CYNGOR Sir Ddinbych Denbighshire COUNTY COUNCIL

To: Members of the Cabinet

Date: 14 January 2014

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Dear Councillor

I refer to this agenda for the meeting of the **CABINET** to be held at **10.00 am** on **TUESDAY, 14 JANUARY 2014** in **CONFERENCE ROOM 1A, COUNTY HALL, RUTHIN** and enclose the following supplement.

Agenda Item No

5 PROPOSED CLOSURE OF YSGOL LLANBEDR (Pages 3 - 20)

This supplement contains the formal response of the Diocese of St. Asaph and the Governing Body of Ysgol Llanbedr to the consultation.

Yours sincerely

G Williams
Head of Legal and Democratic Services

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ESGOBAETH LLANELWY / DIOCESE OF ST ASAPH

Modernising Education Team,
Denbighshire County Council,
County Hall,
Wynnstay Road,
Ruthin
LL15 1YN.

20th December 2013

Dear Sirs

Re: Denbighshire County Council Proposal to Close Ysgol Llanbedr Dyffryn Clwyd Voluntary Controlled Church in Wales School

Please find attached the response of the Diocese of St Asaph to the consultation to close Ysgol Llanbedr Dyffryn Clwyd Voluntary Controlled Church in Wales School.

Yours faithfully

Rosalind Williams

Rosalind Williams
Director of Education and Lifelong Learning

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Llanbedr Church in Wales Voluntary Controlled Primary School ("the School"): response of the Diocese of St Asaph ("the Diocese") and the Governing Body of the School ("the Governing Body") to the formal consultation ("the Formal Consultation") published by Denbighshire ("the Authority") proposing the closure of Ysgol Llanbedr and the transfer of pupils to Ysgol Borthyn subject to parental preference ("the Proposal") .

Contents

1. INTRODUCTION

1.1 This response is provided to the Authority by the Governing Body and the Diocese. It represents their joint considered views on the Proposal contained in the Formal Consultation and on the processes that have led up to it.

1.2 It is our view that for the Proposal to have any validity the following requirements must have been met:

1.2.1 Due process must have been followed at every stage.

1.2.2 All relevant issues listed in relevant guidance must have been addressed at every stage.

1.2.3 There should be sufficient well-researched, accurate factual evidence to support the conclusions reached and the Proposal.

1.2.4 The Proposal should be based (a) on that evidence (b) on relevant, current statutory guidance and policy statements by Welsh Ministers (c) on properly established lawful policies adopted by the Local Authority.

1.2.5 The process should show no evidence of bias or of considerations not based on (a) to (c) above.

1.2.6 There should be no evidence to show that the Proposal has in some way and to some measure been pre-determined or that the outcome of the Formal Consultation has been pre-determined.

1.3 This response addresses the above issues and raises serious questions in respect of them.

1.4 It is the view of the respondents that the Proposal should be rejected. If the Proposal is published in a statutory notice the respondents will enter a formal objection.

2. PROCESS AND RELEVANT LEGISLATION

2.1 This proposal has been brought forward at a point of legislative transition in Wales. While the Formal Consultation and any consequent statutory notice are published under new legislation as described below, the preparatory Informal Consultation fell under the provisions of the School Standards and Framework Act 1998 ("the SSFA"), the Welsh Assembly Circular No: 021/2009 ("the Guidance") and the National Assembly for Wales Circular 9/99 ("the Procedural Guidance"). It is the contention of the Diocese and the School that the Procedural Guidance has not been followed in respect of the Informal Consultation.

2.2 The Formal Consultation however is published in accordance with the provisions of the School Standards and Organisation (Wales) Act 2013 ("the SSOWA") and of the School Organisation Code (document number 006/2013) ("the Code") which came into force on October 1st 2013. Welsh Government policy as set out in the publication *Faith in Education* is also highly relevant to the Formal Consultation and the Proposal. It is the contention of the Diocese and the School that the provisions of the Code have not been followed and that *Faith in Education* has been disregarded.

