting in no-fault termination of the sub-lease with no further liability for the Shire to reconstruct or for sub-lessee to continue to pay rent.</p>	
Jetty Product Tonnage Fee – To be increased to be consistent with other commercial options.	<p>To be increased to *\$2/tonne for first 1m tonnes, and \$1/tonne for each tonne above 1m tonnes exported within that same year of the sub-lease (+Consumer Price Index increases after an agreed period).</p> <p><i>*Clarifying Note: Shire may make temporary adjustments to this rate to take into consideration costs/contributions by the sub-lessee (vis. infrastructure/maintenance provisions outside of the leased area, and the “after FID” payment if Shipment IS through Derby Port in charging this fee).</i></p>	
Additional Payment – This is a payment in acknowledgement that	If Shipment is NOT through Derby Port, then...	If Shipment IS through Derby Port, then...

<p>the sub-lessee now advises that it effectively wishes to secure a first right of refusal to utilise the Derby Port to export mineral sands from – whilst maintaining other options which may actually be more likely to be utilised – Broome Port in particular. The Derby facility is thus tied up and not available to other potential users, with no guarantee or even likelihood of the Shire ultimately obtaining a valuable source of revenue from the sub-lessee – except via the Additional Payments negotiated. A source of revenue is required to maintain the Port and other Shire assets, and the Shire had been led to believe through representations from Sheffield over many years, would eventuate</p>	<p>*\$10,000,000 made up as follows: \$1m within an agreed days of Financial Investment Decision [FID] approval by the sub-lessee, or upon first commercial shipment of mine product, irrespective of departing location. This amount is to be unencumbered by any other events or decisions; \$1m within an agreed time following first commercial shipment of mine product (irrespective of departing location); \$1m upon a cash flow positive position being achieved by the sub-lessee (which effectively would be approximately 12 months after first commercial shipment) but in any event the payment is to be made no later than five years from Financial Investment Decision; and \$7m payable at 50c/tonne for mine product shipments from a port other than Derby, up to a maximum of 14m tonnes, payable for tonnes shipped from year five after FID.</p> <p><i>*CLARIFYING NOTES: It should be noted that the terms outlined would not confer on the Shire an absolutely-guaranteed 'Additional Payment' of \$10m or even \$1m. If the sub-lessee never obtains a favourable Financial Investment Decision approval and never makes a shipment, then the Shire does not obtain any Additional Payment.</i></p>	<p>**\$1m within an agreed days of FID approval by the sub-lessee, or upon first commercial shipment of mine product, irrespective of departing location. This amount is to be unencumbered by any other events or decisions.</p> <p><i>**CLARIFYING NOTE: If product is exported across the Derby Jetty, the Shire will receive \$1m plus higher jetty fees (of approximately \$1m additional per year), but not the \$7m royalty or the other \$2m in payments.</i></p>
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	<p><i>If the sub-lessee obtains a favourable Financial Investment Decision approval but never makes a shipment, then the Shire receives \$1m only.</i></p> <p><i>What these terms would achieve, however, is to ensure that if the sub-lessee does go ahead with mining and export, then the Shire will obtain at least \$1m and probably \$10m if the export doesn't end up being from Derby Port.</i></p>	
<p>Community wellbeing commitment – A commitment by KMS to enhance the wellbeing of the district's communities.</p>	<p>KMS to consider the incorporation of a "Kimberley Living Allowance" of 150%, which will provide extra incentive to workers who are willing to live in or relocate to the district (Shire of Derby/West Kimberley) and "Drive-In-Drive-Out" to the mine for employment.</p>	

Considerations

There is no change to the term of the sub-lease. It will remain unchanged at 29 June 2040, which is the date that the Shire's Head-Lease with the State Government expires. There is also no change to the annual rental (currently \$133,520/annum, excluding GST). The same sub-lease fee structure is also to continue (vis. plus annual CPI and commercial review every five years).

