



BUSINESS PLAN

(In accordance with Section 3.59 of the *Local Government Act 1995*)

FOR THE

ST PATRICK'S CONVENT SCHOOL (Lots 25 and 27 South Street,
York, WA)



SHIRE OF YORK

February 2018

INTRODUCTION

This Business Plan is designed to provide an opportunity for members of the community to make a submission on the future use of the St Patrick's Convent School. The Business Plan is structured to ensure compliance with the *Local Government Act 1995*.

The Business Plan provides details on the following to aid the consideration of the matter by members of the community:

- Background to the acquisition of the property;
- Building and site information including a description of the site, building condition, conservation strategy and valuation information;
- Costs to upgrade/repair the building;
- Future options for the Shire regarding the building/site;
- The matters a Business Plan should consider to be compliance with Section 3.59 of the *Local Government Act 1995*;
- Details on inspections and how to make submissions.

The Business Plan will be advertised for a period of 6 weeks and members of the community are encouraged to make a submission to Council on what they consider the Shire should do with the building into the future.

BACKGROUND TO ACQUISITION OF PROPERTY BY THE SHIRE OF YORK

The site was purchased by the Shire of York in 2015 by the then Commissioner James Best.

The process used by the Shire to purchase the site was very controversial and attracted a lot of community interest and opinion. The community raised significant concerns regarding the proposal, process and entire purchase of the building at Council meetings and in correspondence at the time. Much of this was not addressed and the purchase proceeded.

The following outlines the main points in chronological order relating to the acquisition of the property for which the Shire has records:

- 28 May 2015: Memo was sent from Acting CEO to Special Projects Officer advising the Shire is keen to put an offer in to purchase the building/sites and asking him to undertake Due Diligence Check on the building.
- 4 June 2015: An email was received from Department of Local Govt to Acting CEO providing advice on implications of Section 3.58 of the *Local Government Act 1995* relating to “proposed lease back” of the property to the current owners. The department suggested that before finalising the purchase, the Shire advertise that it proposes to acquire the property and lease back the property to the vendors for the term and consideration and invite submissions from the community in accordance with the *Local Government Act 1995*.
- 11 June 2015: A Site Inspection and Report from Structural Engineers was received by the Shire regarding the building on the property. The report identified the building was in fair condition considering its age however identified several areas of concern that should be repaired.
- 19 June 2015: Correspondence was received from York Real Estate agents advising the offer to purchase 25 & 27 South Street had been accepted. (There is correspondence received dated 8 April with a copy of the offer and acceptance however this was subsequently updated to the date of 19 June. The offer and acceptance was dated 18 June so it is assumed by Officers this was simply an administration error in the dating of the letter.) There were four conditions on the offer and acceptance which become important during the process as follows verbatim:
 - *The buyer is aware there is a memorial and an easement on the property*
 - *Annexures A & B Form part of this contract*
 - *This offer is subject to the buyer being satisfied as to the engineers report on the building by the 25th June 15. If they buyer does not terminate this offer by this date this clause will be deemed to be waived.*
 - *This offer is subject to budget approval from the Shire of York by 25 June 2015.*
- 22 June 2015: Email from Real Estate Agents to Commissioner Best asking which settlement agent will be used for the purchase. The Commissioner forwarded this on to the Acting CEO to advise.
- 25 June 2015: Council meeting to adopt the 2015/16 financial year budget which included for the first time, reference to the purchase of land and building and associated loan as a single line item in the budget.
- 29 June 2015: Email from Acting CEO to Commissioner regarding contact received from the Department of Local Government hoping the Shire could pull out of the purchase as the Department believed Council needed a formal delegation before the conditional offer was submitted.
- 29 June 2015: Acting CEO emailed Mcleods Barristers and Solicitors seeking legal advice.
- 30 June 2015: McLeods emailed Acting CEO providing advice on how to cancel the contract and have the matter considered by Council. The Acting CEO forwarded this to the Department of Local Government.