The informal consultation

2.3 The requirements for any informal consultation on a possible Statutory Proposal are set out in paragraph 2.4 of the Procedural Guidance. Paragraph 2.5 further sets out the interested parties to be consulted at this stage. 2.4 requires that the Authority *must* consult all interested parties and in doing so *must* have regard to "this guidance". 2.5 comprises a list of possible interested parties and includes "the appropriate diocesan authorities" in the case of a school "with a particular religious foundation". It is surprising therefore that as late as the 25th of June 2013 the Director of Corporate Education informed representatives of the school that the Authority had no requirement to consult the Diocese over the closure of a Church in Wales school. While the Diocese was informed of the Informal Consultation and responded on March 12th 2013, it is evident that considerable confusion reigned as late as June in the mind of a leading LA officer and it was confirmed by Councillor Eryl Williams (lead Member for Education) at the meeting of the Authority's cabinet held on October 29th 2013 that the delay in formulating a proposal in respect of Llanbedr was due to the Authority not having consulted properly with the Diocese. It is impossible to believe that the mind-set thus indicated does not demonstrate a substantial measure not merely of ignorance but of bias and pre-determination in respect of the outcomes

of the Informal Consultation and of the consequent decisions now incorporated in the Formal Consultation and the Proposal. The marginalisation of the Diocese in a situation where a possible proposal to close a Church in Wales school was in view is manifestly concerning. It reinforces the evidence below suggesting that the impact of the review on denominational provision was not a factor explicitly being considered and that the position of the Diocese and its schools was not seriously being addressed.

The Formal Consultation

2.4 The Formal Consultation is being carried out in accordance with the new provisions set out in 2.2 above. The Code is quite detailed not only with respect to procedure but also with regard to the factors that should be taken into account. While (following a realisation by the Authority that full consultation with the Diocese was indeed required) the procedure is being followed in that the Diocese is now recognised as a key party to the consultation, the lack of reference to any kind of overall Authority strategy for local Church in Wales school provision, the repeated assertions by the Authority that it has no duty in respect of Church in Wales school provision and the lack of any reference in the consultation document to *Faith In Education* amount to serious procedural flaws. The Authority cannot publish an isolated proposal to close one of a small number of English medium Church in Wales schools without indicating its overall policy in respect of Church in Wales provision and setting out the broader context of Church in Wales provision in the Ruthin area within which the Proposal is located. As will be shown below, such broader policy and potential future proposal issues are extremely important in this particular case.

3. ADDRESSING RELEVANT ISSUES AT EVERY STAGE

3.1 We consider that the Authority has given no indication of having addressed certain important relevant issues at the various stages of this process. In other cases it has purported to address issues but has done so inadequately.

The Informal Consultation

3.2 Paragraph 1.3 of the Procedural Guidance lists "Key Considerations" in respect of the determination of any possible proposals. The language of the Procedural Guidance is often rather loose, but we read this as meaning that these are the considerations that the LA must bear in mind in shaping consultations and formal proposals. The list is we presume not intended to be exclusive but it shows that the LA should have considered at least:

- the effect of any proposed change on the standard of education to be provided in the area;
- the need for the particular type of provision that is proposed;
- the effect of the proposed change on the proportion of denominational places in the area;

- the need for Local Education Authorities to comply with their duties under the Sex Discrimination Act 1975, including those provisions relating to single-sex schools;
- the views of those most directly affected by the proposals such as parents and other schools in the area;
- the cost-effectiveness of proposals and whether adequate financial resources are available to implement the proposals;
- the effect of the proposed change on journey times to school;
- the effect of the proposed change on accessibility to schools, particularly rural schools;
- the extent to which proposals would foster collaborative arrangements between providers for students aged 16+.

The Formal Consultation

3.3 The factors to be taken into account in respect of the Formal Consultation and the Proposal on the other hand are listed in paragraphs 1.1-1.14 of the Code. Again we do not believe that this list should be regarded as exclusive but it once more shows that at least these matters should be covered where relevant.

- Quality and standards
- Need for places and accessibility
- Resourcing and financial implications
- Impact on children from economically deprived backgrounds
- Equality issues
- Trust or charitable interests
- A Community Impact Assessment
- What alternatives have been considered and why they have not been chosen instead of publishing a proposal to close a school
- What other uses could be made of parts of school buildings so as to provided community or other educational resources
- What local authority services might be located in the relevant premises
- The overall impact of closure on the local community, particularly in rural areas
- How parents and children can be helped to engage with and participate in activities at the proposed alternative school.
- The standard of existing nursery places or the possibility of providing them
- The need for nursery provision with a religious character
- The need for Welsh medium (and hence presumably English medium) nursery provision
- The effect of proposals on other institutions providing nursery places
- The extent to which proposals will integrate early years provision or are consistent with an integrated approach

3.4 In addition 1.14 of the Code lists factors to be taken into account in approving or determining school organisation proposals and which in consequence must shape consultations and proposals.