Whilst already included in the current sub-lease, there will be clarity around the commencement date for the payment of Shire rates and the Lessee's contribution to the costs of jetty insurance. The insurance contribution is based on the actual sub-lease area relative to the total jetty area (so approximately 25%). The actual financial contribution will depend on the level of insurance chosen. Shire municipal rates will be charged out similarly to all other properties/leasehold (these will be based on the State Valuer General's Gross Rental Values and multiplied by the Shire's annual GRV rate in the dollar) - again, the same as for other rates properties and the same as is currently provided for in the sub-lease.

The major consideration differences are outlined below:

Current Sub-Lease Provision	Proposed Sub-Lease Provision	Variation
<p>Parties: Parties were, Shire of Derby/West Kimberley; Thunderbird Operations Pty Ltd; and Sheffield Resources Limited.</p>	<p>To include a new party, YGH Australia Investment Pty Ltd ACN 642 889 067 of 175 Hay Street, East Perth, Western Australia (YGH).</p>	<p>NEUTRAL: Whilst this represents a different sub-lease party make-up, there is in effect no impact on the purpose and intention of the sub-lease.</p>
<p>Port Precinct Infrastructure Capital</p>	<p>Sub-lessee to meet the agreed portion of these</p>	<p>POSITIVE: Estimates of between \$2.25m to \$4.0m of</p>

<p>Construction: No requirement for the sub-lessee to meet the cost of any capital works required to repair/upgrade the Port Precinct Infrastructure to a standard consistent with its requirements (other than the infrastructure it builds on the sub-leased area for its sole use).</p>	<p>costs (if sub-lessee utilises the Derby Jetty).</p>	<p>works are required for both construction and maintenance over the term of the sub-lease. Works that might otherwise have been required to be supplied entirely by the Shire.</p>
<p>Port Precinct Infrastructure Capital Maintenance: No requirement for the sub-lessee to meet the cost of any maintenance of jetty precinct infrastructure (other than the infrastructure it has built on the sub-leased area for its sole use).</p>	<p>Sub-lessee to meet the agreed proportion of these costs (if sub-lessee utilises the Derby Jetty).</p>	<p>See variation estimate and impact change outlined above.</p>
<p>Jetty Infrastructure Capital Construction: The current arrangement is that the sub-lessee will construct the necessary infrastructure it requires for its use of the sub-leased area, but clarity could be improved within the sub-lease documentation about where the boundary is for that work.</p>	<p>Sub-lessee to meet the full cost of any capital works required to repair/upgrade the Jetty Infrastructure to a standard consistent with its requirements (including where applicable to the southern abutment area, conveyor and the area outside of the sub-lease like the jetty roadway and abutment support legs).</p>	<p>POSITIVE: Additional contribution required by the sub-lessee will depend on volumes and usage. Costs have not been sought, but it is understood that it could be in the order of say \$100 - 200,000 over the term of the sub-lease.</p>
<p>Jetty Infrastructure Capital Maintenance - . This is essentially what the current arrangement is, but clarity could be improved within the sub-lease documentation.</p>	<p>Sub-lessee to take responsibility for its share of the maintenance/accelerated depreciation of Jetty Infrastructure, consistent with the decided requirement for capital infrastructure provision.</p>	<p>POSITIVE: Additional contribution required by the sub-lessee will depend on volumes and usage. Costs have not been sought, but it is understood that it could be in the order of say \$100,000 over the term of the sub-lease.</p>
<p>Removal of Port and Jetty Infrastructure – No requirement for the sub-lessee to remove the existing ship-loader.</p>	<p>Unless otherwise instructed by the Shire, sub-lessee to remove the ship-loader in an appropriate fashion (including ship-loader</p>	<p>POSITIVE: Costs for ship-loader removal have not been sought, but it is understood that it could be in the order of \$100,000.</p>

