



School Closure
Review Panels

**DECISIONS AND REASONS
BY
THE SCHOOL CLOSURE REVIEW PANEL**

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PANEL MEMBERS: BEVERLEY ATKINSON (CHAIR); CHARLES BESTWICK & RUSSELL ELLERBY

with reference to

FALKIRK COUNCIL'S PROPOSAL TO CLOSE LIMERIGG PRIMARY SCHOOL

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

24 September 2021

Decision

Following a thorough review of the information contained in all of the documents received from Scottish Ministers, together with additional documentation provided by Falkirk Council in response to the requests made by the School Closure Review Panel, the Panel has concluded that Falkirk Council has not fulfilled its obligations under the Schools (Consultation) (Scotland) Act 2010. This consideration is detailed below. Accordingly, the School Closure Review Panel refuses consent and remits back to the local authority, in accordance with section 17C(1) of the 2010 Act.

Background

1. The Schools (Consultation) (Scotland) Act 2010, as amended (“the 2010 Act”) sets out the statutory framework that local authorities must apply to their handling of all proposals for school closures and other major changes to schools.
2. This review and decision by the School Closure Review Panel relates to the decision by Falkirk Council (“the Council”) to close Limerigg Primary School (“the School”). The Council is the education authority, as defined in s135(1) of the Education (Scotland) Act 1980 for the purposes of the 2010 Act.
3. The Scottish Ministers may issue a Call-in Notice in respect of a closure proposal on grounds set out at s17(2) of the 2010 Act. Those grounds are set out and considered in more detail below.
4. On 26 July 2021, the Scottish Ministers issued a Call-in Notice, in terms of s15(3) of the 2010 Act to the Council in relation to the decision (“the Proposal”) by the Council to close the School.
5. Following Call-in, the Scottish Ministers referred the Proposal to the Convenor of the School Closure Review Panel. The Convenor is required to constitute a panel within 7 days of the date on which the Call-in Notice was issued, in this case, namely 26 July.
6. On 2 August 2021, the Convenor formally constituted a School Closure Review Panel (“the Panel”) and appointed Beverley Atkinson (Chair), Charles Bestwick and Russell Ellerby to the panel. The Convenor wrote to the Council on 3 August 2021 to give notification that the Panel had been constituted to conduct the necessary review of the Council’s decision.
7. In terms of s17C(5) of the 2010 Act, the Panel must notify the Council of its decision within a period of 8 weeks, beginning with the day on which the Panel was constituted (or, if necessary, a further 8 weeks). That date is Monday 27 September 2021, and accordingly, this decision of the Panel is within the statutory timescales.
8. The Panel was supplied with the following documents from the Scottish Ministers:
 - The Council’s proposal document dated February 2021
 - The Council’s consultation report
 - The Report dated April 2021 by Education Scotland addressing educational aspects of the proposal by the Council to permanently close the School
 - An e-mail request for information sent by the Scottish Ministers to the Council dated 25 June 2021
 - The Council’s written Response to the Scottish Minister’s information request sent with a covering e-mail dated 6 July 2021

- The Scottish Minister’s Call-In Notice dated 26 July 2021
9. The following documents were provided to the Panel by The Council following a written request from the Panel for further information dated 18 August 2021:
- Minutes of the Council’s Education Executive dated 4 September 2018 and 26 March 2019
 - A Minute of the Council’s Education, Children & Young People Executive dated 26 March 2019
 - A Minute of the Council’s Education, Children & Young People Executive dated 26 January 2021
 - A report to the Council’s Education Executive submitted by the Director of Children’s Services entitled “Agenda Item 14 - Mothballing of Primary Schools” dated 4 September 2018 (“Agenda Item 14”)
 - A report to the Council’s Education Executive submitted by the Director of Children’s Services entitled “Agenda Item 9 - Report on the Consultation on the Proposed Mothballing of Bothkennar and Limerigg Primary Schools” dated 26 March 2019 (“Agenda Item 9”)
 - A report to the Council’s Education, Children & Young Peoples Executive submitted by the Director of Children’s Services entitled “Agenda Item 6 - Proposed Consultation on the Permanent Closure of Bothkennar & Limerigg Primary Schools” dated 26 January 2021 (“Agenda Item 6”)
 - A report to the Council submitted by the Acting Director of Development Services entitled “Strategic Property Review – Next Steps” dated 18 May 2021 (“Agenda Item 7”)

Guidance

10. In conducting its review, the Panel has had due regard to the provisions of the 2010 Act and the Statutory Guidance on the 2010 Act (issued May 2015).
11. The School is a “rural school” as defined by s14 of the 2010 Act. The additional requirements for closure proposals of rural schools are set out in sections 11A-13 of the 2010 Act. These provisions contain, amongst other things, a presumption against closure of a rural school, preliminary requirements in relation to rural school closure proposals and additional consultation requirements where closure of a rural school is being proposed.

Grounds for Call-In

12. In terms of s17(2) of the 2010 Act, the 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) the 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.
13. The Panel is also required to review the Council's decision in line with sections 17B(1)(a) and 17B(1)(b) of the 2010 Act, by considering whether the Council has (i) failed significantly to comply with the requirements of the 2010 Act; and (ii) whether the Council has failed to take proper account of a material consideration relevant to the decision.
14. Call in Ground 1 – Consideration of Reasonable Alternatives
15. The Scottish Ministers had doubts as to whether the Council had met the preliminary requirements in relation to rural school closure as set out in s12A of the 2010 Act, which require, amongst other things, a detailed consideration of any reasonable alternatives to closure prior to consulting a closure proposal. The Scottish Ministers wrote to the Council on 25 June 2021 to understand the apparent absence of this preliminary stage of the consultation process. The Council responded that, prior to the decision to commence the formal consultation, consideration had been made "of the situation" by the Council's Education Executive in September 2018 and March 2019. In addition, the Council also stated in its response that consideration of alternatives was considered via a "Strategic Property Review" where detailed assessments of possible alternatives were considered.
16. The Scottish Ministers were concerned that there was no reference in the Council's proposal paper or in the consultation report, to consideration of reasonable alternatives. There was no reference in the proposal paper or in the consultation report to the Strategic Property Review. The Scottish Ministers noted that, in its response to Education Scotland's comments about the lack of consideration of alternative options, the Council stated "With regard to alternatives to closure, the very low pupil roll and geography of the school catchment ruled out consideration of any school reorganization...". The Scottish Ministers were concerned that this response appeared to contradict the Council's response to the letter of 25 June 2021 in which it was stated by the Council that alternatives had been explored as part of the Strategic Property Review.
17. Accordingly, the Call-In Notice stated "that it appears that the Council may have failed in a significant regard to meet the statutory requirements under s12A of the Act. The

preliminary requirements of the process that apply to rural schools do not appear to have been met..”