- 2 July 2015: Ordinary Council meeting where two items relating to this matter were considered by the Commissioner days before his role as Commissioner finished. The Council (Commissioner) resolved as follows:
 - *Confirming the delegation of power to the Acting CEO on 18 June to negotiate an offer for purchase of 25 and 27 South Street and endorsing the purchase of the site for the agreed amount of \$625,000 including a \$5,000 deposit.*
 - *Making formal application for a loan to WA Treasury Corporation for \$625,000 to acquire the lots.*
- 3 July 2015: Variation to Contract for Sale of Land signed by both parties advising the following:
 - *Extend the finance clause date to now be the latest time 4pm on 3 August 2015*
 - *To waive clause 3 & 4 of the special conditions that are now satisfied.*
- 14 July 2015: Shire paid \$5,000 deposit associated with the purchase.
- 4 August 2015: The new Shire President and Acting CEO signed satisfaction of the property inspection and authority to proceed document for settlement agents and affixed the common seal.
- Undated file note was placed on file from the Acting CEO advising the following (in summary):
 - *The selling agent was to hold documents and take no further action until contacted by the Shire after the adoption of the 2015/16 budget at Special Council meeting.*
 - *Following 2 July Special Council meeting the Acting CEO attended the Agents office to complete the procedure whereby the original offer was to be cancelled and attached to a revised offer and acceptance and forwarded to the Stamp Office*
 - *The Acting CEO advises the agent decided to short circuit the process and register the first offer and then refused to have it withdrawn from the Stamp Office using the option to amend the original offer. This meant that the two conditions on the original purchase being to pass the budget and have a satisfactory structural engineers report were deleted.*
- 19 August 2015: The sale then progressed and settlement occurred.
- 10 September 2015: Following clarification from staff the Structural Engineers advised the building should not be used by the public until the matters identified in the structural report have been addressed.
- October 2015: A Building Compliance Assessment was undertaken by Shire staff to determine works required to use the building.
- A valuation for the site was obtained on 2 November 2015 which valued the building and land at \$555,000.

During this process members of the community raised concerns regarding the purchase of the building with the Council at the time. This primarily occurred at Council meetings and included concern with the condition of the building, the lack of consultation with the community, the proposed lease back arrangements with the previous owners, the ability for the Shire to maintain the building and the rationale for purchasing this building at a time without a Council in place.

Based upon the information in Shire records, Officers referred the process by which the purchase occurred to the Public Sector Commission on 14 July 2017 in accordance with Statutory obligations.

The Public Sector Commissioner reviewed the matter and advised the Shire that it was referring the matter to the Crime and Corruption Commission. Correspondence was received by the Shire from the Crime and Corruption Commission dated 14 September 2017 which advised that no further action will be taken by the Commission. Recognising that the Shire records may be limited regarding this matter, if further information about the acquisition is identified through this consultation process, Officers may follow the matter up with the Crime and Corruption Commission.

BUILDING AND SITE INFORMATION

DESCRIPTION OF SITE

Property Address	25-27 South Street, York WA 6302	
Title Details	Legal Identifier	Lot 801 on Deposited Plan 64073 Certificate of Title Volume 2742, Folio 30
	Legal Identifier	Lot 800 on Deposited Plan 64073 Certificate of Title Volume 2742, Folio 29
	Registered Proprietor	Shire of York
Planning	Zone	Town Centre
	Local Authority	Shire of York
Description "As Is"	Property Type	Commercial
	Building Type	Commercial Building
	Built About	1873
	Walls	Stone/Brick/Timber
	Roof	Iron
	Number of Storeys	1
	Current Use	Vacant
	Lettable Area	319.7m ²
	Land Area	2,659m ²

Heritage

The property is currently registered on the State Register of Heritage Places.

The property is listed on the Shire of York’s Municipal Inventory under classification “Category 1B” which states that the subject property is:

A place of considerable cultural heritage significance to Shire of York that is worthy of recognition and protection through provisions of the Shire of York’s Town Planning Scheme. Recommend: Retain and Conserve the place. Planning application needs to be submitted to Shire of York for any proposed development. Full consultation with property owner prior to making the recommendation.

