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Caroline Amos  
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Cunningham House  
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Dear Ms Amos,

**CALL-IN NOTICE UNDER SECTION 15(3) OF THE SCHOOLS (CONSULTATION)  
(SCOTLAND) ACT 2010**

**NORTH AYRSHIRE COUNCIL – DECISION TO DISCONTINUE THE EARLY LEARNING  
AND CHILDCARE PROVISION AT GARNOCK VALLEY EARLY YEARS CENTRE AND  
RELOCATE THE PROVISION TO ST BRIDGET'S RC PRIMARY SCHOOL EARLY  
YEARS CLASS**

I refer to Jacqueline Finnegan's email of 1 July 2019 notifying Scottish Ministers of North Ayrshire Council's decision of 14 May 2019 to implement its proposal to close the above Early Learning and Childcare (ELC) provision.

Under section 15(2) of the Schools (Consultation) (Scotland) Act 2010 ("the 2010 Act") local authorities are required to notify the Scottish Ministers of a decision to implement a proposal to close a school within six working days. A three-week period when representations can be made to the Scottish Ministers about the proposal begins on the date of the decision. A further five-week period follows during which Ministers can consider whether to call-in the school closure proposal for further investigation.

Under section 17 of the 2010 Act, the Scottish Ministers may only issue a call-in notice if it appears to them that the education authority may have failed:

- (a) in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the closure proposal, or
- (b) to take proper account of a material consideration relevant to its decision to implement the proposal.

After consideration of the notification given by North Ayrshire Council and the information provided, the Scottish Ministers have concluded that there are grounds on which to call-in



the decision to implement the closure proposal with reference to section 17(2)(a) of the 2010 Act.

## ***Procedural Failures***

### ***Notifying Scottish Ministers***

Under section 15(2) of the 2010 Act, the Council are required to notify the Scottish Ministers of their decision to implement a closure proposal within six working days. North Ayrshire Council took its decision to implement the closure on **14 May 2019**, however, it failed to notify the Scottish Ministers of this decision within 6 working days. The notification was not sent to the dedicated school closures mailbox and was instead sent to a member of staff whose remit does not include school closure matters and who was on long term sick leave during the relevant period. His out of office response advised any correspondents to contact another member of staff during his absence. That member of staff was not contacted by the Council until 1 July. We therefore regard this as the date at which ministers were notified of the Council's decision.

The Scottish Ministers consider that the failure to submit the notification within the statutory timeframe may be a failure on the part of North Ayrshire Council to comply with the requirements of the 2010 Act in terms of section 17(2)(a) of the Act. The purpose of the notification within the statutory timescale is to enable the Scottish Ministers to consider the consultation report, any representations they receive in the 3 weeks following the Council's decision, and any additional information that they may require from the Council or HM Inspectors (section 17(3) and (3A), respectively), with a view to deciding whether to call in a proposal. The long delay in the notification meant that insufficient time was available to Ministers to engage with the Council and HM Inspectors further as foreseen by the 2010 Act. It is therefore considered that the Council may have failed in a significant regard to comply with the requirements of the 2010 Act in so far as they are relevant to the closure proposal.

**The Scottish Ministers therefore consider that the Council may have failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the closure proposal. This therefore requires further investigation.**

### ***Publication of a notice confirming the Council's decision***

Under section 15(2A) of the 2010 Act, the Council are required to publish a notice on their website of the fact that the Scottish Ministers have been notified of the decision. This notice further requires to give notice of the opportunity for representations to be made to the Scottish Ministers in relation to call-in of the proposal, including the date on which the 3-week period for such representation ends.

The Scottish Ministers consider that the Council's notice does not meet the requirements of the 2010 Act as it does not clearly state that representations relating to call-in may be made to the Scottish Ministers, or the date by which such representations must be submitted. We would note in this context that the requirement to give notice in section 15(2A) is additional to the requirements in section 9 of the 2010 to publish the consultation report and intimate its publication to consultees. Parents and other members of the community may not have been aware of the opportunity to make representations or the date by which any such representations must have been submitted.

The opportunity for the public to make representations directly to Ministers in relation to call-in is an important part of the 2010 Act's scheme and designed to ensure that the consideration of the proposal by the Scottish Ministers, and the decisions about call-in that they make, are as well informed as possible. It is therefore considered that the Council may have failed in a significant regard to comply with the requirements of the 2010 Act in so far as they are relevant to the closure proposal.

**The Scottish Ministers therefore consider that the Council may have failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the closure proposal. This therefore requires further investigation.**

### **Conclusion**

Therefore, the Scottish Ministers are calling in the proposal under section 15(3) of the 2010 Act for the reasons set out above.

As required under section 17A(2) of the 2010 Act following call in, the Scottish Ministers are referring the proposal to the Convener of the School Closure Review Panel. The Convener is required to constitute a School Closure Review Panel within 7 days beginning with the date on which the call-in notice has been issued. The Panel will review the proposal and reach a decision in terms of sections 17B and 17C of the 2010 Act. Such a decision will normally be intimated to the Council within 8 weeks from the date of constitution of the Panel.

North Ayrshire Council may not implement the proposal (either in whole or in part) unless the School Closure Review Panel grants consent to the proposal (either with conditions or unconditionally) and either the period for making an appeal to the Sheriff has expired without any appeal being made, or, if an appeal is made, it is abandoned or the Sheriff has confirmed the Panel's decision (in terms of section 17A(4) of the 2010 Act).

Yours sincerely,



**Jerry O'Connell**  
**WIR : School Funding, Infrastructure and Organisation**