18. Failure to give Notice as required by s11A(3) of the 2010 Act
19. Under Call-In Ground 1 of the Call-In Notice, the Scottish Ministers also indicated that no copy was given, as required by s15(2)(b)(iii) of the 2010 Act, of the Notice which the education authority is required to publish under s11A(3). This Notice requires the Council to publish reasons why it is satisfied that implementation of the proposal (wholly or partly) is the most appropriate response to the reasons for formulating the proposal identified by the authority under s12A(2)(a). It appeared to the Scottish Ministers that no such Notice had been published by the Council as required by s11A(3). The Scottish Ministers raised this issue as part of its overall position that there were doubts as to whether the Council had met the preliminary requirements in relation to rural school closure as set out in s12A of the 2010 Act.
20. Call-In Ground 2 – Content of Proposal Paper - Previous Actions to address reasons, and alternatives
21. The second ground for call-in related to a concern by the Scottish Ministers that the Council had failed to describe in the proposal paper the actions taken in the past to address the reasons for the closure proposal, or to explain why it did not take any such steps, as required by ss13(2)(b) and (c) of the 2010 Act.
22. Accordingly, the Call-In Notice stated that the Scottish Ministers had “concluded that it appears that the Council may have failed in a significant regard to comply with the requirements of s13 of the 2010 Act. In particular, it appears that the Council has failed to describe what steps it took to address the reasons for the closure proposal, or explain why it took no such steps, which is a requirement under s13(2)(b) or (c) of the 2010 Act. It further appears that the Council has failed to undertake a consideration of reasonable alternatives which is a requirement under s13(2)(d) to (f). Given the centrality of the unsustainably low pupil roll to the Council’s proposal as the identified reason for the proposal, these failures are considered to be failures in a significant regard.”

Review

23. Call in ground one: Consideration of Reasonable Alternatives
24. The Schools (Consultation) (Scotland) 2010 Act as it applies to a rural school requires detailed consideration of alternatives to closure prior to consulting on proposals to close a school. In addition, proper consideration requires to be given to these alternative options through an options appraisal. It is intended that this takes place

in advance of publishing the proposal paper. Indeed, the education authority can only proceed to the publishing of a proposal paper after complying with section 12A(2) of the Act.

25. The School is designated as a rural school. Section 12A of the 2010 Act sets out the preliminary requirements that must be taken in relation to rural school closure. This section applies where an education authority is formulating a closure proposal as respects a rural school.

26. Section 12A provides:

s12A(2) - The authority must:

- a. Identify its reasons for formulating the proposal,*
- b. Consider whether there are any reasonable alternatives to the proposal as a response to those reasons,*
- c. Assess, for the proposal and each of the alternatives to the proposal identified under paragraph (b) (if any)*
 - i. The likely educational benefits in consequence of the implementation of the proposal, or as the case may be, alternative,*
 - ii. The likely effect on the local community (assessed in accordance with section 12(4) in consequence of such implementation,*
 - iii. The likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.*

s12A(3) – For the purposes of this section and section 12, reasonable alternatives to the proposal include (but are not limited to) steps which would not result in the school or a stage of education in the school ... being discontinued.

s12A(4) – The authority may not publish a proposal paper in relation to the proposal unless having complied with subsection (2), it considers that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

27. The Statutory Guidance makes several references to what the authority requires to do in order to comply with the preliminary requirements set out at s12A.

Paragraph 4 states: *The 2010 Act makes special arrangements in regard to rural schools, establishing a procedural presumption against the closure of rural schools. This requires the education authorities to follow a more detailed set of procedures and requirements in formulating a rural school closure proposal and in consulting on and reaching a decision as to whether to implement a rural school closure proposal.*

With particular reference to consideration of Reasonable Alternatives:

Paragraph 67 states: *Section 11A provides that the authority may not decide to close a rural school unless it has completed with the requirements in sections 12, 12A and 13 and is satisfied that such decision is the most appropriate response to the reasons it has identified for making the proposal. Section 11A is referred to as a “presumption against closure”, as compliance with specific requirements is necessary before a closure decision can be made. Section 12 requires an authority to carry out very thorough consideration of why it wishes to close a rural school prior to consulting on a closure proposal, to assess all reasonable alternatives to closure, and only to proceed, following consultation, if the authority is satisfied that the closure proposal is the most appropriate response to the issues identified.*

Paragraph 70 states: *An authority that is formulating a rural school closure proposal must satisfy the preliminary requirements set out in section 12A of the 2010 Act before starting to prepare its proposal paper. It must identify the reasons for formulating the proposal. ... The authority is required to consider these reasons when making its decision on a proposal or any reasonable alternatives, so it is important that these are clear and as specific as possible. ... Rather than simply stating that the school is no longer viable, the authority is expected to set out the reasons why it considers the school to no longer be viable.*

Paragraph 71 states: *There is a new duty on the authority in terms of section 12A(2) to identify any reasonable alternatives to the proposal which might also address the reasons for the proposal. Full consideration should be given to including “maintaining the current school” as an option here unless it is clear that this would not address the reasons for the proposal. The authority is required to invite written representations on these alternatives as well as suggestions for other reasonable alternatives (in terms of the additional consultation requirements in section 13(3)(b) and (c)).*

Paragraph 72 states: *The authority is required to assess for the proposal, and all reasonable alternatives that have been identified:*

- *the likely educational benefits;*
- *the likely community impact...; and*

- *the likely effect of any different travelling arrangements...*

Paragraph 73 states: *The authority cannot make a decision as to whether to proceed to consultation until these preliminary requirements have been carried out and unless they are satisfied that that implementation is the most appropriate response ... It is expected that this type of engagement would lead to higher quality proposal papers and better statutory consultations.*

Paragraph 74 relates to identifying reasonable alternatives and states: *The policy intention here is to ensure that when an option to close is proposed, the decision to consult on that option is only taken after very careful consideration, and after all other reasonable alternatives have been considered. ... It is important to ensure that all reasonable alternatives that the authority identifies are properly explored before the authority proceeds to consult on closure.*

Paragraph 75 states: *Examples of alternatives to closure that might merit consideration include: using the school as a 'community hub' where it accommodates and supports provision of a range of community services; how the school roll might be increased, for example, by realigning catchment areas, or encouraging or supporting community initiatives aimed at attracting employment or other inward migration to the area; how recruitment to teaching posts in remote areas might be improved; whether other management options might be a possibility...; suspension of consideration of a closure proposal for an agreed period to enable a community time to instigate a project/initiative aimed at, for example, increasing local development or employment opportunities in the community, which in turn may increase the viability of the school.*

Paragraph 76 states: *Once the authority has identified all the "reasonable alternatives", the authority is required to assess their educational benefit, community impact and effect on travel arrangements...*

