



School Closure
Review Panels

DECISION AND REASONS

by

THE SCHOOL CLOSURE REVIEW PANEL

**PANEL MEMBERS: FORBES MITCHELL (CHAIR), CATRIONA WADDINGTON,
SALLY WAINWRIGHT**

with reference to

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

**DECISION FOLLOWING A REVIEW BY THE SCHOOLS CLOSURE REVIEW
PANEL IN TERMS OF SECTIONS 17B and 17C OF THE SCHOOLS
(CONSULTATION) (SCOTLAND) ACT 2010**

29 October 2019

Decision

The School Closure Review Panel grants consent with conditions to North Ayrshire Council's proposal to discontinue the early learning and childcare provision at Garnock Valley Early Years Centre in terms of section 17C(1)(c)(i) of the Schools (Consultation) (Scotland) Act 2010.

Background

1. The Schools (Consultation) (Scotland) Act 2010 ("**the 2010 Act**") sets out a procedural framework with which education authorities require to comply in implementing proposals to vary the school provision within their area.

2. In terms of section 17(2) of the 2010 Act, Scottish Ministers may issue a call-in notice only 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.
3. On 08 July 2019 Scottish Ministers issued a Call-In Notice under Section 15(3) of the 2010 Act to North Ayrshire Council ("**the Education Authority**") in relation to the decision by the Education Authority to discontinue the early years learning and childcare provision at Garnock Valley Early Years Centre ("**GVEYC**") and relocate the provision to St Bridget's RC primary school early years class ("**the Call-In Notice**").
4. As required under section 17A(2) of the 2010 Act following call-in, the Scottish Ministers referred 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, namely 08 July 2019. A School Closure Review Panel was convened on 10 July 2019, and was asked to review the proposal and reach a decision in terms of sections 17B and 17C of the 2010 Act.
5. Under the terms of section 17A(4) of the 2010 Act, 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.
6. In conducting the review, the Panel has had due regard to the Schools (Consultation) (Scotland) Act 2010 Statutory Guidance (May 2015) ("**the Statutory Guidance**").
7. The Panel has reviewed the decision taken by the Education Authority to determine whether the Education Authority has complied with the statutory requirements imposed on it by (or under) the 2010 Act, so far as they are

relevant to the closure proposal in terms of sections 17(B)(1)(a) and (b) of the 2010 Act which state that –

“A School Closure Review Panel must consider both of the following in relation to a closure proposal-

(a) whether the education authority has 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 proposal,

(b) whether the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.”

8. The Panel’s decision would normally be intimated to the Council within eight weeks from the date of constitution of the Panel. In actual fact, and in order to fully consider all of the available evidence, the Panel extended the period of the review for a further eight weeks. This period expires on 30 October 2019 and this decision has been taken and intimated within that time.

Grounds for Call-in

9. The Call-In Notice identified that the Scottish Ministers considered that there may be two potential failures by the Education Authority to comply with the requirements of the 2010 Act, being: (i) in respect of the requirement to notify Scottish Ministers of a decision to implement a closure proposal in terms of section 15(2) of the 2010 Act; and (ii) in respect of the requirement to publish a website notice confirming the Education Authority’s decision in terms of section 15(2A) of the 2010 Act.

Section 15(2): Requirement to notify Scottish Ministers

10. Under section 15(2) of the 2010 Act, an education authority is required to notify the Scottish Ministers of its decision to implement a closure proposal within 6 working days of that decision being taken. A 3-week period when representations can be made to the Scottish Ministers about the proposal begins on the date of the decision. A further 5-week period follows during which ministers can consider whether to call-in the school closure proposal for further investigation.
11. The Education Authority decided to implement the closure of GVEYC on 14 May 2019. However, the Call-In Notice indicates that Scottish Ministers consider they were not informed of this decision within the required timescale. The Scottish Ministers’ position is that the notification was not sent to the dedicated school closures mailbox but was instead sent to a member of staff whose remit did not include school closure matters and who was on long term sick leave when the notification was sent, and for the remainder of the

relevant period. The relevant member of staff's 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 Education Authority until 01 July 2019. Scottish Ministers therefore regarded this as the date at which ministers were notified of the Council's decision.