- Related proposals must be considered
- There must be consultations in accordance with the Code
- Any proposal must be published in accordance with the Code and the notice must contain all the required information
- The consultation document and report must be considered
- Objections, the objection report and responses must all be considered

Specific points to be made

3.5 Between them, these lists highlight a number of matters to which regard is required to be had. We comment now on significant considerations from them that are relevant to the Proposal. We note also that the combined list of relevant factors set out above is much longer than that cited in the Formal Consultation at 5.4. Against the statutory background the list at 5.4 is startlingly inadequate and itself a serious cause for challenge.

3.6 Neither the Informal Consultation nor the Formal Consultation shows that the standard of education would be improved by the proposed change. On the contrary, the Formal Consultation document admits that "educational standards at the school are good and have improved". The Level 4 figures quoted for Llanbedr are above both the Denbighshire average and the Wales average. The arguments set out in the Formal Consultation paragraphs 12.1-2 do not address actual educational standards but focus instead on generalised issues about the wider educational experience. They centre in fact merely on the small size of the school (which is in any case incorrectly reported in the Formal Consultation document) and amount to a policy (or at least a mind-set) against smaller schools. No argument is adduced that standards at Llanbedr are especially low in any respect, nor that the educational standards at Ysgol Borthyn (or at any of the other schools that might take Llanbedr pupils) are substantially higher. Indeed the evidence published in the Formal Consultation would of course sustain no such conclusions.

3.7 We are consequently in respect of the key issue of standards forced back on the assertions set out in paragraph 12 of the Formal Consultation. These comprise entirely commonplace negative attitudes in respect of small schools and (if taken seriously) amount to an argument that Llanbedr (and any school of a similar size) should be closed merely because it is relatively small. It might of course be lawful for the Authority to have a policy to close schools with fewer than (say) 50 pupils but we are not aware that it does have such policy and we note (a) that small schools are common in Wales because of its rural and often mountainous character (b) that the Code and the SSOWA include special provisions for small schools – defined as those with fewer than 10 pupils and (c) that the Authority has existing schools within the Ruthin area numbering 54, 32, 23, 35

and 22 pupils, none of which is proposed for closure. We note that the Authority has on several occasions declined to give any number above which Llanbedr would be regarded as viable and hence can only conclude (a) that the proposal to close it has nothing to do with standards and (b) that it in reality has nothing to do with numbers of pupils either. This is further borne out by paragraph 7.10 in the Formal Consultation in which Llanbedr is described as always remaining a "small school with a maximum of 54 places". If the Authority has a policy to close schools of this size it must say so and consult on that basis. Otherwise we are left to conclude that the proposal to close Llanbedr is merely a matter of expediency for reasons wholly unconnected with either the standards or the size of Ysgol Llanbedr itself. This view is reinforced by the clear statement by Jackie Walley (Head of the Authority's Modernising Education team) to Llanbedr staff at their official consultation meeting that "even if the school has 100 children it would still be closed". Clearly therefore this Proposal is not in fact about size.

3.8 At this point it is also relevant to note that the Authority has consistently under-reported the numbers currently expected in the school from September 2014, and the Informal Consultation (by not showing the Llanbedr figures in more detail or fully addressing its recent history) gives a completely false impression both of the reasons for the present low pupil numbers and of its likely future size. In reality (as is well known to the Authority) the Associate Headteacher provided by the Authority from January 2012 (and withdrawn at her request by the Authority after just one term) so re-organised the school in January 2012 by amalgamating junior years 3 and 4 with 5 and 6 during an academic year without due consultation or explanation to parents beforehand and so antagonised the parents that 21 pupils were withdrawn from the then Junior years and moved by their parents to other schools. In the previous term 12 pupils were withdrawn consequent on widespread parental dissatisfaction and the perceived inaction of the then Headteacher (who went on sick leave pending an Authority enquiry). The school under the present acting Head (see below) has worked hard to recover from this disaster. Parental support has been strongly re-established (such that no parent has expressed support for the Proposal) and pupil intake is in fact such as to leave the school confident that its permanent accommodation of 54 will be closely approached. In addition the school's temporary accommodation is in constant use for "Munchkins" (a nursery and school breakfast club) for an after school club, for a holiday club and for a range of parental/community activities, leading to a re-establishment of parental and community links and a massive growth of confidence in the school which is reflected in the current Nursery/Reception intake of 10 for 2013-14 and expectations of 20 for 2014-15. We are aware of united parental opposition to the Proposal of which the Authority must be fully cognisant.