Paragraph 77 states: *The proposal paper must set out the alternatives to the proposal that the authority has identified, give the authority's assessment of these and explain why the authority considers, in the light of that assessment, that implementation of the closure would be the most appropriate response to the reasons for the proposal. The authority is required to consult on these alternatives and whether there are any further reasonable alternatives, by informing consultees of the alternatives and their opportunity, firstly, to make representations regarding these as well as the main proposal, and, secondly, to suggest further alternatives..*

28. In the Council's consultation report, at section 4, in response to the Report by Education Scotland, the Council stated: "With regard to alternatives to closure, the very low pupil roll and geography of the school catchment *ruled out* (our emphasis) consideration of any school reorganisation to boost the roll (such as rezoning)."
29. In response to the Scottish Ministers' questions prior to Call-In, with particular reference to questions raised about the Council's compliance with the requirements of s12A of the 2010 Act, the Council advised that it had given consideration to a number of possible reasonable alternatives to the closure proposal. The Panel agreed with the suggestion by the Scottish Ministers in the Call-In Notice that the Council's responses on this issue appeared contradictory, at least in so far as relating to consideration of rezoning as a reasonable alternative to closure.
30. Proper consideration of all reasonable options must take place at the preliminary stage, prior to formulation of a closure proposal, as s12A(4) of the 2010 Act only permits an education authority to publish a proposal paper where, having complied with s12A(2) of the 2010 Act, the closure proposal would be the most appropriate response to the reasons for the proposal. The Panel considered the content of the proposal document. The Panel noted that the proposal document was relatively brief and generally lacking in detail or specifics. It contained no consideration of reasonable alternatives to the closure proposal. Information provided by the Council in response to questions from the Scottish Ministers appeared contradictory. In order to consider whether the Council had met its statutory requirements in terms of s12A of the 2010 Act, the Panel had to go beyond the content of the proposal paper itself and looked in detail at the responses provided by the Council.
31. In responses to questions raised by the Scottish Ministers about the Council's compliance with the requirements of s12A, the Council stated: (a) that its reasons for formulating the Proposal were clearly detailed reports agreed by the Education Executive in Agenda Items 9 and 14; and (b) that consideration of reasonable alternatives to closure had been conducted via a "Strategic Property Review" ("SPR") where detailed assessments of possible alternatives (eg keeping the school open, rezoning the catchment or adding a nursery class) were considered. In its Call-In Notice, the Scottish Ministers highlighted that there was no reference in either the proposal paper or the consultation report to the SPR.
32. The Panel looked at each of the Council's responses in turn.
33. (a) Agenda Items 9 & 14
34. The Panel was not provided with these reports and so requested them. In response to the Panel's request, we were provided with the reports along with additional information, as set out a paragraph 9 above.
35. *Agenda Item 14*

The purpose of this report was to set operational parameters for Children's Services to progress consultation on the mothballing of a primary school when the number of catchment area pupils on the school roll had fallen below an agreed level, and to propose amendments that would be required to the current Admissions Policy if the recommendations were approved. This was a general report and it contained no information specific to the School. The report provided advice to the Council on Scottish Government Guidance on mothballing of schools. It set out criteria for considering mothballing and proposed management action to be taken when schools are identified for mothballing. It set out "Educational Concerns Where Primary Schools have very low rolls" and the Panel notes that the perceived problems commonly associated with teaching a small group of pupils listed (i) to (vi) in this report eventually came to be incorporated into Educational Benefits section of the proposal paper. Paragraph 3 of the Report sets out the Scottish Government Guidance on mothballing schools. It specifically narrates paras 63, 64 and 65 of the Statutory Guidance. However, the Panel notes that no reference is given to the Statutory Guidance relating to rural schools, namely para 66-82 which are essential when authorities are considering the closure of a rural school of which mothballing is considered as being an option. In particular, there is no mention in the report of paragraphs 66 and 67 relating to the statutory presumption against closure. The failure to differentiate between a non-rural school and rural school in the report in itself is not considered a failure but gives an early indication of a lack of consideration by the Council in respect of matters pertinent to rural schools.

36. Agenda Item 9

This is a report on a (non-statutory) consultation process undertaken at the stage that the Council was considering mothballing of the School (and another school, Bothkennar Primary). The Report recommends the mothballing of the School. There is no reference in the report to the School being designated a rural school. The Panel notes that the report concludes that, as a result of very low demand, the School is currently not viable. Mothballing of the School was the only option considered in this report. Section 5 of the report is entitled "Proposed Way Forward". That section is entirely silent on any steps which the Council intends taking to try to redress the declining school roll. Instead, the Council's attention at this stage appears to be focused on the arrangements needed to transfer children enrolled with the School to the proposed alternative catchment school. This report did not inform the Panel's understanding of what consideration, if any, was given to reasonable alternatives prior to closure.

37. Agenda Item 6

This report recommends that the Council progress to a formal statutory consultation on a proposal to close the School (and also to close Bothkennar Primary). The report does not contain any consideration of alternatives to closure prior to consulting on a proposal to close the School, nor does it contain an options appraisal. Given that these matters require to be addressed as a statutory pre-requisite of proceeding with a proposal paper, it would be considered competent to advise the education executive on the status of both matters in advance of seeking agreement of the executive to progress to statutory consultation on a proposal to permanently close the School. Paragraph 5.8 of the report notes, for the first time in the documents provided to the Panel, that because the School is a rural school, "special consideration" must be undertaken before any decision on a [closure] proposal is made. Factors to be considered are the effect on the local community and on travel arrangements. There is no mention in this report of the requirement to consider reasonable alternatives to the closure proposal.

38. The Panel found no evidence, within the 3 reports provided to it, of the Council having undertaken any detailed consideration of reasonable alternatives prior to formulating the closure proposal. No options appraisal has been reported as being carried out, nor do the reports disclose that the education authority was advised of the outcome of any such appraisal. No options have been highlighted for consideration from within the authority or canvassed from the affected local community.
39. The Panel would expect that key areas of policy would be addressed through the committee process, even if consideration was given elsewhere, and given the absence of any such narrative the Panel can only conclude, from its review of the reports provided to it, that such consideration did not take place.
40. The Strategic Property Review
41. In its response to the Scottish Ministers at the pre Call-In stage, the Council stated that reasonable alternatives had been explored as part of a SPR. The Scottish Ministers pointed out that there was no reference to such review in either the proposal paper or the consultation report.
42. In a letter dated 18 August 2021, the Panel requested further information from the Council to seek clarification and substantiate their comments regarding the Strategic Property Review. The Panel's request read: *"Please provide the Panel with a copy of any Strategic Property Review document, prepared prior to February 2021, together with any related documents which demonstrate (a) the input from Children's Services and /or the Education Executive to the SPR advising on the outcome of consultations with the local community and other interested parties about any reasonable alternatives to closure of the school; and (b) the SPR's community engagement exercise on the school estate with the Limerigg local community;"*