The subject property is also listed on the “Register of the National Estate”.

Native Title

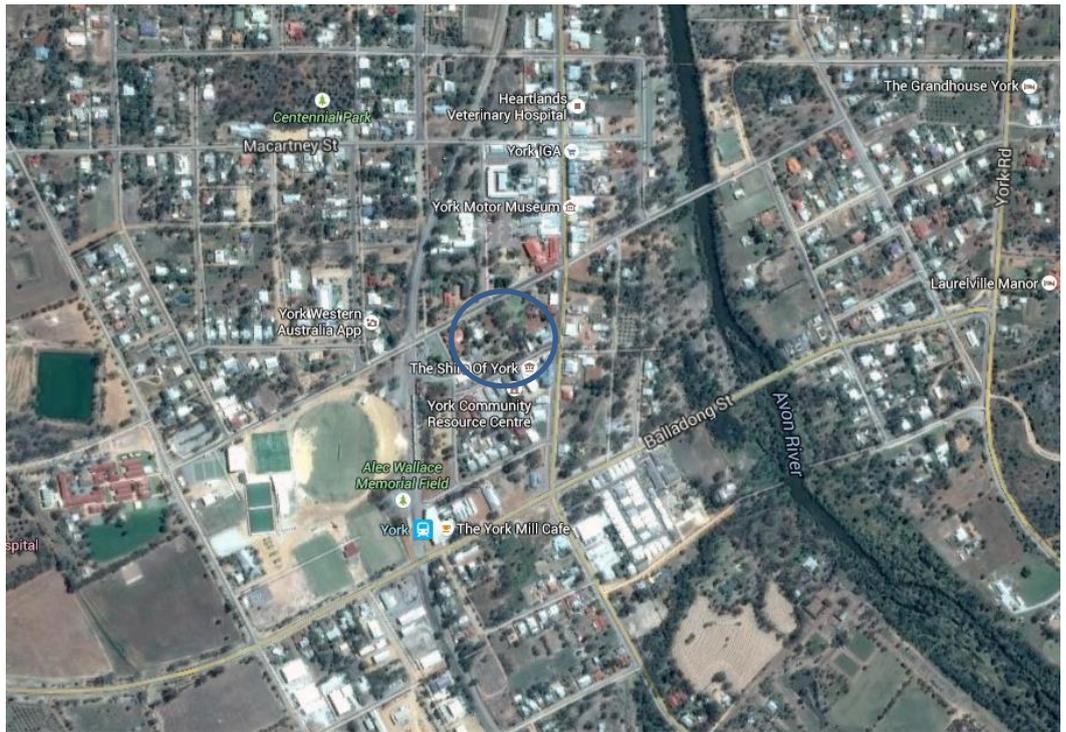
Under the *Native Title Act 1993*, Native Title has been extinguished over land which is held in freehold. Enquiries with the Department of Planning and Infrastructure reveal that Special Leases under Section 116 of the *Land Act 1993* also extinguish Native Title.

Encumbrances

Reference No	Details	Registration Date
Lot 801 H110396	Memorial. <i>Heritage of Western Australia Act 1990.</i>	17.5.1999
Lot 800 N/A	Easement Burden created under Section 27A TP & D Act for sewerage purposes to Water Corporation. See Deposited Plan 64073 as created on Deposited Plan 30513.	N/A
H110396	Memorial. <i>Heritage of Western Australia Act 1990.</i>	17.5.1999

The easement is approximately 3m wide from front to rear along the eastern boundary of Lot 800.

Site Location and Lot Map



BUILDING CONDITION

A "Site Inspection and Report – 29 South Street, York" was completed by McDowall Affleck consulting engineers and received by the Shire of York on 11 June 2015. A copy of this report is attached at Appendix A for information. This report details the results of a site inspection carried out and details the condition of the building.