3.9 Further points must be made in respect of numbers, which are clearly related to the requirement in the Procedural Guidance and in the Code for the Authority to have to establish the level of need against which a proposal is being made. In this case it is incumbent on the Authority to show not merely that there happen to be temporary surplus places in a particular school or even temporary surplus places more widely locally but that these form part of an established trend which is not likely to be countered by housing

development or the birth-rate in the near future. There are present plans to build 70 houses in Llanbedr and it is widely accepted that the birth-rate is rising nationally. Yet neither of these factors is so much as mentioned in the Formal Consultation, let alone assessed for their impact on the Proposal. This cannot be right. In order to support a proposal for closure the Authority must be able to show birth-rate forecasts and existing live-birth figures that show a continued substantial over-provision of school places. Such figures are a commonplace of closure or expansion proposals made by local authorities across the nation. Yet these factors are not so much as mentioned, let alone provided in the Formal Consultation. Instead the Authority has provided misleading Llanbedr figures and omitted important recent Llanbedr history in order to buttress a decision to close the school which appears to have been taken for quite other reasons.

3.10 The Formal Consultation document includes in its table at 8.1 evidence to show that the leadership and management of the school has had shortcomings in the recent past. Yet nothing is made of this evidence. We have already noted in 3.8 above the key effect of a temporary Head seconded to the School by the Authority and this is clearly a very relevant factor that must be taken into account. We note with regret that (although the matter is not mentioned at all in the Formal Consultation) there have been several statements from the Authority to the effect that the Governing Body of the School (and it alone) must bear responsibility for the actions of that Head and for the consequent withdrawal of so many pupils. This attempt on the part of the Authority to evade its clear responsibility for a secondment that it made is not acceptable and seriously undermines the validity of the arguments put forward in the Formal Consultation.

3.11 We also note that the Formal Consultation suggests at 12.2.g that "the absence of a permanent Headteacher could have a significant effect on school standards in the future", with the implication that the Governing Body has either neglected to consider making a permanent appointment or has been unable to do so. In fact however the Governing Body has been advised by the Authority (both prior to the Informal Consultation and subsequently) that it should not seek to make such an appointment pending the outcome of any consultation and possible proposal. One can see the logic for that in that it would place a substantive Head in a less secure position than the present seconded one. However the LA cannot adduce this as a further reason for closing the school. The issue here is not that small schools have a general difficulty in recruiting Headteachers. Everybody knows that to be the case. The issue is whether that general problem is a reason for closing this specific school. The Authority would have to show that Llanbedr had attempted to recruit in normal level playing field conditions and had failed to do so. The Authority has attempted to show (and could show) no such thing.

3.12 There is a further point relating in general terms to accessibility and also (and more importantly) to the impact on the children involved that we address at this point. The Authority sets out nothing in the Formal Consultation in respect of its more medium-term plans for school provision in the general Ruthin area. Yet it is widely known that the Authority has an aspiration to build a new town centre Community School in Ruthin very

close to the site of Ysgol Borthyn. In such a case it must set out in the Formal Consultation the anticipated effect of such a development on Ysgol Borthyn and hence on those children that would under the Proposal transfer from Llanbedr to Ysgol Borthyn. Given the high likelihood of some kind of effect on Ysgol Borthyn by the proposed development it is extremely probable that transferring pupils and their families will be caught up in another round of controversy and stress within the remaining portion of their time in the primary phase of their education. This seems wholly wrong. Some of these children will have been affected by the actions of the Associate Headteacher first seconded by the Authority to Llanbedr, will be affected again by being forced to transfer to Ysgol Borthyn and will then be faced by a third period of disruption caused by the opening of a new school very close by and hence inevitably to some degree seeking to recruit from the same catchment. For this issue not to be included in the Formal Consultation in order that parents and other consultees can take it into account cannot be right. The schooling of a particular cohort appears seriously at risk as a consequence of this sequence of events. The Formal Consultation should have set out the Authority's plans for Ruthin town centre in order that parents could take account of this important factor in coming to a view about the Proposal.

3.13 We note too that no analysis is offered of deprivation levels and hence that the Authority is entirely unable to show that it has considered the effect of the Proposal on children from economically deprived backgrounds. The Authority must be able to show that it has done so or that neither Llanbedr nor Ysgol Borthyn have pupils to which this might apply. The latter is surely very improbable. Hence consideration of this matter should have been an explicit part of the Formal Consultation.