43. The Panel considers it important to set out the Council's response in full: *"The Strategic Property Review awaits the outcome of the school closure proposal before discussing future options for this building with the local community. There were no objections to either mothballing or permanent closure from the local community and stakeholders during the consultations in 2019 and 2021, but there was some interest in future plans for the property asset. It was made clear at the public meetings that this would be addressed via community consultation as part of the Strategic Property Review.*

For reference, the report in the link below was agreed by Falkirk Council in May 2021 and provides detail of the Strategic Property Review and implementation plan: [hyper-link to Agenda Item 7]"

44. Firstly, it should be noted that the Panel requested any Strategic Property Review document prepared *prior to* February 2021 (which was the publication date of the proposal paper). The document provided to us – Agenda Item 7 - was dated May 2021. Neither the Council's response, nor anything contained in Agenda Item 7 provided to the Panel, directly addressed any of the questions asked by the Panel. The response directly contradicted the Council's assertion to the Scottish Ministers that: "it had undertaken significant work under its "Strategic Property Review" for several years. As part of the input and assessments made to this, there was consideration of alternative options."
45. In addition, the Council had informed the Scottish Ministers that *"The Strategic Property Review (SPR) formed a key part of the Council's community engagement exercises when options for a range of properties including schools were discussed. Following this the SPR concluded also that closure was the best route."* Not having been provided with any SPR document prepared prior to the formulation of the proposal paper, (despite having specifically requested same) the Panel had considerable difficulty understanding the basis upon which this assertion could have been made.
46. The Panel carefully considered the reports provided to it and it was satisfied that it had not seen any tangible evidence to support the Council's assertions that detailed consideration had been given to reasonable alternatives to closure prior to the formulation of the proposal document.
47. The Panel also had regard to the Council's approach to the consultation. The Statutory Guidance at Paragraph 106 onwards, makes clear that special requirements apply to preparing the consultation report on a rural school closure. Following the consultation period, when the education authority is reviewing its proposal inter terms of s9(1) of the 2010 Act, the education authority is required to carry out a further assessment for

the proposal and each of the alternatives that were set out in the proposal paper. The education authority is also required to make this assessment for any new reasonable alternative proposals suggested by consultees through representations. The Panel noted that one consultee asked as to the impact on the community without a school within it. The Council's response noted that a major community engagement exercise was underway across the Council area and for which sustainability of small communities such as Limerigg could be discussed. This seemed an inadequate response as such discussions, such as they might pertain to revealing alternatives to school closure, might reasonably have been expected to precede the closure proposal.

48. A further response to the consultation also queried why the school could not remain mothballed as a proposed local housing development in the village may provide future opportunity for re-use of the premises as a school. There had been no mention of the proposed housing development in the proposal paper. The Council's response in the consultation paper was that there had been no interest shown in activating the planning permission and that should development go ahead, capacity at Slamannan Primary school would be sufficient to accommodate the potential increase in primary age pupils. This response appeared to the Panel to be entirely contrary to the statutory intention, namely the presumption against closure of rural schools. The Panel did not consider that there was any proper consideration of this suggestion as a reasonable alternative to closure. Instead, the Council's response appeared focused on setting out how the alternative catchment school would deal with any additional pupils. While there may be cogent reasons for the local authority to dismiss the likelihood of new housing (or its likelihood of increasing the primary school age population) the absence of any commentary in the consultation report as to whether continued mothballing was a reasonable alternative added to an overall perception of a lack of serious scrutiny by the Council to reasonable alternatives to closure.
49. Having received information requests from both the Scottish Ministers and the Panel, the Panel proceeds on the basis that the Council has produced all relevant documents/information that it wishes to be taken into account in order to demonstrate its compliance with the statutory requirements of the 2010 Act. On that basis, the Panel has reached the conclusion that the Council failed to give proper consideration to any reasonable alternatives to closure prior to formulating the proposal paper.
50. The Panel has therefore concluded in relation to Call-In Ground 1, that the Council failed to comply with the requirements of s12A of the 2010 Act. However, the 2010 act requires that the Panel not only consider whether an education authority has failed in a duty but also whether any failure is in a "significant regard". In the decision of Sheriff Tierney in *Highland Council -v- School Closure Review Panel 2016 SLT (Sh Crt) 207*, "failure in a significant regard" was held to mean "in an important way". The Panel considers that the failure in this instance is a failure of considerable importance as the preliminary requirements of s12A are a key part of the statutory framework protecting rural schools from closure without thorough consideration and consultation on all realistic options. Failure to comply with the preliminary

requirements undermines the consultation that follows and may adversely affect rural communities' ability to properly consider and scrutinise closure proposals. The Panel therefore concluded in respect of Call-In Ground 1, that the Council failed in a significant regard to comply with the requirements placed in it in terms of s12A of the 2010 Act.

51. Failure to give Notice

52. On 3 June 2021, the Council's Director of Children's Services sent an e-mail to the Scottish Ministers' e-mail address for intimation of closure decisions. That e-mail notified the Scottish Ministers of the Council's decision to close 2 schools, Limerigg Primary and Bothkennar Primary. The e-mail was sent in terms of s15(2)(a) of the 2010 Act which requires notification to be given within 6 working days of the date on which the decision was made.

53. Section 15(2)(b) provides that, along with the notification, the Scottish Ministers must also be given a copy of: the proposal paper, the consultation report; and where the decision relates to a rural school, a copy of the notice published under s11A(3).

54. Section 11A of the 2010 Act makes specific requirements in relation to an authority's decision to implement a rural school closure proposal. Following a decision to implement a rural school closure proposal, section 11A(3) requires the authority to publish a notice on its website of that decision.

55. s11A(3) provides:

The authority must publish on its website notice of –

(a) Its decision as to implementation of the proposal; and

(b) Where it decides to implement the proposal (wholly or partly), the reasons why it is satisfied that such implementation is the most appropriate response to the reasons for formulating the proposal identified by the authority under s12A(2)(a).

56. The e-mail of 3 June contained hyper-links to 3 documents, relating to Limerigg. Those documents were:

- 1) A Notification of decision to close Limerigg Primary School posted on the Council's website on 3 June ("the Notice")
- 2) Limerigg Proposal Document
- 3) Limerigg Consultation Report

57. In the Call-In Notice, the Scottish Ministers indicated that no copy was given, as required by s15(2)(b)(iii) of the 2010 Act, of the notice which the education authority is required to publish under s11A(3). This notice requires the Council to publish reasons why it is satisfied that implementation of the proposal (wholly or partly) is the

most appropriate response to the reasons for formulating the proposal identified by the authority under s12A(2)(a). It appeared to the Scottish Ministers that no such notice had been published by the Council as required by s11A(3).