	infrastructure on the land and the jetty structure) and leave the site suitably clean and safe.	
Risk: this needs to accommodate normal commercial risk clauses, plus accommodate the risk responsibilities placed on the Shire by the State Government through the Head-Lease.	Change the sub-lease to pass on to Sheffield/Thunderbird, the Head-Lease risk clauses that are currently accommodated by the Shire.	NEUTRAL/POSITIVE: Costs are only incurred if a risk event occurs, but the transfer of risk will reduce/eliminate the potential of costs being borne by the Shire.
Sub-leasing and “Permitted Use” definition: Sub-leasing is permitted but the term “Permitted Use” requires modification if the land is to continue to be “sub-let” (e.g. to Koolan Iron Ore Pty Ltd).	Minor modification to the term “Permitted Use” required, to enable Mt Gibson/ Koolan Iron Ore Pty Ltd licence to continue.	NEUTRAL/POSITIVE: There is no direct financial benefit to the Shire from this licenced use, but it does assist the sub-lessee to keep its business sustainable, and that does have positive consequences for the district.
Shire Rates: This matter is currently chargeable but has been complicated by the Koolan Iron Ore Pty Ltd Access Licence sub-lease issue.	Payment for rates from the access date (1 April 2019) of the Koolan Iron Ore Pty Ltd Access Licence. The rates would apply to the whole sub-lease area (not just to the Koolan Iron Ore access area).	NEUTRAL/POSITIVE: This is an existing commitment, but the new arrangement confirms the start date for these payments.
Insurance Level and Contribution: Lessee contributes towards Shire’s insurance costs for the Jetty commensurate with its sub-leased area proportion of the entire jetty floor area. This matter is currently chargeable but complicated by the Koolan Iron Ore Pty Ltd Access Licence sub-lease issue. 25 November 2021 Council Meeting resolved to allow a change of the insurance type for the Derby Jetty from “Replacement”, to “Removal of Debris”.	As per current sub-lease wording, sub-lessee to pay a share of the jetty insurance premium relative to its sub-leased area (approximately 25%) with contributions to commence from 1 January 2022). Shire to write off existing insurance contribution charges up to 31 December 2021. If practical, a provision to be incorporated into the sub-lease under which the sub-lessee acknowledges that the Sub-lessor’s (Shire’s)	NEUTRAL: If it is possible to reduce insurance coverage to Removal of Debris only, savings on insurance premium costs can be made. These savings will also be enjoyed by the sub-lessee. The insurance payment clause is an existing commitment, but the new arrangement confirms the start date for these payments. The Shire will need to write off charges made to the sub-lessee up the period 31 December, 2021.

	<p>insurance type is Removal of Debris not Replacement; that catastrophic damage or destruction of the jetty by cyclone or other severe storm or tide event is considered Force Majeure resulting in no-fault termination of the sub-lease with no further liability for the Shire to reconstruct or for the sub-lessee to continue to pay rent.</p>	
<p>Jetty Product Tonnage Fee – To be increased to be more consistent with other commercial options.</p>	<p>To be increased to *\$2/tonne for first 1m tonnes pa, and \$1/tonne for each tonne above 1m tonnes exported within that same year of the sub-lease (+Consumer Price Index increases after an agreed period).</p> <p><i>*Clarifying Note: Shire may take into consideration the “after FID” payment if Shipment IS through Derby Port in charging this fee.</i></p>	<p>POSITIVE: Up to \$1m per annum in additional jetty usage fees will be received.</p> <p><i>For the point of clarity, if 1.5m tonnes are exported in the same sub-lease year, the tonnage fee calculation would be (1m tonnes @\$2/tonne)+(½m tonnes @\$1/tonne) = \$2.5m</i></p>
<p>Additional Payment – No additional payments were applicable in the original sub-lease.</p>	<p>If Shipment is <u>not</u> through Derby Port, then \$10,000,000</p> <p>If Shipment <u>is</u> through Derby Port, then \$1m, plus higher jetty fees (of approximately \$1m additional per year).</p>	<p>POSITIVE: Up to \$10m if Derby Port not utilised, or...</p> <p>higher jetty usage fees if it is (with those higher jetty fees amounting to potentially \$10 – 15m over the term of the lease).</p>
<p>Community wellbeing commitment – A commitment by the sub-lessee to enhance the wellbeing of the district’s communities.</p>	<p>Sub-lessee to consider the incorporation of a “Kimberley Living Allowance” of say 150%, which will provide extra incentive to workers who are willing to live in or relocate to the district (Shire of Derby/West Kimberley) and “Drive-In-Drive-Out” to the mine for employment.</p>	<p>NEUTRAL: This is not a sub-lease condition, but it will be an advantage for the community.</p>