12. The Call-In Notice identifies that failure to submit the notification within the timeframe prescribed by section 15(2) of the 2010 Act may be a failure on the part of the Education Authority to comply with the requirements of the 2010 Act in terms of section 17(2)(a) of the Act.
13. 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 an education authority's decision, and any additional information that they may require from the education authority or HM Inspectors, under the terms of section 17(3) and 17(3A) of the 2010 Act, with a view to deciding whether to call-in a proposal. The delay in the notification being received by the Scottish Ministers meant that insufficient time was available to Ministers to engage with the Education Authority and HM Inspectors further as foreseen by the 2010 Act. The Scottish Ministers therefore considered that the Education Authority 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.

Section 15(2A): Requirement to publish a website notice confirming the Education Authority's decision

14. Under section 15(2A) of the 2010 Act, an education authority is required to publish a notice on its website of the decision to implement a school closure proposal. This notice must identify that the Scottish Ministers have been notified of the decision, and provide an opportunity for representations to be made to the Scottish Ministers in relation to the proposal which must include reference to the date on which the 3-week period for such representation ends.
15. The Call-In Notice identifies that the notice published by the Education Authority did not meet the requirements of section 15(2A) of the 2010 Act as it did not clearly state that representations relating to the call-in may be made to the Scottish Ministers, or the date by which such representations must be submitted. The Call-In Notice also identifies that in this context, the requirement to give notice in section 15(2A) is additional to the requirement to

publish a Consultation report in terms of section 9 of the 2010 Act and inform consultees, and that 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.

16. The opportunity for the public to make representations directly to Ministers in relation to call-in is 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. In the absence of a compliant notice being published in terms of section 15(2A) of the 2010 Act, the Scottish Ministers considered that the Education Authority may have failed in a significant regard to comply with the requirements of the 2010 Act so far as they are relevant in relation to the closure proposal.

Evidence reviewed by the Panel

17. The Panel were provided with and reviewed the following copy documents by Scottish Ministers:-

- i. Call-in Notice dated 08 July 2019 issued to Head of Service (Education), North Ayrshire Council by Scottish Government, Learning Directorate, Workforce, Infrastructure and Reform Division, School Funding, Infrastructure and Organisation.
- ii. Letter dated 08 July 2019 issued to the Convener, School Closure Review Panel (*with a copy of the Call-in Notice dated 08 July 2019 issued to Head of Service (Education), North Ayrshire Council*) by Scottish Government, Learning Directorate, Workforce, Infrastructure and Reform Division, School Funding, Infrastructure and Organisation.

18. The Panel were provided with and reviewed the following copy documents, following requests made by the Panel to the Education Authority and Scottish Ministers:-

- i. North Ayrshire Council Proposal to relocate Garnock Valley Early Years Centre to St Bridget's Primary School Early Years Provision in Kilbirnie – Report by Head of Service (Directorate of Education and Youth Employment) with associated appendices including: an executive summary; the strategic context; the background; the pre-

consultation stakeholder engagement; the outcome of pre-consultation stakeholder engagement; current service provision; financial information; the proposal; the educational benefits statement; the proposed new provision; the statutory public consultation process; the pre-consultation engagement plan; a map of current provision; a response form; a financial template.