58. The Notice was clearly provided to the Scottish Ministers as an attachment to the e-mail of 3 June. The Panel considers that the true question for its consideration is not whether a notice was published, but rather, whether the content of the Notice met the requirements of s11A(3).
59. It is important to set out the content of the Notice in full. It states:

On Tuesday 1 June 2021, the Education and Young People Executive [hyper-link] made the decision to permanently close Limerigg Primary School.

This followed consideration of all responses received during a statutory consultation with parents, staff, pupils, the local community and other interested parties, in accordance with the Schools (Consultation)(Scotland) Act 2010, earlier this year. Full details of the proposal, the response to this consultation and the associated report from Education Scotland can be viewed in the Consultation Report [further hyperlink].

Limerigg Primary School was temporarily closed (mothballed) in August 2019 after the school roll had fallen to 5 pupils having been declining over a number of years. Slamannan Primary School became the catchment school for primary pupils living in this area and this will remain the case following the decision to permanently close the school.

80% of respondents to the consultation were in support of the proposal to close the school and the Education, Children and Young People Executive made the decision to close the school in line with the reasons stated in the Proposal Document [further hyper-link]

Following the school's closure, the local community will have the opportunity to influence future use of the site/building during the community conversations [further hyper-link] that are now underway.

Following the Council's decision to close the school, there is a requirement to notify Scottish Ministers. All stakeholders have a further opportunity to make representations to Scottish Ministers either in support or against the closure within 3 weeks of the Council's decision (by Tuesday 22 June 2021). Scottish Ministers then have a further 5 weeks to decide whether to "call-in" the decision and refer to the

School Closure Review Panel for further consideration. Further information on this process can be found on the Scottish Government Website [hyper-link].

Any further representations on the closure decision should be sent by e-mail to schoolclosure.gov.scot (<mailto:schoolclosure@gov.scot>) or by post to:

*The Scottish Government
School Infrastructure Unit
2A (South) Victoria Quay
Edinburgh EH6 6QQ*

The deadline for further representations is 22 June 2021.

60. In considering the question before us, the Panel has also had regard to the terms of s15(2A) of the 2010 Act which provides: At the same time as it notifies the Scottish Ministers of the decision under subsection (2)(a), the education authority must publish on its website notice of –
 - (a) The fact that the Scottish Ministers have been so notified, and
 - (b) The opportunity for making representations to the Scottish Ministers in connection with subsection (4), including the date on which the 3 week period referred to in that subsection ends.
61. It should be noted that the content of the notice which the Council requires to publish in terms of s15(2A) is quite separate to the information which it requires to publish in terms of a notice under s11A(3). There is no cross-over in terms of the information that requires to be included in each notice. The Panel notes that the requirement to publish a s15(2A) notice must be carried out “at the same time” as notification to the Scottish Ministers of the decision under s15(2)(a).
62. The Panel has considered the terms of the Notice. One interpretation might be that the Notice is a notice issued in compliance with s 15(2A) rather than s11A(3). A more generous interpretation might be that the Council has attempted to conflate the notice requirements of sections 11A(3) and 15(2A) into a single notice. The Panel does not intend concerning itself with the question of the competency of that but, instead has considered whether the information contained in the Notice would be sufficient to meet the requirements of s11A(3). It is the decision of the Panel that the Notice fails to meet those requirements.
63. s11A(3) requires publication of a notice setting out the local authority’s decision as to implementation of the proposal and, where it decides to implement the proposal (wholly or partly), the reasons why it is satisfied that such implementation is the most

appropriate response to the reasons for formulating the proposal identified by the authority under s12A(2)(a).

64. The Notice meets the requirements of s11A(3) in some regards. It fulfils the requirement to set out the Council's decision to implement the closure proposal. The Notice also provides the reason for the decision, namely the declining school roll. The Panel takes the view that the Notice fails, however, to meet the requirement to publish the reasons why the Council is satisfied that implementation of the closure proposal is the most appropriate response. The Notice contains several links to other documentation, including the proposal paper. Given the importance of the information it is perhaps surprising that the Council attempted to satisfy its statutory requirements by way of referring interested parties to separate links, rather than incorporating the necessary information into the Notice. However, even if an interested party had followed the links, the information contained therein would have been insufficient to satisfy the requirement on the Council to explain why it was satisfied that implementation was the most appropriate response to the reasons for formulating the proposal.
65. The question of whether or not implementation of the proposal was the most appropriate response would have required detailed consideration by the Council of the preliminary matters set out at s12A(2) of the 2010 Act, in particular, the question of whether there were any reasonable alternatives to the proposal. Without having undertaken a detailed consideration of reasonable alternatives to closure, it would not be possible for the Council to determine whether (or provide reasons why) closure was the most appropriate response. For reasons set out elsewhere in this Decision, the Panel has taken the view that the Council failed in a significant regard to meet the requirements of ss12A of the 2010 Act. There was nothing in either the content of the Notice; or (i) the proposal paper and (ii) the consultation notice, both of which formed part of the Notice by virtue of being attached by hyper-link, which provided sufficient information to satisfy the requirement on the Council to explain why implementation of the proposal was the most appropriate response to the reasons for formulating the proposal. Accordingly, the Panel takes the view that the Council failed to publish a Notice which complied with the requirements of s11A(3) of the 2010 Act.
66. Call-In Ground 2 – Content of Proposal Paper - Previous Actions to address reasons, and alternatives
67. The second ground for Call-In related to an alleged failure to describe in the proposal paper the actions taken by the Council in the past to address the reasons for the closure proposal, or to explain why it did not take such steps.

68. There was also said to be a failure in the proposal paper to set out any alternatives to the proposal identified at the preliminary stage, explain the Council's assessment of all reasonable alternatives, or explain why, in light of such assessment, the Council considered the closure proposal to be the most appropriate response.
69. Section 4 of the 2010 Act sets out the statutory requirements for a proposal paper. The Statutory Guidance makes several references to factors to cover in the proposal paper. In terms of paragraph 52 of the Guidance, the authority must ensure the proposal paper provides sufficient detail on areas likely to be of concern to communities. This is said to include clear travel plans for pupils and states that the proposal paper should *"also be clear on the authority's plans for the future use of any school building and associated facilities that will be released by the proposal. It is reasonable for communities to be concerned whether a school building would have another public purpose, be available for the community, sold or might remain vacant for a significant period, and authorities should provide as much certainty and transparency as possible"*.
70. Section 13 of the 2010 Act sets out additional consultation requirements which apply to any closure proposal relating to a rural school. Section 13(2) sets out additional matters that require to be addressed in the proposal paper and provides:-
S13(2) The proposal paper must additionally –
(a) Explain the reasons for the proposal;
(b) Describe what (if any) steps the authority took to address those reasons before formulating the proposal;
(c) If the authority did not take such steps, explain why it did not do so;
(d) Set out any alternatives to the proposal identified by the authority under section 12A(2)(b);
(e) Explain the authority's assessment under section 12A(2)(c);
(f) Explain the reasons why the authority considers, in light of that assessment, that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.
71. Paragraph 82 of the Statutory Guidance states that a proposal paper relating to a rural school has one further "significant" additional component. As well as explaining the reasons for the proposal, there is a duty on the authority to set out the steps it has taken, if any, to address the reasons for the proposal *before formulating the proposal*. This paragraph states *"For example, the reason for the proposal might be the falling roll at the school and understanding what action, if any, the authority has taken in the past to seek to address this would help to understand whether such measures should be tried now, or have little prospect of success. Additionally, if the authority has not*

taken any steps to address the reasons for the proposal, the authority is required to explain why it did not do so..”