3.14 The list at 3.2 above (importantly in this context) includes "the effect of the proposed change on the proportion of denominational places in the area". Yet the formal consultation document includes not one word about this issue. The Equality Impact Assessment relating to the Proposal admits that the Proposal would have a negative impact on a protected characteristic (in this case religion or belief). It describes an intention to provide transport for pupils in the statutory age range but acknowledges that parents without their own transport will have difficulty in accessing non-statutory provision at Ysgol Borthyn (or elsewhere). Neither the Equality Impact Assessment nor the Formal Consultation addresses the fundamental issue of the provision of education in Church in Wales schools or takes account of future proposals which may impact on Ysgol Borthyn and thus on Church in Wales provision in the whole Ruthin area. Indeed the only comment relating to the Church in Wales character of the school appears to be 10.4 of the Formal Proposal which "acknowledges that parents may not choose Ysgol Borthyn as an alternative provider of English Medium Faith Based education". Quite what this comment itself is supposed to mean is not clear but what is very evident is that no consideration whatever is given to the impact of the Proposal on denominational provision. This is compounded by the Authority's aspiration already mentioned for a new town-centre school in Ruthin which could well have a future effect on denominational provision at Ysgol Borthyn. It is also the case that Authority officers have openly questioned whether

they have any duty in respect of denomination school provision. This in itself implies a view that they have no duty and may disregard the issue. It cannot be too strongly stressed that they have undoubted duties as follows:

- To treat every existing school maintained by them fairly and without bias
- To show no bias in proposals either for opening or for closing schools
- To ensure that the impact on denominational provision is considered as a factor in any opening or closure
- To take account of parental wishes in respect of denominational provision at both statutory and nursery phases of education
- To take account of equality issues, including ensuring that no religious discrimination is involved in decisions and that the needs of religious people in respect of the education of their children are reasonably addressed where this is possible
- To seek and take account of evidence of demand for denominational places
- To ensure that alternative provision of the same religious character remains available and accessible to pupils in the local area
- To take account of any relevant Welsh Government publications – specifically in this case of *Faith in Education*
- To engage with any appropriate religious bodies in developing proposals

This does not mean that a Church in Wales school must never be closed. It does mean that there must be overwhelming reasons for the closure of one of a very small number of such schools and that the evidence leading to a proposal for a closure must be very strong and ideally such that (as part of a wider strategic plan in which they were involved) the Diocese could support. None of this obtains in the case of this Proposal. The Authority's determination not to consider the impact on denominational provision is discriminatory.

3.15 It is also incumbent on the Authority to address trust-related issues in any proposal relating to a voluntary school. The only comment on this in the Formal Consultation is an assertion in 15.4 of the Formal Consultation that "the existing building and site would revert to the diocesan authority". This shows an astonishing lack of understanding of matters that (because of their consideration in the SSOWA) should actually be fresh in the minds of the Authority's officers and legal advisers. In fact the site at Llanbedr is of course already owned on trust by the Diocese. It will not "revert" to it. But, because the site was provided under the School Sites Act 1841, if it ceases to be used as a school it is extremely likely to revert not to the diocesan authority but to the heirs of the original donor under the provisions of that Act. This in turn means that any proceeds of sale will not be available for reinvestment in other Church in Wales schools locally nor will there be likely to be any possibility of securing the use of any part of the premises for continued community use unless the revertee wishes to sell the site and the Authority wishes to purchase it. Nothing is said in the Formal consultation about this, which must be a major matter of concern to the Llanbedr population generally. Hence the Authority should acknowledge that in making this proposal it is (a) knowingly letting go an educational endowment and (b) not considering the duties of the trustees to preserve their

trust for the good of the children of the poor in Llanbedr and (c) removing any further possibility of community provision on the school site in this rural area. The Formal Consultation should undoubtedly have addressed these issues in order to give consultees a complete picture of the consequences of the proposal.

3.16 The overall impact of the proposed closure on the community in this rural area is also in itself a factor that the Authority should consider and should have set out in the Formal Consultation. There is no evidence at all in the Formal Consultation that it has done so. Yet the School has a flourishing life and clientele outside school hours including the Munchkins club. In rural areas such as this the village school is the only available public hall with related child care facilities. The Authority has a duty to consider the impact of its removal but has clearly made no attempt to do so. No Community Impact Assessment is referred to in the Formal Consultation though an intention to commission one is mentioned in the Equality Impact Assessment and it has now been provided – too late! Its non-inclusion is a further serious deficiency in the Formal Consultation.