The reports concluded:

"The building is in a fair structural condition when considering its age. However, there are several areas of concern that should be repaired as noted above. As the cracking appears to be caused by the reactive soils, additional minor cracking is likely to reappear over time and may require additional maintenance. There are other options that will reduce the likelihood of cracking such as underpinning and piling, however, these options are not recommended because they are unlikely to be cost effective."

The community raised a significant number of issues regarding this report which was not made public at the time. This resulted in further clarification being sought from McDowall Affleck.

On 10 September 2015, an email was received from McDowall Affleck advising "...we do not believe that the building should be used by the public before the repairs noted in the drawings are undertaken." A copy of this email is attached at Appendix B.

The Shire then engaged Hendry Group Pty Ltd to prepare a "Building Compliance Assessment" on the building in September 2015. A copy of this report dated October 2015 is attached at Appendix C. The purpose of this report was to determine compliance with the Building Code of Australia. This report identified areas of noncompliance for inclusion in a future scope of works to be undertaken on the building.

CONSERVATION MANAGEMENT STRATEGY

In June 2016, Heritage Consultant Laura Gray prepared a conservation plan for the building a copy of which is attached at Appendix D. Such plans are generally required in order to access heritage funding for upgrades or conservation of heritage buildings.

The conservation plan details the history of the building, the timing of the construction of the various stages of the building. The plan outlines the significance of the building including providing details on the primary and secondary significant elements/aspects.

The plan provides a condition report and identifies immediate and medium-term actions which should be undertaken to conserve the building.

PROPERTY VALUATION

A Valuation was sought for the property in August 2015. The date of this correspondence being provided to the Shire of York is 2 November 2015. This report shows the property had a value of \$555,000. A copy of the executive summary of this valuation report is attached at Appendix E.

When Officers first commenced investigating options for the future of this building a valuation was obtained from Independent Valuers of Western Australia. This valued the property at \$385,000. A copy of the Executive Summary of this valuation is attached for information at Appendix F.

The Shire is required to have a valuation of the site prepared by a Licensed Valuer no less than 6 months old if it intends to dispose of the site. With the referral of the manner in which the site was purchased to the Public Sector Commission and then the Crime and Corruption Commission the valuation obtained from Independent Valuers of Western Australia was then more than 6 months old.

Given disposal of the site is an option in this Business Plan Officers engaged Independent Valuers of Western Australia to update their earlier valuation obtained January 2017. This valuation indicated the property has a current market value of \$400,000. A copy of the Executive Summary of the current valuation is attached at Appendix G.

Officers requested the valuers provide a valuation on the market rental of the site. The rationale for this is explained further in the report.

FUTURE OPTIONS FOR THE SHIRE OF YORK

The following options are presented for community input and comment to help Council make a final decision regarding the future of this building.

The options proposed include:

DISPOSE OF THE PROPERTY

An option for the Shire is to sell the property in its current condition. This could take place in the 2018/19 FY.

Local Government, in accordance with the *Local Government Act 1995* can dispose of property in three ways; by tender; at an Auction; or by private treaty.

Officers would be recommending a tender process if Council wanted to proceed with this option.

Council could consider undertaking works on the property to bring the building up to code, however given it is unclear what a future owner would like to use the property for and a lot is known on the condition of the building, Officers are recommending disposing of the property in its current condition.

The building was purchased for \$625,000. A loan was taken out from WA Treasury Corporation for this amount. As at 8 January 2018, there is \$487,320 remaining to be repaid on the loan.

Using the valuation as a guide, if the Council disposes of the property for \$400,000 this would mean the Shire has taken a loss on the building of \$225,000.

The financial implications of this option are outlined further in this Business Plan.

USE THE BUILDING FOR A COMMUNITY PURPOSE

Officers have identified three main community purposes for which the building could be used. (There might be others which are identified during the consultation phase.) These are:

- Visitors Centre
- Library
- Arts/Cultural Centre

These will be explored further below.