72. Failure to describe steps taken to address the reasons for the proposal
73. In carrying out our review the Panel looked at what the Proposal Paper said about the reasons for the proposal. The section headed “Background”, stated *“During school session 2018/2019, the pupil roll at Limerigg Primary School fell to just 5 pupils after a prolonged period of declining numbers. Following a consultation with affected parents and the school community, it was agreed that Limerigg Primary School would be mothballed, subject to an annual review of demand for pupil places, and that Slamannan Primary School would become the proxy catchment school for the area. Two years on, the primary age population in the Limerigg Primary School Catchment area has not changed, with the prospect of declining numbers over the coming 5 years. For this reason, it is now proposed that the school is permanently closed.”*
74. The Panel concluded that, for the purposes of the 2010 Act, the reasons for the proposal are set out in the above paragraph, namely a declining school roll.
75. The next section of the Proposal Paper headed “Pupil Numbers in the area” provides details of how demand for places had declined, year on year, between 2014/15 to 2018/19. The paper provides *“Based on all known data, there will be no increase in catchment demand for places in the coming 5 years to justify re-opening the school”*.
76. To comply with its statutory obligations, the Council is required to describe the steps it took to address the reasons for the proposal before formulating the proposal, or if it did not take any steps, say why. The proposal paper does not describe the steps the Council took to address the reasons for the proposal, nor does it explain why the Council did not take any such steps. The Panel considers the absence of this description to be a failure to comply with the requirements of s13 of the 2010 Act.
77. In any event, the Panel attempted to ascertain what steps were taken prior to the proposal being formulated. It was not clear exactly when the proposal was formulated, however, the Panel worked on the assumption that the proposal was not formulated prior to the decision to mothball in 2019. The Panel therefore attempted to assess what steps were taken by the Council to address the reasons for the proposal from 2019 onwards.
78. When considering this question, the Panel had regard to the Opinion of Lady Wise in the *Petition of Perth & Kinross Council for Judicial Review [2020] CSOH 41*, in particular, paragraph 36 of that Opinion where her Ladyship provided helpful commentary on

what a local authority required to do to fulfil its obligations in terms of s13 of the 2010 Act. Paragraph 36 of the Opinion provides:

“In the Proposal Paper, the local authority must, after explaining its reasons for the closure proposal, provide retrospective information about what steps it took to address those reasons (here principally the falling school roll) “before formulating the proposal”, a clear reference to a period prior to even considering that closure might be an option. These additional requirements for rural schools flow naturally from the procedural presumption against rural school closure introduced by section 11A. The starting point for a local authority must be to address a falling school roll in a way that avoids the spectre of closure. Only if the problem can’t be addressed, and the local authority can explain why that was, can it properly move to the next stage. Identification of alternatives is not synonymous with addressing a problem and is part of the later stage. Conducting a review of a catchment area is not tantamount to addressing a falling school roll problem; making alterations to a catchment area would be different and could well constitute an attempt to address the issue...”

Prior to Call-In, the Scottish Ministers raised the apparent failure to describe past steps taken with the Council.

79. The Council’s response to a specific question about what steps had been taken to address the reasons before formulating the proposal simply referred the Scottish Ministers back to the response that it gave to other questions, which was the same response already narrated at paragraph 31 of this Decision, namely that the steps taken by the Council to address the declining school roll could be ascertained from information contained in Agenda Items 6, 7, 9 & 14.
80. The Council’s response was of very limited assistance. The Council identified low pupil numbers as one of the reasons for formulating the proposal. It was said there was no prospect of catchment demand increasing in future. This response provided no information at all, however, on what steps, if any, the Council had taken to try to address the declining school roll prior to formulating the closure proposal. The Council also stated, in its response to the Scottish Ministers that the Headteacher of the School had sought to mitigate against the negative impact of the falling roll by increasing the involvement of the children with activities also with their peers within the alternative catchment school. It was said that these efforts addressed some of the adverse issues identified with a low school roll but also resulted in an increase in families electing to send their children to the alternative school, further compounding the issue of low pupil numbers at the School. The Panel noted that this information, provided only in response to an information request by the Scottish Ministers, was helpful but we agree with the comments of the Scottish Ministers in the Call-In Notice that it is a requirement of the 2010 Act to include evidence of consideration of steps

taken to address the reasons for the Proposal within the proposal paper and the consultation report.

81. The Council also relied on an assertion that as part of its Strategic Property Review, several alternatives to closure had been considered including keeping the school open; catchment re-zoning and provision of a nursery class to increase primary demand. None of these options were, in fact, canvassed in any of the documents provided to the Panel by the Council. The Panel saw nothing which informed its understanding of what options might have been considered by the Council prior to formulating its Proposal. In any event, having regard to the excerpt from Lady Wise's Opinion above, a mere consideration of options to address the reason for closure would not be sufficient to fulfil the statutory requirements. The Council required to take action to try to address the reasons for the closure proposal and, in terms of s13 of the 2010 Act, it required to describe the actions taken in the proposal paper, or to explain why it did not take any such steps. No such description or explanation was set out in the position paper.
82. In considering this matter further, the Panel also had regard to a statement in the proposal document at the section headed "Background" where it was said "*.. it was agreed that Limerigg Primary School would be mothballed, subject to an annual review of demand for pupil places ...*" The Panel wanted to explore whether this annual review had identified any steps that might have been taken during the period of mothballing to address the declining school roll.
83. The Panel wrote to the Council and asked for "*all documents which evidence such annual reviews having taken place, or which narrate the outcome of such reviews, from the date of mothballing onwards*". The Council's response indicated that, after mothballing in 2019, primary 1 intake enrolment data for Session 2020/21 made clear that there had been no increase in demand for places so no formal, documented review was undertaken. It was said that a review would not, in any event, have been possible to the onset of the Covid-19 pandemic in March 2020 which resulted in cancellation of Council meetings. The absence of formal annual review, which could have targeted alternatives to permanent closure is regrettable and though undoubtedly impacted by the COVID-19 pandemic, if conducted with a view to the obligations under the 2010 Act, might have provided information that would have helped evidence the closure proposal or provide opportunity for consultees to bring forward alternatives to closure. The Council indicated that a second Annual Review in January 2021 was formalised in a committee paper (Agenda Item 6) and provided a hyper link to that document. The Council's response highlighted no increase in demand for school places but failed to explain what steps, if any, it had taken to try to address the declining school roll between mothballing and the formulation of the

proposal to close the School. The Panel also noted that Agenda Item 6 contained no references at all to any steps taken to try to address the declining school roll.