- ii. Report by Education Scotland addressing educational aspects of the proposal by North Ayrshire Council to relocate Garnock Valley Early Years Centre to St Bridget's Primary School Early Years provision in Kilbirnie. March 2019. Report prepared by Her Majesty's Inspectors of Education (HM Inspectors)
- iii. Cabinet Report and associated papers considered by North Ayrshire Council on 14 May 2019 entitled Early Learning and Childcare Expansion Programme.
- iv. Minute of Cabinet North Ayrshire Council 14 May 2019.
- v. Copy of Web page from North Ayrshire Council website – Garnock Valley Early Years Outcome Report.
- vi. Projected capacity Garnock Valley Early Years Centre and St Bridget's Centre.
- vii. Information from North Ayrshire Council in reference to Capacity, Financial information, transport, Consultation and e mail correspondence with Scottish Ministers.
- viii. Information from Scottish Ministers in reference to e mail correspondence with North Ayrshire Council.
- ix. North Ayrshire Council - Standard Design Brief, Early Learning and Childcare Centre.
- x. Panel request for additional information 28 August 2019 relating to North Ayrshire Council Cabinet Paper of 01 May 2018 and associated minute of meeting, financial calculations, staffing details, early years provision of 1140 hours. North Ayrshire Council Cabinet paper 19 June 2018 and associated minute. North Ayrshire Council's response of 04 September 19.
- xi. Panel request for additional information 09 September 2019 relating to staffing, financial savings, roll projections and capacity. North Ayrshire Council's response of 12 September 2019.

- xii. Panel e mail of 29 September 2019 requesting clarification on additional information provided by North Ayrshire Council and a telephone conversation with a North Ayrshire Council representative on 01 October 2019 with the provision of additional financial information.

Review in relation to section 15(2) – Requirement to notify Scottish Ministers

19. At a meeting held on Tuesday 14 May 2019 the Education Authority's Cabinet considered a paper entitled 'Early Learning and Childcare Expansion Programme' seeking approval for the proposal to close GVEYC and relocate to St Bridget's Primary School Early Years Class in Kilbirnie. The paper written by Head of Service (Directorate of Education and Youth Employment) with associated appendices included the Proposal Paper and Consultation Report (being documents required to support implementation of a closure proposal in terms of sections 4 and 9 respective of the 2010 Act) and provided an outline of the process that had been followed by the Council. The minute of that Cabinet meeting confirmed that the Cabinet agreed to close GVEYC and relocate the provision for 2-3 year olds to newly refurbished provision within St Bridget's Primary School Early Years Class in August 2020.
20. Section 15(2) of the 2010 Act requires that an education authority notify the Scottish Ministers of its decision to implement a closure proposal within 6 working days. The Education Authority took its decision to implement the closure on Tuesday 14 May 2019 and should therefore have notified Scottish Ministers of that decision by Wednesday 22 May 2019.
21. The Panel considered all correspondence provided to us between the Education Authority and the member of staff of the Scottish Government's Learning Directorate to whom the notification was sent ("X") relating to the proposed closure. According to the timeline provided by the Education Authority, it first emailed X on 01 August 2018 advising of the Education Authority's proposal to explore options to relocate GVEYC. No evidence of a reply to this email was provided to the Panel. On 21 January 2019 a second email was sent to X notifying the Cabinet decision to move to a Statutory Public Consultation. Again, neither Scottish Ministers nor the Education Authority provided evidence of any response from X. A third email was sent to X on 03 April 2019, advising him that the statutory public consultation had been completed. The Education Authority received no reply to this email other than an automated notification saying X was out of the office until 16 May and to contact another member of staff in his absence. A fourth email was sent to X on 22 May 2019, with the purported statutory notification of the Education

Authority's decision. The Panel notes that this was within the statutory period of 6 working days. However, a further out of office response was received which did not give a date for X's return to work, but again informed the Education Authority to contact the other member of staff. On 05 June 2019, the Education Authority sent a fifth email to X asking if he had any comments on the Consultation Report, to which it received no response. It was only on 01 July 2019, more than 30 working days after the Education Authority's decision to implement the closure proposal, that the Education Authority took steps to contact the other member of staff as per the information in the out of office responses.