Legislative Requirements

Preparation of a Major Land Transaction Business Plan

Section 3.59 of the Local Government Act 1995 details the process governing 'Major Land Transactions'.

A 'Major Land Transaction' is defined by the Act and means a land transaction (other than an exempt land transaction) if the total value of -

- (a) the consideration under the transaction; and
- (b) anything done by the local government for achieving the purpose of the transaction, is more, or is worth more, than the amount prescribed for the purposes of this definition.

For the Shire of Derby/West Kimberley, that means a transaction worth more than \$2 - 3 million. The proposal is well in excess of this expenditure benchmark and so S. 3.59 of the Local Government Act applies and the Council is required to prepare a Major Land Transaction Business Plan before entering into this 'Major Land Transaction'.

A Major Land Transaction Business Plan must include an overall assessment of the land transaction, including the legislatively required considerations of:

- its expected effect on the provision of facilities and services by the local government;
- its expected effect on other persons providing facilities and services in the district;
- its expected financial effect on the local government;
- its expected effect on matters referred to in the local government's current plan (vis. its Corporate Business Plan and its Strategic Community Plan);
- the ability of the local government to manage the undertaking or the performance of the transaction; and
- any other matter prescribed for the purposes of this subsection.

This Business Plan has been written so as to comply with the requirements of Section 3.59 (Commercial Enterprises by Local Governments) of the Local Government Act 1995 and the Local Government (Functions and General) Regulations 1996 and to provide members of the public with sufficient information so as to make an informed judgement in respect to this proposal.

Assessment of Major Land Transaction

Effect on the Provision of Facilities and Services by the Shire.

The changes to the sub-lease will have a positive effect on the provision of facilities and services by the Shire, as the new arrangements will provide a much more favourable financial result for the Shire than was previously the case. That improved financial position will enable the Shire to fund much needed jetty and other port precinct maintenance currently due to be undertaken, and also the expected maintenance requirements of the jetty structure and the other port precinct infrastructure anticipated over the next 18½ year period to the end of the Shire's Head-Lease (on 29 June 2040). These funds will not only enable the continued safe public usage of the jetty and its surrounds, but there can be every expectation that services and facilities at this location will be improved over the term of the Head-Lease.

The Thunderbird project is planned to have two stages and there would be approximately 26 round trips per day delivering product to the Derby Port Precinct in Stage 1 of the Project and approximately 42 round trips per day in Stage 2 of the Project. RAV10 Super-quad vehicles in the typical form of 25 or 26 axle truck combination trucks are anticipated (see example vehicle make-up below). The new sub-lease provisions require the sub-lessee to undertake the necessary civil infrastructure upgrades, and undertake the necessary maintenance, but these vehicles will utilise Jetty Road and Loch Street through the Derby Town-site, and Derby and Great Northern Highways external to the town-site, so there will be inconvenient traffic volumes and additional noise generated. Whilst not impacting upon Shire roads, there will be inconvenience to road users and residents', particularly in the vicinity of Loch Street.



The duration of the project life is approximately 35 - 40 years based on average annual tonnages provided in the table below.