3.17 There are problems too in the purported consideration by the Authority of possible alternatives. The advantages and disadvantages of the main options considered are set out in the tables within paragraph 13.3 of the Formal Consultation. However unfortunately Authority members and officials have several times indicated that having taken a view (based on what we wonder) that closure should be proposed they were under no obligation to consider alternatives. Closure was the first thing to be considered we have been told and hence nothing else was really relevant. This is of course quite contrary to the requirements of the Code. Hence 13.3 of the Formal Consultation is just window dressing. It merely makes assertions about alternatives that have not been seriously canvassed or discussed. As will be apparent from other parts of this response, some aspects of the tables (for example those based on the supposed continued decline of pupil numbers) are not even accurate. In addition, we note that the revenue impact of the proposed closure appears to be already included in the County budget, and Members and Officers have several times indicated that the closure of a school was essential in order to drawn down grant from the relevant Assembly capital programme. This aspect is not discussed in the Formal Consultation but yet it is clear from statements made by representatives of the Authority that it features importantly in their thinking. We have no means ourselves of knowing whether capital grant would be dependent on closure in such a way. But we can see that capital allocations might be contingent on plans to remove genuinely surplus places (if in fact there are any in the Ruthin area). Mrs Walley has stated that the Ruthin area has 24% surplus places (though against what forecasts we do not know). We understand that Welsh Assembly Government policy is that up to 25% is acceptable in rural areas. However if it is true that the Authority believes that there is a genuine long-term surplus in the area, that would indicate that the real reason for the Proposal is not in fact educational standards or the issue of surplus places specifically at Llanbedr in itself but the need to make a sacrifice somewhere in order to gain capital. If that is so and if this Formal Consultation is really about the need to close somewhere (albeit with a preference for Llanbedr) then alternative options for closure and disposal

should have been set out and considered in the Formal Consultation. It cannot possibly be the case that Llanbedr is the only school in the Authority that might conceivably be closed. If (as seems likely) this consultation is really about the need to close somewhere, then the whole argument of the Formal Consultation is wrongly drafted. It should include an assessment of the other closure options considered and the reasons for preferring Llanbedr. None of this has happened. In respect of those possible arguments, it would also seem illogical for the Authority to light on a school where disposal of the site would generate no capital receipt for the Authority. All of this should be considered afresh and the present process aborted.

3.18 This conclusion is reinforced by the views expressed by Mrs Catrin Jones (Head of Schools Reorganisation and 21st Century Schools and Education Programme North and Mid Wales) in a letter of December 4th 2013 to the Vice Chair of the School. She indicates that local authorities need to use the "HM Treasury 5 Case Model" to evidence capital projects that they propose under (in this case we presume) the 21st Century Schools and Education capital programme. This requires a business case within which local authorities "will be required to evidence and detail why options were discounted and why the preferred option has been selected. Each proposal needs to demonstrate a clear case for change, value for money, affordability and deliverability." While of course the Formal Consultation is not such a business case, it is surely clear that, if the Authority (as it has several times stated) intends to include the closure of the School as part of its business case, then it must in the Formal Consultation set out the true reasons (viz those that it intends shall form part of the business case in due course) for the Proposal. The Authority cannot provide one set of (weak) arguments for closure in the Formal Consultation and then use closure as part of a quite different set of arguments in the business case. The Formal Consultation should have set out the consideration given to other possible closures and the reasons for preferring Llanbedr rather than other possibilities. It has not even addressed this issue, let alone demonstrated a strong argument.

3.19 We note too with regret that at a meeting with the governing body of the School a senior officer of the Authority Mrs J Walley, Head of School Modernisation, (a) stressed that the Authority was not in her view under any duty to consider options in respect of Llanbedr but could focus solely on a case for closure and (b) was unaware either of the business case requirements set out in 3.18 above or of the parallel requirement in the Code that there must be "no presumption in favour of closing any school". Indeed Mrs Walley asked where this requirement might be found. This level of disregard of the regulatory framework strongly suggests that the Formal Consultation is inadequately drafted and that there is a strong unacknowledged bias and prejudice lying behind the case actually set out there. The Formal Consultation simply does not address important actual issues that appear to be uppermost in the minds of the Authority and hence any weight given to those issues by the Authority in now coming to a view must be ultra vires. This supports our view that the process should now be aborted and that any decision reached to close Llanbedr would be reached improperly.

3.20 An independent person examining the Proposal in the light of Authority's statements and recent actions cannot but suspect that Llanbedr is merely a convenient sacrificial lamb. Indeed the education portfolio holder himself is reported as commenting that Llanbedr was "just the victim of circumstances". If so then the Formal Consultation is just a manufactured alibi to provide cover for a decision not directly related to the factors actually set out in it. The Authority simply cannot lawfully act in such a way. The Formal Consultation is fundamentally improper and the Proposal cannot be taken forward into a Statutory Notice.