22. Scottish Ministers are of the view that the notification sent by the Education Authority on the 22 May 2019 did not meet the statutory requirement to notify Ministers of its decision within 6 working days as it was not sent to the dedicated school closure email address. The Panel has had regard to the paras 111 -113 of the Statutory Guidance, relating to Notification and Notices, and notes that it does not specify an email address to which such statutory notifications should be sent. (The only email address given is that to which members of the public may make representations about the proposal to Scottish Ministers).
23. The purpose of the prescribed timescale is to allow time for the Scottish Ministers to properly consult the Education Authority and HM Inspectors in relation to the closure proposal, in conjunction with the 3 week period for representations provided for by section 15(4) of the 2010 Act. In the absence of notification being received timeously, this makes it difficult for a meaningful and effective assessment of the proposal to be undertaken by the Scottish Ministers within the 8 week period within which the Scottish Ministers must determine whether or not to call in the proposal (as required in terms of section 15(3) of the 2010 Act).
24. As the Statutory Guidance does not specify an email to which school closure notifications must be sent, the Panel considers that the fact the initial notification was sent to X does not, in and of itself, constitute a failure under the 2010 Act. However, the Panel has taken account of all correspondence relating to the GVEYC closure since August 2018 and considers that the Education Authority's failure to act on the out of office response from X, particularly in light of the lack of any other written response from Scottish Ministers to its emails, was unreasonable. Given the importance of the notification to Scottish Ministers in determining the timetable for the remainder of the closure decision review process, the Panel considers that in these circumstances a reasonable course of action would have been for the

Education Authority to take steps to ensure that the statutory notification had been received by Scottish Ministers.

Conclusion in relation to section 15(2)

25. The delay in the notification being effectively served on the Scottish Ministers beyond the required 6 working day period meant that insufficient time was available to Ministers to engage with the Education Authority and HM Inspectors further as foreseen by the 2010 Act. The Panel therefore concludes that the Education Authority has failed in a significant regard to comply with the requirements imposed on it by (or under) the 2010 Act, namely section 15(2)(a).

26. Although the Panel has determined that the failure to follow up on the initial email notification constitutes a failure in a significant regard, the Panel acknowledges that the Scottish Ministers' decision to call in the proposal on two separate grounds in any event means that the delay in notification did not materially affect the process as a whole. Given the other factors outlined below, although the Panel considers the Education Authority did fail in a significant regard to comply with section 15(2), the Panel's decision does not turn on this point.

Review in relation to section 15(2A) – Requirement to publish notice of the Council's decision

27. Under section 15(2A) of the 2010 Act, an education authority is required to publish a notice on its website of the fact that the Scottish Ministers have been notified of the decision to implement a closure proposal. This section further requires the education authority 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. Paragraph 113 of the Statutory Guidance gives clear instructions as to the content of the notice that the education authority must publish on its website. In addition to the information required by the Act, the Statutory Guidance states at para. 113 "*The notice the authority publishes should provide the appropriate contact details for submitting representations*". The contact details specified are email and postal addresses.

28. As Scottish Ministers noted in the Call-In Notice, the requirement to give notice in section 15(2A) is additional to the requirements in section 9 of the 2010 Act, to publish the consultation report and inform consultees.