Product	Production Rate (tpa) (Average Per Annum over Period)	
	Stage 1 FY 2 to 4	Stage 1 Life of Mine
Zircon Concentrate	200,000	188,000
LTR Ilmenite	500,000	448,000
Titano-Magnetite	190,000	180,000

Whilst the additional usage will be consistent with normal commercial usage levels of a fully operational port/jetty, current users of the Derby Jetty and the port precinct generally will be inconvenienced by that additional usage. That inconvenience is considered to be related more to the fact that usage of the jetty is currently much lower than it is capable of delivering and so any increase will be more noticeable and impactful, and not that the usage is unduly excessive for the size and scale of the Derby Port facility.

Effect on Other Persons Providing Facilities and Services in the Region

There are no other providers of similar mine product within the Shire of Derby/West Kimberley. There will be a positive impact for employees and commercial enterprises who either currently live/operate from Derby, or might wish to relocate to the district.

There is a great deal of potential for community members of both the Derby and Broome districts wishing to take up employment at the Thunderbird mine (or for a business working for the mine). There is also good potential for the local businesses of those two districts to gain additional/new business to service the mine's operational activities.

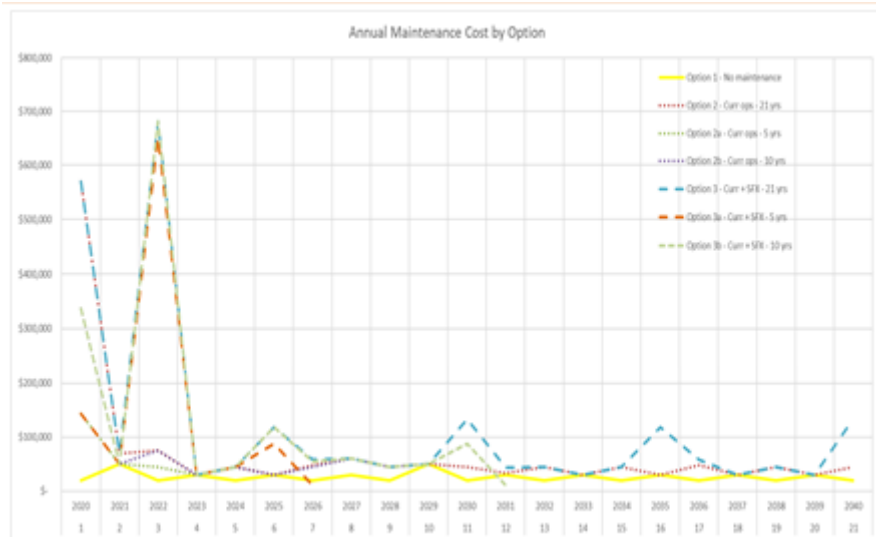
Expected Financial Effect on the Shire of Derby/West Kimberley

The Shire's annual budgets are constantly under pressure to balance revenue limitations and expenditure needs and without port revenue sources, there is no realistic capacity to fund the port precinct's infrastructure and maintenance needs. Even though there are some areas still subject to final negotiation, the changes proposed to the sub-lease will substantially improve the port's financial performance and will enable the Shire to meet its Head Lease requirements to maintain the facility.

With improved disciplines, practices and procedures introduced over the last several years, the Derby Port has enjoyed an operational surplus, but when capital expenditure and depreciation is taken into, it consistently operates in a nett loss-making position (see summary table below). The nett position fluctuates according to usage and capital expenditure needs, and so a longer term average is the best reflection of ongoing annual financial position. The average annual nett loss is \$555,657 for the six year period to 30 June 2020.