3.21 We find it hard from the Formal Consultation to assess (as is required by the Code) the financial consequences for the Authority, either in respect of capital or of revenue. The Informal Consultation itself says nothing about capital except to confirm that the capital value of the School itself would be lost to the Authority. We have ourselves pointed out that it might be lost to the Diocese as well and thus to education and the local community generally. As to revenue, 16.2 says "It is estimated that the net saving within the schools delegated budget of £68,000." (sic) Assuming for the moment that we should insert "would be of the order " between "budget" and "of", we still do not know over what period of time this saving is alleged to accrue. The table at 16.1 appears to show the school in a balance surplus until the end of the school year 2014-2015 and the deficit position for 2015-2016 is presumably calculated on the basis of the Authority's mistaken assumptions about pupil numbers at that point. While 16.4 points us to a further saving in respect of the mobile it is not made clear whether the additional (annual?) expenditure of £26,600 at 18.2 in respect of transport has been taken into account (and over what period) in arriving at the above quoted £68,000. To look at this in another way, the revenue costs of Llanbedr into the future will be determined overwhelmingly by actual pupil numbers. There is no suggestion of other exceptional revenue or capital requirements and the historic buildings are sound and in good repair. Hence the alleged saving can only be on the basis of a pupil forecast that we have already shown to be false and temporarily affected by the consequences of parental action in early 2012. If the Authority wishes to argue that a school of about 50 in a rural area is unsustainable in its view then it should do so - though it might find itself on difficult ground! But it cannot use the consequences of its own Headteacher secondment and her actions to remove this important denominational English language rural provision. The financial position as described in the Formal Consultation does not support the closure of Ysgol Llanbedr.

EVIDENCE OF BIAS OR OF A PROPOSAL NOT BASED ON THE ADDUCED EVIDENCE RELEVANT GUIDANCE AND MINISTERIAL OR LOCAL AUTHORITY POLICY

4.1 While the Authority is given a clear statutory duty in respect of Welsh medium education it must not imply that it has no duty or a lesser duty in respect of English medium provision. Statutory provisions in respect of Welsh medium schools are there to protect important Welsh language and cultural concerns. However that has to be understood

against a general background of English language provision, either on the basis that English is the majority language (or the majority first language) or alternatively that English is a minority language in the local context. It will be evident that the detailed equalities issues will differ depending on which approach is being argued but the Authority cannot ignore the fact the it has duties to monoglot Anglophones as well as to the various shades of polyglots that are presumably the actual local context. For the Authority to develop a closure case against an English medium Church in Wales school it must take great care to ensure that there is no possible trace of bias either in respect of the language medium or on the basis of religion and that the case for closure is based on strong objective reasons. It will be evident from the above that the objective reasons are not strong but more a matter of convenience. We have also shown that consideration of the relevant religious factors has been reluctant and perfunctory on the part of the Authority and open to allegations of bias. We must also wonder whether the language issue also plays an unacknowledged part in the Proposal. At the very least the Formal Consultation should have considered the issues of English medium and Welsh medium provision in the Ruthin area and of the various mixtures of teaching medium that we suppose are in fact everyday practice. How do they impact on Llanbedr, on the choice of Llanbedr as their preferred school that parents locally or more widely might seek to make and on the options left to parents should Llanbedr in fact be closed? None of this is clear from the Formal Consultation, yet the Authority has a clear duty impartially to consider such matters and equally impartially to act in the interests of the full range of local parents and children.

4.2 Councillors and officials of the Authority must be able to show their personal and corporate impartiality both in shaping and in determining proposals. Conflicts of interest should be declared and appropriately handled in accordance with statute and council standing orders. We seek assurances that this has been the case, since there are prima facie substantial conflicts of interest here on the part of councillors involved with individual schools and in particular in respect of the involvement of Cllr Eryl Williams (Lead Member for Education and Councillor for the Clocaenog District) with a proposal to close Ysgol Cyfylliog (bi-lingual) and Ysgol Clocaenog (Welsh language) and to open a new replacement school in Clocaenog. We draw attention to this proposal (which has we understand been adopted by the Authority) as (a) it focuses on Welsh language provision and (b) will result in a new school of identical size to Llanbedr. We note also Cllr Williams's strong support for permitting Bryn Clwyd to remain open with a role of 21(!) on the grounds (we understand) that it should be given the opportunity to attract Welsh speaking children from Llandyrnog. There are two elements of concern here. First Lead Members must be able to show that they have acted without bias towards proposals affecting their own district. Secondly both the Authority as a corporate body and individual members (especially Lead Members) must be able to show that they have not acted with a bias against English language provision in promoting Formal Consultations and any consequent proposals. In the light of the decisions and views set out in this paragraph it is difficult not to conclude that there is no true parity of treatment here. Arguments against small schools that are used to support the closure of Llanbedr would

be even stronger in respect of a closure of Bryn Clwyd and equally strong in respect of the new build proposed for Clocaenog. While of course there are Welsh Assembly Government policies in respect of Welsh language provision set out in the Code that the Authority must consider, it is also crucial that there are no biased decisions taken on the back of undeclared conflicts of interest.