Visitors Centre

The York Visitor Centre is currently located at the Town Hall. Visitor numbers have increased more than 30% on last year. This increase in visitor numbers, which is hoped will continue, puts pressure on a small space such as the area currently used in the Town Hall. However:

- Visitors like to be able to access the Town Hall, hence there are synergies of locating the Visitor Centre at the Town Hall;
- It is recommended that Visitor Centres be located either on the way into town or at the main local attraction. The St Patrick's Convent School building meets neither of these criteria;
- It was considered that the Visitor Centre should be located on Avon Terrace and be easy to locate which this building is not.

If the Visitor Centre did relocate from the Town Hall to this site Officers are unsure what part of the space would be used for this purpose and what the remaining space could be used for.

Library

The current Shire Library is located as part of the Administration Centre. Although this space works well and there are synergies in staffing resources between the Library and the Shire Administration, the Library could relocate to this building.

The Library typically operates as an attraction in its own right so it could be feasible to assume that members of the public wanting to access the Library would do so in this building once renovations were completed.

The connection the building has with the park could be an attractive feature of a Public Library. This use of the building could also incorporate knowledge and innovation uses including startup spaces for new businesses.

This would leave the space in the Administration building where the Library is currently located for meeting rooms and future expansion space.

Accessing grant funding for a Library by itself could be limited as these types of functions are seen as the responsibility of Local Government.

Arts/Cultural Centre

Officers expect that arts and culture will be a key platform of the economic and social development of York into the future. This building could be used as an arts/cultural centre to complement other existing facilities in town.

The need for an Arts and Cultural centre was identified as a priority at a recent Arts Forum held by the Shire.

The model could over time, develop into something akin to Fremantle Arts Centre providing programs, activities and multipurpose spaces. However, the Shire is planning on preparing an Arts and Cultural plan as part of the 2018/19 financial year and if this option for the future use was chosen, the role and management model of the centre could be defined during this process.

Such a facility could not only provide community and cultural offerings to locals and visitors alike but could also provide support for the development of the arts and cultural industries in York. Officers consider that arts and cultural industries will be a pillar of the future economic development of the Shire and a facility such as this could play an integral role in their development.

Similar to the use as a Library, the connection the building has with Peace Park does provide opportunities for programs and activities flowing from the building into this public space.

Officers consider that with a contribution by the Shire, some capital funding could be obtained towards the upgrade of building for use as an Arts/Cultural Centre. The exact amount of this would only be known with further investigation and clarification of the role of the centre.

COMMERCIALLY LEASE THE PROPERTY ON THE MARKET

The property has been used in the past as a restaurant and retail outlet and Council could lease the property to someone to conduct these or similar commercial uses again.

The building is in an ideal location for a use such as a restaurant. It has elements of a commercial kitchen in place as well as some ablution and parking options. The capacity of these to meet planning and building requirements would need to be determined by potential lessees and be dependent upon the use identified.

Officers consider that a commercial use of the building could add to the retail and food and beverage offerings available in town given the iconic nature and location of the building.

Council could call tenders for the lease of this property from commercial operators. The site is well located in close proximity to the main street, adjacent to a park and with parking available.

Tenders could be called on an “as is” basis or the Shire could make a contribution towards the upgrade of the building as part of any future lease arrangement.

The Shire could also benefit from the income generated from leasing, reducing reliance on rates to fund operations.

The valuation obtained indicates that a commercial rental on the property could return \$28,000 per annum to the Shire.

From this income, the Shire would still be required to pay building insurance and undertake annual preventative maintenance.

This assumes that the Shire is not required to provide any further capital for upgrades to the building, which is unlikely unless a long-term lease is provided. As per most commercial leases, the Shire will likely be responsible for any structural or any major maintenance which with a building like this, there is a high possibility of occurrence.

Therefore, it means that the income received from any lease is only likely to cover operating, maintenance costs and allocation to reserve to cover any future long-term maintenance costs. The property is considered unlikely to attract significant capital growth over the short to medium term.