84. The Panel found nothing in the proposal paper which described the steps taken to address the reasons for the proposal either before or after the decision was taken in 2019 to mothball the School. Having looked at the available documents, and having requested further information to clarify matters with the Council and try to ensure that nothing had been missed, it appeared to the Panel that the Council did not take any steps to address the decline in the school roll. There is a suggestion (albeit one that is not supported by any documentary evidence) that the Council considered but discounted catchment re-zoning. Consideration of an option is not sufficient to satisfy the statutory requirements. The 2010 Act does not set out any specific steps that an education authority must take before formulating a closure proposal. Section 13 of the 2010 Act does, however, require the education authority to address the reasons for closure proposal before formulating the proposal. If it did not take any such steps, it must explain why.
85. Failure to address alternatives in the proposal paper
86. The Panel considers it can deal with this ground of the Call-In in fairly short order given its finding, in respect of Call-In Ground 1, that the Council failed in a significant regard to meet the statutory requirement to give proper consideration to any reasonable alternatives to closure prior to formulating the proposal paper.
87. Section 13(2)(d) of the 2010 Act provides that the proposal paper in respect of any closure proposal of a rural school, must set out any alternatives to the proposal identified by the authority under section 12A(2)(b).
88. No consideration of specific alternatives to closure were presented in the proposal paper, or as part of the consultation process. The Council appears to have taken a decision to mothball the School in 2019 and then took no action to try to address the declining school roll or properly consider any reasonable alternatives to closure. The Panel, having determined that the Council failed to fulfil its obligations in terms of s12A(2)(b) of the 2010 Act, also determines that it was not then possible for the Council to fulfil its obligation in terms of s13(2)(d) of the Act to set out any alternatives to the proposal.
89. The Panel considers that the Council has failed in its statutory obligations to comply with the requirements of s13 of the 2010 Act. The Panel again requires to consider whether any failure is in a significant regard. The purpose of evidencing in the proposal paper the actions taken in the past to address the reasons for the closure

proposal, or to explain why the education authority did not take such steps, and furthermore to set out any alternatives to the proposal, are important steps in explaining the overall assessment carried out of all relevant options, and in explaining why in light of such assessment the Proposal is considered to be the most appropriate response. The statutory requirements are intended to ensure that the circumstances that led to the closure proposal are clear to consultees. Failures to satisfy these requirements may undermine the effectiveness and transparency of the process and the special protection given to rural schools by the presumption against closure under the 2010 Act. The Council was clearly aware of the falling school roll. Given the centrality of the unsustainably low pupil roll to the Council's Proposal as the reason for the proposal, the Panel considers the failures to be failures in a significant regard.

90. The Panel took into account the statutory presumption against closure of a rural school and in particular the provisions of s11A of the 2010 Act which provides that an education authority may not decide to close a rural school unless it has complied with the requirements of ss12, 12A & 13 of the 2010 Act. The presumption against closure is a rebuttable presumption which can only be rebutted by proper compliance with the preliminary and additional consultation requirements. The Panel has reached the view that the Council to satisfy the requirements of s13 of the 2010 Act with respect to describing (1) previous actions to address the reasons for the proposal; and (2) any alternatives identified at the preliminary stage. The Panel has concluded in relation to Call-In Ground 2, that the Council failed in a significant regard to comply with the requirements imposed on it under the 2010 Act.
91. **Further Review in terms of s17B(1) of the 2010 Act**
92. In terms of s17B(1) of the 2010 Act, the Panel is required to consider if the Council has failed in a significant regard to comply with any of the requirements imposed by the 2010 Act and whether it has failed to take account of any material considerations relevant to its decision to implement the closure proposal.
93. Having reviewed the information supplied by the Scottish Ministers and the Council, the Panel did not consider that the Council had failed to take proper account of a material consideration relevant to the proposal. However, the Panel did identify areas in which it considered that the Council had failed to fulfil its obligations in terms of its preparation of a proposal paper which sets out details of the relevant proposal in terms of ss3&4 of the 2010 Act.
94. The Panel considered that information provided by the Council in the proposal document as insufficiently clear, complete and transparent in the following sections:
 - (a) Educational Benefits Statement;

- (b) Financial Considerations;
- (c) Community Impact

95. Educational Benefits Statement

96. Paragraph 33 of the Statutory Guidance states: “... *the local authority must, for all consultations, prepare an Educational Benefits Statement and publish it within the proposal paper. ... The authority must also include its reasons for reaching the views which it sets out regarding the educational benefits. Reasons should be supported by evidence, including, for example, HM Inspector reports .. to assist consultees in their understanding of the projected educational benefits*”. Paragraph 35 of the Statutory Guidance states: “... *any proposal is likely to involve both pros and cons. ... Consultees reading the Educational Benefits Statement, including of course, an HM Inspector within Education Scotland, should be able to clearly identify details of the benefits that would accrue from implementation of the proposal. It is likely that an Educational Benefits Statement which is too brief or general and fails to identify specific benefits to the pupils of the affected school would result in criticism by HM Inspectors and/or a proposal being calling in by Scottish Ministers*”.
97. The Educational Benefits Statement is relatively brief and lacking in detail. The specific benefits set out in the proposal paper appear generic and not sufficiently evidenced to enable scrutiny or context based analysis of their relevance to the School. By way of example, there is nothing contained within the Statement that explains how the School benchmarks against others in the Council’s school estate. The Statement contains generalised statements and non-referenced analysis which renders scrutiny by consultees difficult. The Statement contains 10 indicators adopted by the Council in reviewing its school estate. It is the Council’s view that the School cannot meet all of these criteria but no specification is given as to which indicators are met and which are not. The Statement concentrates on the potential benefits of the proposal with little or no consideration of any potential disadvantages.
98. The Panel noted with interest the comments made at Paragraph 3.2 of the Report by Education Scotland relating to educational aspects of the Proposal. HM Inspectors commented that they agreed with some, but not all, aspects of the Council’s educational benefits statement. The Report did not specify which aspects HM Inspectors agreed or disagreed with but some clarification is provided in the Consultation Report prepared by the Council at Section 4 which suggests that HM Inspectors agreed with contentions in this case on the “socialisation with larger peer groups, access to a wider range of clubs and activities and opportunities for leadership provided in the bigger [Slamannan] school”. Those are only 3 of 6 suggested benefits contained in the proposal paper and the Council fails in the consultation report to address why HM Inspectors appear to have accepted only 3 of the suggested benefits of the Proposal.