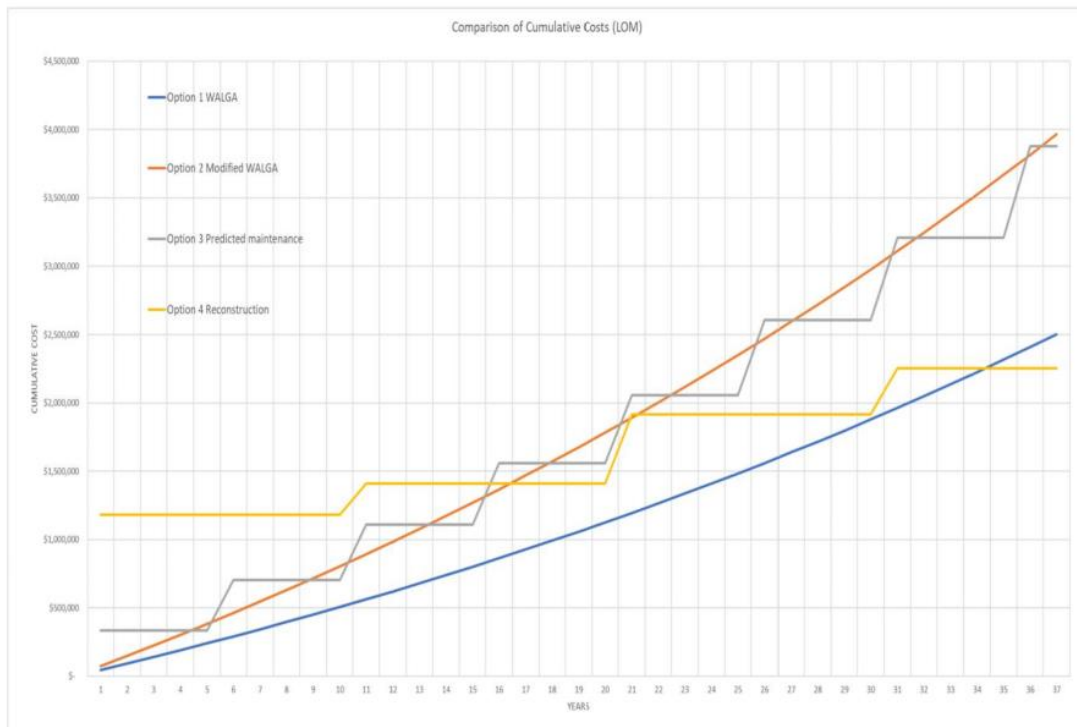
	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Income	1,094,600	653,176	189,124	975,743	1,423,444	1,416,424
Expenditure	806,221	669,962	879,310	590,266	871,332	797,760
Operating Position	288,379	16,786	690,186	385,477	552,112	618,664
Capital Expenditure	265,369	18,033	312,196	907,901	463,324	1,383,784
Depreciation	233,934	114,061	97,480	184,886	244,803	245,828
Grand Total	210,924	148,880	1,099,862	707,310	156,015	1,010,948

Whilst there are numerous models for calculating long term maintenance requirements, they all revolve around a combination of asset consumption and asset provision standards. The "optimal asset refurbishment/maintenance level" recommended for the Derby Jetty structure has been estimated to be \$9,682,000 for the period 2020 – 2040 (2040 being the end of the Head Lease that the Shire has with the State Government). An alternative calculation based on a "basic level of maintenance" but satisfactory to accommodate the requirements of the sub-lessee's operations, has been estimated at \$2,436,210 for the same period (vis. to 2040). The Shire's Strategic Resourcing Plan 2019 – 2034 shows a limited capacity to adequately fund the Derby Port Precinct's asset management needs. The Shire's Strategic Resourcing Plan does highlight an ongoing commitment to an integrated approach to planning for the future by showing a picture of the Shire's long term financial and asset management circumstances, but only \$1,227,760 has been allocated from the Shire's own sources revenue for Derby Wharf expenditure over the period 2019 to 2034. This allocation of \$1,227,760 (2019 - 2034) is much less than is required to maintain the jetty structure in accordance with the Shire's Head Lease requirements, although any contribution from the sub-lessee for jetty maintenance under the original sub-lease would have been in addition to this sum.