29. The notice published on the Education Authority's website on 22 May 2019 stated: "*North Ayrshire Council's Cabinet met on 14 May 2019 to consider the consultation report and made a decision to accept the proposals. The outcome of the Cabinet decision will now be notified to Scottish Ministers. Scottish Ministers will make their decision within an eight week period and notify the Council accordingly.*" The notice did not state that representations relating to the call-in could be made to the Scottish Ministers, nor the date by which such representations had to be submitted. Nor did it include the contact details that should be used for submitting such representations, as detailed in the Statutory Guidance.
30. The Panel requested details from the Education Authority of any other steps it took to notify consultees about their right to make representations, but none were provided. However, the Education Authority did point out that the Proposal Paper at paragraph 11.11, and Consultation Report at paragraph 9.2, published by the Education Authority both accurately described the steps required by the 2010 Act. The Consultation Report also states that "*Anyone wishing to contact the Scottish Ministers during the three week period referred to above should do so by e-mail to: schoolclosure@scotland.gsi.gov.uk or in writing to: School Infrastructure Unit, Scottish Government, Area 2-A South, Victoria Quay, Edinburgh, EH6 6QQ.*" Neither of these publications gives the dates of the three week period, as that depended on the (future) date of the Education Authority Cabinet's decision.
31. The Panel does not consider that the inclusion of the correct information in the authority's Proposal Paper and Consultation Report is sufficient to meet the express statutory requirement to publish this on its website, particularly in the absence of alternative notification to those entitled to comment. Additionally, neither of the documents which described the process gave the date by which any representations should be made. The Panel considers it is therefore possible that parents and other members of the community who would have wished to comment on the proposal may not have been aware of the opportunity to make representations or of the date by which any such representations must have been submitted.

Conclusion in relation to section 15(2A)

32. The opportunity for the public to make representations directly to Ministers in relation to a call-in is an important part of the 2010 Act's scheme and is designed to ensure that the consideration of the proposal by the Scottish Ministers, and the decisions as to whether or not to call-in the proposal, are as well informed as possible. Based on the evidence provided to it, the Panel considers that there is a risk that the failure to comply with the requirement to publish a notice in terms of section 15(2A)(b) of the 2010 Act may have prejudiced the ability of interested parties to make such representations.

Although, the Panel concludes that the Education Authority has failed in a significant regard to comply with the requirements imposed upon it by (or under) section 15 (2A)(b) of the 2010 Act, the Panel acknowledges that the Scottish Ministers' decision to call in the proposal on two separate grounds in any event means that this failure did not materially affect the process as a whole. Given the other factors outlined below, although the Panel considers the Education Authority did fail in a significant regard to comply with section 15 (2A)(b), the Panel's decision does not turn on this point.

Further review in relation to section 17B(1)

33. As identified above, the grounds for call-in were in respect of sections 15(2) and 15(2A) of the 2010 Act. However, under section 17B(1) the Panel is required to consider if the Education Authority has failed in a significant regard to comply with any requirements imposed by (or under) the 2010 Act and whether it has failed to take into account any material considerations relevant to its decision to implement the closure proposal.
34. Having reviewed all of the information supplied by the Scottish Ministers and the Education Authority, including the Proposal Paper and the Consultation Report, the Panel did not find any evidence that the Education Authority had failed to take proper account of a material consideration relevant to the proposal.
35. However, the Panel identified three areas in which the Panel considered that the Education Authority had failed to comply with the Act in terms of properly discharging its obligations to prepare an Educational Benefits Statement identifying the likely effects of the proposal (in terms of section 3(1) of the 2010 Act), and to prepare a Proposal Paper which sets out details of the relevant proposal (in terms of section 4(1)(a) of the 2010 Act).
36. Section 3 of the 2010 Act requires an Educational Benefits Statement to be produced by an education authority, by reference to specific heads of assessment. Section 4 of the 2010 Act requires a Proposal Paper to be produced by an education authority setting out details of a closure proposal.
37. In each of the three areas identified by the Panel, the Panel considered that the information provided by the Education Authority was insufficiently clear, complete and transparent. The three areas feature in the Proposal Paper and Consultation Report. The first area – the exact changes – also features in the Educational Benefits Statement. The areas were:
 - i. Details of the exact changes being proposed.
 - ii. Transport and Travel arrangements.
 - iii. Financial and staffing information.