99. Overall, the Panel does not consider that the content of the Educational Benefits Statement fully or adequately set out its reasons for reaching the views which it sets out regarding the educational benefits. Nor would it allow consultees to clearly identify and interrogate the basis for the proposed benefits that it is argued would accrue from implementation of the proposal.

100. Financial Considerations

101. It is the view of the Panel that the finance statement contained within the proposal document is not compliant with the Statutory Guidance at paragraphs 53-59. Paragraph 53 provides: “.. *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 employed.*” While some flexibility for context is allowed, the statements as to costs saving are opaque. For example, where one school is to be closed and the pupils are proposed to move to another existing school, the actual current costs for the school proposed for closure should be given. These should cover a full financial year and assume that the school remained open for the full year. The additional financial impact on the receiving school as a result of taking in extra pupils should also be given for a full financial year. Data should also be given on the capital costs of the school(s) proposed for closure and the receiving school(s). Care should be taken to ensure that these are comparable and reflect the expected life cycle of a school. Annual property costs for a closed school before it is disposed of should also be given; and any non-recurring revenue costs. The impact of the closure, if any, on the authority’s Revenue Grant should also be given. This is based on a Grant Aided Expenditure (GAE) formula. It should be clearly indicated whether GAE is likely to be affected. In addition, the guidance notes the inappropriateness of inclusion of certain costs such as central management support costs.

102. Community Impact

103. As the School is a rural school, s12 of the Act provides that the Council must have “special regard” to the likely effect on the local community in consequence of the proposal, if implemented. The effect on the community is to be assessed inter alia by reference to the sustainability of the community and the availability of the school premises and its other facilities for use by the community. The time for the Council to have “special regard” to the community impact is before the proposal is published.

104. The proposal document considers community use of the school and states that “*prior to mothballing use/lets of the school was limited to Councillor Surgeries only*”. There is nothing in the proposal document which sets out where surgeries have taken place since mothballing or what consideration was given to other potential uses of the school and its facilities in the future.

105. There is also a lack of clarity regarding the Council's intentions for future use of the school building. The proposal document indicates that, since mothballing, the school has been used as temporary office accommodation for Council staff. It goes on to say *"Once the building becomes empty, it would be deemed surplus to Children's Services operational requirements and the Council's Asset Management Team would then consider what future options were are for the property, which could include potential sale. However, it is important that all community views are considered prior to this happening and we would welcome your views on possible future uses for this building, should the school close permanently."*
106. Paragraph 52 of the Statutory Guidance states: *"The Proposal Paper should also be clear on the authority's plans for the future use of any school building and associated facilities that will be released by the proposal. It is reasonable for communities to be concerned whether a school building would have another public purpose, be available for the community, sold or might remain vacant for a significant period, and authorities should provide as much certainty and transparency as possible."*
107. It is clear that the Council requires to have "special regard" to community impact before a proposal is published. The Panel does not consider that consideration of options and the seeking of community views *after* the School is closed permanently is being "clear on the authority's plans for future use", nor does it fulfil the requirement on the Council to "provide as much certainty and transparency as possible".
108. Taking into account the Panel's concerns around the level of detail and transparency in the proposal paper as set out above, and the expectations set out in the Statutory Guidance, the Panel considers that the Council has failed to produce a proposal document which fulfils the requirements of sections 3 & 4 of the 2010 Act. The Panel considers that the failures to provide detailed and transparent information in (a) the Educational Benefits Statement; (b) the Financial Statement; and (c) Community Impact may have denied consultees the opportunity to fully and properly consider the Proposal and make representations during the consultation period.
109. **Conclusion**
110. The Panel has determined that the Council has failed in a significant regard to comply with the requirements of ss12A and 13 of the 2010 Act. The Panel has also determined that there has been a statutory failure on the part of the Council in terms of s17B(1)(a) of the 2010 Act.
111. The Panel has considered the impact of these statutory failures and is of the view that the giving of proper consideration to the preliminary requirements set out in s12A of the 2010 Act, would have enabled the Council to provide more detailed and transparent information in the proposal paper in order to meet the requirements of

ss3,4 and 13 of the 2010 Act. The provision of more detailed and transparent information may have improved the depth and breadth of the consultation process.

112. The Panel considers that this is a case which highlights issues which arise from the “mothballing” provisions at Paragraphs 63 to 65 of the Statutory Guidance which suggests that an education authority may, as an alternative to closure, consider a temporary closure which does not lead to a consultation process under the 2010 Act. The aim of mothballing is to allow closure of a school for a temporary period, without the need for a consultation process in terms of the 2010 Act. It is envisaged that mothballing will take place where a school is not currently viable but there is a reasonable prospect that the number of pupils in the area will increase such that it should be re-opened in the future. It is the opinion of this Panel that the mothballing provisions set out in the Statutory Guidance can, in effect, provide the circumstances in which closure becomes inevitable and this appears contrary to the intention, particularly in respect of rural schools where there is a statutory presumption against closure. In effect, the mothballing of a school can create the circumstances which then make closure inevitable. Once children are transferred to an alternative school, and staff moved or made redundant, the education authority effectively creates the circumstances in which it can then be said that the school in question is no longer viable. In the present case, it appeared to the Panel that the majority of the consultees looked at the closure proposal as being inevitable. That was compounded, in the Panel’s view, by the Council’s failure to adequately put forward any reasonable alternatives to closure.

113. The Panel considers the Council to have failed in its obligations in a significant regard. In light of the significant and numerous failures, the Panel did not consider it appropriate to grant consent to the Proposal with conditions. The Panel considered outright refusal of the Proposal. However, the Panel was also mindful that outright refusal with a standstill period of five years did not appear to be in the best interests of the community that the 2010 Act was intended to protect. Accordingly, the School Closure Review Panel refuses consent and remits back to the local authority, in accordance with section 17C(1) of the 2010 Act in order that it may redress its failures. The Panel has determined that the Council requires to undertake the following steps again before reaching a fresh decision:
 - a. The Council shall fully comply with the preliminary requirements set out at s12A of the 2010 Act including, but not limited to, a proper consideration of any reasonable alternatives to closure;
 - b. Should the Council, after compliance with the preliminary requirements of s12A, formulate a proposal to again close the School, it shall prepare a fresh proposal paper in compliance with the requirements of s13 of the 2010 Act;

- c. The Council shall then carry out a fresh consultation process with all statutory consultees.

Yours sincerely,

Beverley Atkinson
Chair