Over \$1m is required to be spent in the first couple of years on asset management (using the “basic level of maintenance” standard) and that work should be undertaken as soon as funds can be located. These planned works and the port revenue streams align to a reasonable degree, and will over the longer term provide the asset management funds needed to meet the expectations of the Shire’s Head Lease with the State Government. If exports can occur through the Derby Port in line with the estimated production tonnages of 800,000+ tonnes per annum, then the Shire will earn an additional \$800,000pa in port fees than the original lease provided for, which will over time as outlined above, provide the necessary funds to meet the current “asset management cost gap”. It is understood that exports of up to 1m tonnes per annum could be possible, further increasing the financial benefits for the port and the Shire.

To enable the sub-lessee to safely export its products, the sub-lessee has also agreed to meet its agreed share of the costs of civil infrastructure upgrades, refurbishments, and maintenance to Derby Port Precinct infrastructure (vis. the Shire may agree to some cost adjustments to those contributions if works are considered to be outside the scope of the sub-lessee’s port usage requirements). This is a reasonable expectation of a development as significant as the sub-lessee’s (noting that its use of the Derby Port will reflect approximately 90% of the total tonnage throughput of that facility). The sub-lessee will also meet its share of the civil works requirements of the Jetty Road causeway and any internal port roads utilised, which were principally a Shire responsibility in the original lease. The cost of those works (to accommodate up to 1m tonnes/annum of cartage) are estimated to be in the order of \$2.25 – 4.0m over the 37 year life of the mine. This mine life estimate extends past the current 2040 Shire Head-Lease expiry, with costs to 2040 being estimated at some \$1.0 – 1.6m.



If the Derby Port is used by the sub-lessee, which is the preferred Shire scenario, the Shire will now receive a higher than previously agreed tonnage rate (namely, a 100% increase for the first 1m tonnes exported every year). Just the estimated increase in fees receivable is anticipated to be \$10 – 15,000,000 over the term of the lease and whilst these funds are only received as exports occur, they will be more than sufficient to fund the asset management requirements of the Derby Port Precinct until the conclusion of the Head Lease in 2040.

The sub-lessee in recognition of the fact that it might not use the Derby Port at all, has also agreed to provide a payment to the Shire (of up to \$10m) if that scenario eventuates. That \$10m alone, although not required by contract to be spent at the Derby Port, could also fund the entire asset management needs of the Derby Port Precinct until the conclusion of the Head Lease in 2040.

The Shire of Derby/West Kimberley is currently progressing its new Long Term Financial Plan, and so will be able to update it with these financial modifications prior to the port being actively used by the new sub-lessee.

Any business growth in and around the Derby Town-site will foster additional employment, additional services, and potentially also, some additional Shire rates revenues.

Effect on Matters Referred to in the Plan for the Future

The proposed development accords with the vision and aspirations of the community and the strategies of the Shire of Derby/West Kimberley’s plans for the future. The project is incorporated (either directly or by way of general reference to these types of economic development opportunities) in the Shire's strategic planning documents, namely-

Strategic Community Plan 2021-2031

3.1 Industry and Business Development and Growth:

3.1.4 Support industries, service providers and businesses in attracting and retaining workers and their families.

3.2 Strong Economy:

3.2.1 Recognise and promote the economic potential of the district.

Corporate Business Plan 2019-2023

1.1 Local Business Development and Employment Opportunities:

1.1.1.1 Assess opportunities to attract businesses to the district.

3.3 Reliable and Safe Transport Infrastructure:

3.3.5 Maintain wharves and lobby for funding.

4.4. Financial sustainability and accountability for performance:

4.4.3 Actively pursue alternative sources of income to fund the Shire's services and infrastructure.

Strategic Resourcing Plan 2019 – 2034

Whilst this Plan does highlight an ongoing financial commitment for Derby Wharf asset management, only \$1,227,760 is provided for until 2034, against an expected "optimum maintenance standard" requirement of some \$9,682,000 (albeit this estimate is to 2040). This allocation of \$1,227,760 is much less than is required* to maintain the jetty structure to an optimal level, and is even less than the \$2,436,210 "basic" level of maintenance estimated to be required.