38. The Panel therefore reviewed these aspects of the Proposal Paper, Educational Benefits Statement and Consultation Report in more detail to ascertain whether, in the Panel's view, these failures were significant. On further investigation it appears that some of the questions initially raised by the Panel were, in fact, due to a lack of transparency or completeness in the Proposal Paper and associated documents. It was only after two written requests for information and a phone call resulting in a third written response that the Panel considered it was able to piece together what the Panel now believes to be the whole picture.
39. The Statutory Guidance provides further detail on the expectations of education authorities when producing the documentation required by the 2010 Act to underpin a closure proposal. At paragraph 13, the Statutory Guidance states that it is essential that education authorities seek to achieve high standards both in the information that underpins school consultations and in the consultation documents that are published (including the Proposal Paper and Educational Benefits Statement). Paragraph 95 of the Statutory Guidance highlights that the robustness of all information in the proposal paper is paramount to the process, and specifically identifies that inaccuracies or omissions in this document would undermine the whole closure consultation process.
40. It is of considerable concern that clarifying this information was so difficult. If the Panel was unable to understand fully what was being proposed, we consider it likely that some of the relevant consultees would have similarly struggled. This is particularly noteworthy as only one person (a member of staff at St Bridget's) of the 11 who formally responded to the consultation agreed with the proposal (another two gave no preference).
41. The Panel's considerations of how these three aspects are reflected in the documents required in terms of the 2010 Act are briefly summarised here.

Details of the changes being proposed

42. The proposal addresses two separate but related changes – the closure of GVEYC and the extension of early years hours to 1,140. These two changes are conflated in the Proposal Paper and the Education Benefits Statement. Whilst much of the narrative is about delivering 1,140 hours at St Bridget's, the financial data compares 600 hours at St Bridget's with 600 hours at GVEYC. It is never made explicit that the specified savings are for 600 hours provision at St Bridget's.
43. When the 1,140 hours is implemented at St Bridget's the early years sessions will be held from 8.00 – 12.45 and 13.15 – 18.00. This is not explained in the Proposal Paper, making it difficult for the reader (and specifically, persons

who may wish to make representations on the proposal) to understand how the proposal will result in the additional capacity required for the extension of hours.

44. The information about session times was found independently by the Panel in an Education Authority Cabinet document. Further correspondence with the Education Authority confirmed that it was the intention to provide these session timings in St Bridget's. The clarification about the 600 hours financial comparison was made in a telephone call between the Education Authority and a Panel member.
45. The Panel considers it likely that the absence of this information and clarifications means that relevant consultees may have been unable to clearly identify the substance and detail of the relevant proposals, and may therefore have found it difficult to comment on the impact of these changes, should they have wished to do so. The Panel therefore considers that the Proposal Paper does not fully meet the requirement of section 4(1)(a) of the 2010 Act, in that it does not fully and clearly set out details of the relevant proposal.

Transport and Travel Arrangements

46. As part of the proposal it is intended to remove the free transport (other than to qualifying children) that is currently available to 2-3 year olds. The transport service at GVEYC is, according to the Proposal Paper "a unique service in North Ayrshire and was developed as a response to the rural nature of the Garnock Valley" (paragraph 6.6). The consultation report, paragraph 6.13, states "There was a concern that parents would not bring their children if the dedicated transport arrangement... is removed"; this concern was also noted in the Education Scotland Report. As far as the Panel understands it, no impact assessment was carried out in relation to this proposal, nor was there any discussion of how it might fit with the Education Authority's intention to carry out a Transport Assessment to consider congestion around the school and to encourage a reduction in the number of children being brought by private car (Proposal Paper paragraph 10.5). In its reply to an enquiry from the Panel, the Education Authority stated "*The currently (sic) transport provision will not be removed from any child who currently receives it. Due to the phasing of this proposed closure all current children will have moved on to other provision for 3-5 year olds. Transport will not be provided for 2-3 year olds at St Bridget's under the proposed provision and this brings the provision into line with all other ELC [Early Learning and Childcare] provision across the authority.*"
47. However, section 3(1)(a)(iii) of the 2010 Act requires that the Educational Benefits Statement must consider "*any children who would (in the future but for implementation) be likely to become pupils of the school*". The Panel notes that the removal of this provision is not mentioned in the Educational Benefits

Statement, and the Panel does not consider that the Education Authority's response to the question fully meets this requirement as it does not consider potential future pupils but only makes reference to children currently benefitting from the provision, who, by virtue of their age, would not receive it in future in any event. In this regard, the Panel considers that the Educational Benefits Statement does not fully comply with the requirements of section 3(1) of the 2010 Act.