Furthermore, as explored further in this business plan, there are a number of other commercial properties in York for these types of purposes for the market to access, which may see this building competing with other private sector offerings.

COMPLIANCE WITH LOCAL GOVERNMENT ACT

Section 3.59 of the *Local Government Act 1995* requires the Business Plan to review the proposal against the following criteria.

The expected effect on the provision of facilities and services by the local government

Selling the property will not change any current level of service provision by the Shire of York as the building is not currently being used by the Shire of York to provide any services.

Disposing of the property could however reduce the ability for the Shire to provide new or expanded services into the future as a building in a key location will no longer be owned by the Shire

Using this building for a community purpose would improve the provision of facilities and services by the Shire.

Leasing this building on a commercial basis is not expected to have any material impact upon the services and facilities provided by the Shire of York.

The expected effect on other persons providing facilities and services in the district.

Selling the property would make the property available for other persons providing services and facilities in the district.

If the building is used for a community purpose such as Visitor Centre or Library, this is not expected to impact upon other persons providing facilities in the district.

However, there are organisations, businesses and individuals who operate in the arts and cultural industries in the Shire. These people would need to be consulted and involved in the development of a model for an Arts/Cultural Centre if this option is chosen, to avoid duplication. This could be done as part of the development of the Arts and Cultural Plan as identified previously.

The impacts this property may have if leased commercially on other businesses providing services and facilities in the district is hard to determine until any proposed use is known.

The most likely commercial use is a restaurant or retail facility. There are several other restaurant facilities located in the town and a number of vacant shops. This would place this Shire owned building in competition with other private land owners in the Shire for rental of commercial space.

The expected financial effect on the local government

The future use of this building could have significant financial impacts upon the Shire of York therefore more detail is provided in this section. These impacts are attempted to be outlined as below.

Loan 67 was raised for 10 years and was expected to be paid out by 8 July 2025. The Shire currently pays approximately \$70,000 per annum in loan repayments. If Council decides to sell the property and use the proceeds to pay down debt in the 2018/19 financial year and the current valuation price was achieved there would be up to \$50,000 left to pay in outstanding loan principal depending upon when in the financial year the settlement occurs. The outstanding loan principal balance as at 8 July 2019 will be \$399,157. If the property sold for the current valuation and settlement occurred in July 2019, then potentially the principal could be entirely repaid. This would result in the Shire saving up to \$50,000 on interest repayments over the life of the loan.

If the building was retained and used for a community purpose there would be capital, operating and renewal costs:

- The capital cost to bring the building up to a suitable standard has been outlined earlier in the report and depending on the use, could cost more than \$900,000 over the coming years. Although depending upon the use, grant funding may be able to be sought, it would be expected that the Shire would be required to make an allocation towards the capital upgrades from either reserves or additional borrowings.
- Officers estimate that the general running costs (ie insurance, maintenance, utilities, grounds maintenance, and depreciation) could be compared to those of the Residency Museum which are around \$50,000 per year. Officers consider that this order of annual costs would be incurred by the Shire regardless of the final use and management model and should be factored into consideration if the building is to be retained.
- The Shire would also be required to make annual allocation for future renewal of the building which would be dependent upon the scope of upgrades undertaken but could be expected to be \$10,000 pa.
- Depending upon the final use and the management model developed (ie a Library or Arts Centre requiring Shire Staff) if 2 part-time staff members were located at the centre the annual cost could be estimated at around \$100,000 per year.

If Council chose to lease the building commercially, then it would be expected that the Shire would be responsible for:

- Some (if not all) capital improvements to the building and site in line with general commercial leases.
- An annual allocation for operating costs and allocation for future renewal of the building which would be dependent upon the scope of upgrades undertaken but could be expected to be \$10,000 pa.
- Some annual costs including insurance, preventative maintenance, service charges and minor repairs estimated to cost approximately \$10,000 pa.