4.3 It is difficult also not to perceive a bias towards town provision in this proposal. In effect the arguments for the closure of Llanbedr (once the errors in respect of pupil numbers and hence of revenue cost are stripped out) are actually arguments in favour of closing any small rural school, and nothing is done in the Formal Consultation to address the consequences either educational or communitarian for the village or its surrounding country community. If the Authority actually has a policy to concentrate schools and other community facilities in towns it should say so – and face the consequences. However if this is not in fact its policy it should be equally clear and should set out effectively why in that case the closure of Ysgol Llanbedr is proposed rather than other options being pursued. We have seen that the supposed consideration of alternatives has been reluctant and perfunctory. No weight is given in the Formal Consultation to the rural nature of Llanbedr, just as no weight is given to its Church in Wales character or its English medium character. Yet all these are major factors that require the Authority's sympathetic consideration. That they have all been ignored amounts to bias. That the bias should be combined with significant prejudicial statements on the part of Authority figures amounts to evidence that the outcome of the Formal Consultation on the Proposal is in fact pre-determined. The Authority clearly wishes to close Llanbedr not because it is a poor school nor because it is at all really likely to remain with the pupil numbers to which it was driven by the actions of the Authority's own secondee as Headteacher nor because it will in fact in the future be significantly high cost per pupil but because it is (as admitted by the portfolio-holder) "a victim of circumstances". It is a convenient sacrifice because is a rural, Church in Wales English medium school and the Authority has no serious interest in retaining such an entity!

SUMMARY AND CONCLUSIONS

5.1 In our Introduction we set out the various criteria we believed were relevant to enable the Authority to move from the Formal Consultation to a Statutory Notice. We now list them again with a summary comment on each criterion.

5.2 *Due process must have been followed at every stage.* We have provided evidence to show that due process has not been fully followed. The Authority remained confused until a late stage about the requirement to consult the Diocese and had to delay later stages in consequence. It has patently not covered the range of relevant issues required either by the Procedural Guidance or by the Code.

5.3 *All relevant issues listed in relevant guidance must have been addressed at every stage.* We have shown that this is not the case.

5.4 *There should be sufficient well-researched, accurate factual evidence to support the conclusions reached and the Proposal.* We have demonstrated that some major facts are erroneous while other important information has not been provided at all.

5.5 *The Proposal should be based (a) on that evidence (b) on relevant, current statutory guidance and policy statements by Welsh Ministers (c) on properly established, lawful policies adopted by the Local Authority.* We have shown serious evidence to suggest that the Proposal is not based on the evidence provided, is not compliant with current guidance or published Ministerial policies, and is not a consequence of policies actually adopted by the Authority.

5.6 *The process should show no evidence of bias or of considerations not based on (a) to (c) above*. We have provided evidence that strongly suggests bias and the existence of considerations not addressed in the Formal Consultation or covered by (a) to (c).

5.7 *There should be no evidence to show that the Proposal has in some way and to some measure been pre-determined or that the outcome of the Formal Consultation has been pre-determined.* We have provided evidence to show that the Authority has in fact pre-determined the outcome in its own mind based on factors that are not covered in the Formal Consultation.

5.8 Hence our conclusion is that the Authority cannot properly proceed to the publication of the desired Statutory Notice on the basis of this consultation process. If it were to do so the Diocese and other relevant parties will enter a formal objection. If then the Authority none the less proceeds to accept its own proposal the Diocese will refer the matter to Welsh Ministers in order that they may consider it afresh in accordance with s54 of the SSOWA.

This response has been drafted for the Diocese and the Governing Body by Lee Bolton Monier-Williams of 1 The Sanctuary, Westminster, SW1P 3JT, legal advisers in education matters to the Church in Wales, to the Church of England, to the Diocese of St Asaph and to the National Society (which is the umbrella body for Anglican schools in both England and Wales). It has been drafted in the light of information and documents provided by the School and by the Diocese of St Asaph and after consultation with diocesan and school officers.

The Diocese of St Asaph

The Governing Body of Ysgol Llanbedr

December 18th 2013

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