Financial and staffing information.

48. Paragraph 55 of the Statutory Guidance states "*It is expected that the financial information provided should include both actual costs and a narrative. This narrative should explain the costs...*".
49. The Proposal Paper states that the closure of GVEYC would enable annual recurring staff cost savings of £193,696. Neither the Proposal Paper nor the Consultation Report explains how this sum was calculated and what staff changes were envisaged. The Proposal Paper is very general, stating in paragraph 10.3 that "*The extended facility would be staffed according to local and national policies and agreements in place at the time, which are designed to ensure that all duties and responsibilities of the early years provision are carried out. The staffing levels will principally be determined by the number of children.*". The Panel asked three times for more detailed information, twice in writing and once by telephone. The information that was then provided showed that the £193,696 was calculated by:
- i. Totalling the staff costs of GVEYC: 1 Head of Centre, 1 Depute Head, 5 early years practitioners, 1 driver, 56% of an Education Assistant and parenting support work costing £27,022.86; and
 - ii. Deducting the cost of additional staff required at St Bridget's after the proposed change: 3 early years practitioners and 1 early years manager.
50. Section 4(2A) of the 2010 Act requires a Proposal Paper to include information about the financial implications of the proposal. The Statutory Guidance (at paras. 53-55) makes clear that the purpose of this requirement is that information on all likely financial implications should be provided in a clear, complete and consistent form for all school closure proposals, rigorously evidencing any financial argument that is deployed and providing a narrative alongside the actual costs. It is the Panel's view that the Education Authority has failed to provide sufficient evidence set out in a clearly understandable format as to how the financial savings are going to be achieved and what the impact will be on the educational provision.
51. The Panel concludes that this information should have been made clear in the Proposal Paper and related papers because it shows a like-for-like, and

not actual, reduction in staffing, when comparing 600 hours of provision at the two establishments. Information about staff changes is important for consultees and should also be used to inform the Educational Benefits Statement. The documentation should also have made clear that the costings are based on provision of 600 hours in each setting.

52. The further information obtained by the Panel showed that some of the anticipated savings are in fact due to a planned reduction in the overall staff:pupil ratio at St Bridget's, when compared with that at GVEYC. Neither this fact nor the implications of it in terms of service provision to children and/or parents are mentioned in the Proposal Paper and related papers. It is the Panel's view that this information should have been made clear in order to allow relevant consultees to understand and comment on it.

Conclusion in relation to further review under section 17B(1)

53. Taking into account the Panel's concerns around the level of detail and transparency in the Proposal Paper and Educational Benefits Statement as outlined above, and the expectations on education authorities set out in the Statutory Guidance, the Panel considers that the Education Authority has failed to produce a Proposal Paper, Educational Benefits Statement (and consequently a Consultation Report) which fully discharge the requirements of sections 3, 4 and 9 respectively of the 2010 Act. The concerns about level of detail and transparency also apply to the Consultation report, where the opportunity was not taken to respond to concerns about transport and staffing (and the services the staff provide) with more information. The Panel concludes that the failure to provide full, clear and accurate details of the information described above – related to the changes proposed, travel and transport, and the financial statement (including a description of how savings to the total cost of staff were calculated) - may have denied consultees an opportunity to fully and properly consider and comment on them.
54. It is important that the closure of a school is proposed for positive educational reasons. Section 3 of the 2010 Act requires an education authority to produce a comprehensive Educational Benefits Statement that clearly sets out the benefits that would accrue for the children affected. Para 35 of the Statutory Guidance provided additional guidance on the drafting of the statement. "*The impact of a proposal on a range of educational factors will rarely only give rise to benefits and any proposal is likely to involve both positive and negative consequences. The Educational Benefits Statement is the place for the authority to explore that balance.*"
55. In light of the failings discussed above, the Panel considers that the Education Authority has failed to comply fully with the statutory provisions of sections 3 and 4 of the 2010 Act in terms of the clarity and content of the Proposal Paper and the Educational Benefits Statement.