(*) The proposed increased funding contributions by the sub-lessee will more than adequately accommodate the additional expenditure required to satisfactorily maintain the jetty and the other assets within the Derby Port Precinct.

Ability of the Shire to Manage the Undertaking

The Shire has considerable experience with managing the Derby Port. It has been doing so since 1998 and in more recent years has implemented improved disciplines, practices, and procedures to ensure that the port is operating to a satisfactory standard. Whilst volumes of export and ship movements will increase, the Shire has in place the processed and procedures to accommodate the expected demands that this increase will generate. In addition, the Shire's senior employees have access to Kimberley Ports Authority through an officer based Ports Advisory Group, which shares information and best practice operational techniques.

Risk Management Considerations

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Business Interruption: Other users at the jetty might be inconvenienced by sub-lessee's use.	Possible	Moderate	Medium	Coordination of users and constant information flow between parties should minimise any inconvenience. This is

				not different to that which was originally proposed.
Community: Community access to the jetty will be disrupted.	Possible	Major	Medium	Manage the jetty's operations to minimise inconvenience. This is not different to that which was originally proposed.
Environment: Potential for spills of mine product or ship materials/liquids.	Unlikely	Severe	High	Ensure that good operational practices are in place and maintained. This is not different to that which was originally proposed.
Financial: Potential for payments by sub-lessee to not be received as agreed.	Unlikely	Severe	High	Ensure that legal agreements are in place and recovery actions can be progressed if required. Whilst the financial sums are much higher, this is not different to that which was originally proposed.
Legal & Compliance: Head-Lease or Local Government Act non-compliances arise.	Unlikely	Moderate	Medium	Maintain Shire Legal Advisor involvement.
Property: Damage to the jetty by export operations occurs.	Unlikely	Major	Medium	Manage jetty operations in accordance with normal port operating standards. This is not different to that which was originally proposed.

Business Plan Advertising and Submissions

Section 3.59 of the Local Government Act 1995 requires the Council to give state-wide and local public notice of the Major Land Transaction, inviting public submissions for a minimum period of six weeks. A copy of this business plan may also be inspected or obtained from the Shire of Derby/West Kimberley's offices in Derby, and in Fitzroy Crossing.

A notice advertising this Business Plan and seeking public submissions in respect to its content will be placed in the West Australian Newspaper on Monday 20 December 2021 and also on the Shire's notice boards, web page, and in its social media platforms. A copy of the public notice is below.

Shire of Derby/West Kimberley

Major Land Transaction

Renegotiation of an existing sub-lease between the Shire of Derby/West Kimberley and Sheffield Resources Ltd and Thunderbird Operations Pty Ltd over a portion of land and a portion of the jetty at the Derby Port Precinct.

Submissions are invited on a Shire of Derby/West Kimberley proposal to commence a major land transaction. The transaction is the renegotiation of an existing sub-lease with Sheffield Resources Ltd and Thunderbird Operations Pty Ltd.

The sub-lease revenue and several sub-lease clauses are proposed to be adjusted for the remainder of the term of the sub-lease (which is due to expire on 29 June 2040). Up to \$10 million of additional payments could be applicable if Derby Port is not utilised by the Lessee, and approximately \$10-15m of additional port fees could apply if Derby Port is utilised.

Our Business Plan has been prepared, providing the required details of the major land transaction. A copy of the Business Plan may be inspected or obtained at the office of the Shire of Derby West Kimberley. A copy is also available on the Shire's webpage.

Written submissions about the proposed transaction are invited by 4:30 pm on 31 January 2022 and are to be addressed to Chief Executive Officer, Shire of Derby West Kimberley, PO Box 94, Derby, W.A., 6578, or via email at neil.hartley@sdwk.wa.gov.au

For further information please contact Neil Hartley director strategic business on neil.hartley@sdwk.wa.gov.au

*Amanda Dexter
Chief Executive Officer*