Based on a valuation received, a commercial lease income may be estimated to be up to \$28,000 offsetting some of the above expenses and loan repayments. It could be expected that once building is up to standard any remaining funds from the lease could eventually be transferred to Reserves for future renewals.

The expected effect on matters referred to in the local government's current plan prepared under section 5.56

The future of this property was identified in the Council's Corporate Business Plan as needing to be determined. However, the Corporate Business Plan does not identify the relocation of either the Visitor Centre or the Library, or the establishment of an Arts and Cultural Centre.

The ability of the local government to manage the undertaking or the performance of the transaction

The Shire would be able to manage the sale. It would be recommended this be conducted by a public tender process. Officers would engage a real estate agent to manage the tender process. These costs would need to be provided for from within existing funds.

If the building was used as a community purpose the Shire would find it challenging to manage the development and operation of an Arts/Cultural Centre. If this use was selected, partnerships would need to be established for the operation of the building.

The Shire has a number of outstanding leases which need to be resolved. Furthermore, the Shire only currently has one commercial lease (York Carriage Diner) which it manages.

Until all leases are up to date, Officers question the capacity of the organisation to successfully manage another commercial lease without additional resources. This would impact upon the ability of the Shire to manage a commercial lease within current resources if this option was chosen.

CONCLUSION

The best financial outcome for the Shire would be to dispose of the property by selling the building, however this is based upon the assumption that the property would sell in its current condition. Proceeds received would be used to repay debt which together with other loan payments would in time be repaid improving the Shire's overall financial position.

The best community service outcome is to use the building as a Library and/or Arts and Cultural Centre. However, whilst this may be a sound objective, the challenge for the Shire is being able to afford to upgrade, maintain and operate another community facility with a limited rate base and the need to upgrade and maintain other assets across the Shire. If a model could be developed which did not rely on the Shire providing substantial funds to upgrade, operate and/or maintain the centre, this could be worthy of consideration.

This process is designed to provide the community with an opportunity to have input into what the Shire should do with the building into the future prior to Council making a decision. Anyone with an interest in the Shire is encouraged to make a submission.

COMMUNITY INSPECTIONS AND MAKING A SUBMISSION

INSPECTIONS

During the adverting process, the Shire will hold two inspections of the premises. This allows those members of the community interested in inspecting the site to access the buildings and grounds to help inform their consideration of the future use and submission.

The inspections are to be held at the following dates/times:

Tuesday XXXXXX from 4pm to 6 pm.(To be determined)

Saturday XXXXX from 9am to 11 am(To be determined)

There is no need to RSVP or register to attend the inspections. Everyone is welcome.

MAKING A SUBMISSION

The Shire of York encourages members of the community to make a submission on what the future of this building should be. Submissions, in writing, should be addressed to the following:

Submission – Future use of St Patrick’s Convent School

Delivered by post to:

Chief Executive Officer

Shire of York

PO Box 22

York, WA, 6302

Or emailed to: Records@york.wa.gov.au

Submissions should be received by 4.30pm XXXXXX.(To be determined 6 weeks from commencement of advertising).

People making a submission should note that all submissions will be publicly available including names. Only addresses and personal information will be removed when each submission is presented to Council for information.

If anyone in the community has questions on the Business Plan or making a submission they can contact Paul Martin, CEO on 9641 2233 or records@york.wa.gov.au.

COUNCIL CONSIDERATION OF SUBMISSIONS RECEIVED

Once the submission period closes, Officers will prepare a report to Council presenting the submissions, a copy of every submission received and a recommendation of how to proceed in deciding the future use of the building.

All of this information will be open to the public for review and the report to Council will not be confidential.

Council will consider the submissions received and make a decision on the future of the building.

COMMUNICATION OF COUNCIL DECISION

Once Council has considered the submissions and made a decision on its future use, a media release will be issued for community information.

Correspondence (either by letter or email) will be sent to everyone who made a submission outlining the Council's decision in regard to this matter.