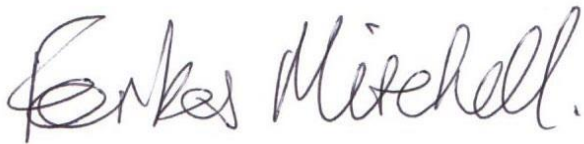
Decision

56. The Panel has determined that the Education Authority has failed in a significant regard to comply with the requirements imposed under section 15(2) of the 2010 Act – notification to the Scottish Ministers; and section 15(2A) of the 2010 Act – publication of information on the Education Authority’s website. The Panel acknowledges that the Scottish Ministers’ decision to call in the proposal on two separate grounds in any event means that the delay in notification and the failure to publish the required information did not materially affect the process as a whole. Given the other factors outlined above which the Panel considered through conducting a review of the closure proposal, although the Panel considers that the Education Authority did fail in a significant regard to comply with Section 15(2)&(2A), the Panel’s decision does not turn on these points.
57. For the reasons set out in paragraphs 33 to 54 (inclusive) above, the Panel has further determined that the Education Authority has failed to fully comply with the requirement to prepare an Educational Benefits Statement (as set out in section 3 of the 2010 Act), and the requirements to prepare a Proposal Paper (as set out in section 4 of the 2010 Act).
58. Therefore, the Panel determines that there has been a statutory failure on the part of the Education Authority in terms of sections 17B(1)(a) and 17C(4)(a) of the 2010 Act, in that the Education Authority has failed to comply with the requirements imposed on it by (or under) the 2010 Act so far as they are relevant in relation to the proposal.
59. The Panel has considered the import of these statutory failures and is of the view that providing fuller information in the Proposal Paper and Educational Benefits Statement would have considerably improved the depth and breadth of the consultation process. The Panel considers that this may have led to improvements in the implementation of the proposed closure, but would not have materially affected the substantive decision to close GVEYC. The Panel has therefore concluded that the most appropriate way to address these failures is through the imposition of conditions. These address the failings described above in relation to transport and travel arrangements, and to the financial and staffing information.
60. The Panel therefore grants consent with the imposition of three conditions in terms of s.17C(1)(c)(i) of the 2010 Act. These conditions are:
61. The Education Authority shall carry out a full impact assessment of the proposal to remove the free transport currently available to 2-3 year old children attending (or due to attend) GVEYC or St Bridget’s. This shall include, *inter alia*, consultation with the parents of children who will be

affected by the decision. A report of the impact assessment shall be considered by Council for a further decision as to whether or not to proceed with the removal of this service. Until such a decision to withdraw free transport is made, the transport shall continue to be provided to all children who would be eligible under the present terms.

62. The Education Authority shall prepare a report fully detailing the reduction of staffing levels for 2-3 year old children at St Bridget's that is envisaged by the Proposal when compared with the existing staffing levels at GVEYC. The report shall include an assessment of the impact that this reduction will have on the services currently provided both to children and to their parents who attend, or will in future attend, GVEYC or St Bridget's. No reductions to the staffing levels shall be implemented until a decision to do so has been taken by Council following consideration of that report.

63. The Education Authority shall send a report to the Scottish Ministers in April 2020 detailing its progress in complying with the two conditions set out above.

A handwritten signature in black ink that reads "Forbes Mitchell". The signature is written in a cursive style with a large initial 'F'.

Forbes Mitchell
Chair