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Licensing Committee

Thursday, 9th April, 2015
at 11.00 am

Supplemental Agenda

This meeting is open to the public

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AGENDA

Agendas and papers are available via the Council's website

6 GAMBLING ACT 2005 - LARGE CASINO LICENCE: PROPOSAL TO AMEND LOCATION AND OTHER ISSUES

Report of the Head of Legal and Democratic Services detailing a proposal to amend the location of the large casino and other issues, attached.

Additional Appendices

Appendix 21: Comments on the proposals from Friends of Town Quay Park, City of Southampton Society and Southampton Commons and Parks Protections Society

Appendix 22: Aspers Universal Limited Submissions

Appendix 23: Global Gaming Ventures (Southampton) Ltd Submissions

Appendix 24: Kymeira Casino Limited – letter dated 31 March 2015

Appendix 25: WoodsWhur on behalf of Grosvenor Casino Limited – letter dated 31 March 2015

Appendix 26: Eversheds on behalf of Genting Casinos Limited – letter dated 1 April 2015

Appendix 27:Barton Wilmore on behalf of Hammerson Plc – letter dated 31 March 2015

Appendix 28: RPW letter dated 31 March 2015

Monday, 30 March 2015 HEAD OF LEGAL AND DEMOCRATIC SERVICES

Comments on the proposals from FTQP (Friends of Town Quay Park), CoSS (City of Southampton Society) and SCAPPS (Southampton Commons and Parks Protections Society)

"We understand the purpose of the meeting is for the Committee to decide, from a consideration of statutory provisions & the content of the respective stage 1 applications, if the Council may accept stage 2 submissions which relate to premises in a different location in the proposed Royal Pier Waterfront (RPW) development to that which was considered by the Committee at stage 1. The underlying implications arising from this change in the location of casino premises within the RPW development would, we consider, give rise to considerable public concern.

At the stage 1 hearing, we drew attention to the absence of a firm & committed planning context for the definition of the 'premises' in applications in the RPW development. The City Council recently adopted the City Centre Action Plan which provides for a development including the derelict Royal Pier, the Red Funnel car ferry terminal & Mayflower Park. Over recent years, various different broad sketch layouts & illustrative perspective drawings have been published but there has been no meaningful public consultation, as required by the wording of the City Centre Action Plan, on details of layout, location & scale of built structures, scale & mix of uses & phasing of development.

The stage 1 applications showed the casino premises as one of the uses within a major built structure with a mixture of uses on the site of the derelict Royal Pier, with a multi-storey car park above the casino premises. This concept conformed with illustrative perspective drawings published by the City Council & the developer in 2014. Construction of this major mixed use development could not therefore commence until after relocation of the Red Funnel car ferry terminal & completion of reclamation from the River Test. The phasing of construction of the replacement waterside park is similarly determined by completion of reclamation because it too is located on land to be created by reclamation from the River Test. There was therefore the opportunity to tie phasing of construction of the development containing the casino to construction, completion & opening to the public of the replacement waterside park.

The new proposal is to locate the casino on the landward half of the present Mayflower Park, probably as a single use building, not, as before, as one element in a multiple use structure. In the absence of a planning permission specifying phasing, there must be concern that the casino could therefore be constructed as soon as the developer secures control of the land --- in advance of relocation of the Red Funnel terminal & completion of the reclamation, both of which are necessary before building can commence on the major part of the RPW development itself, & certainly before work creating the replacement waterfront park. The loss of the present waterside Mayflower Park so long in advance of completion of its replacement would be a matter of considerable public concern. There may well be concern too about the very different nature of a stand-alone casino in the new location compared with the previous proposal where it would have been one use amongst others & contained within a complex where, very largely, uses other than the casino would face out onto the public realm, including the replacement park."

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ASPERS UNIVERSAL LIMITED

SOUTHAMPTON

LARGE CASINO COMPETITION

SUBMISSIONS

As Requested by
Southampton City Council
Letter of 21st March 2015

HEARING
9th April 2015

Martin S Heslop QC
2 Hare Court
Temple
London EC4Y 7BH

INTRODUCTION

1 By their letter of 21st March 2015, Southampton City Council (SCC) invited written submissions in respect of the following 3 questions.

(1) In the case of each of the applicants, may they show their proposed casino on any or all of plots WQ2, WQ3 or WQ4 at Stage 2 of the Casino licence competition.

(2) Does the Council have a discretion to accept new applications following the completion of Stage 1 and, as is the case here, the commencement of Stage 2 of the competition.

(3) If so, should the Council exercise its discretion to accept such applications.

2 It is respectfully submitted the answer to each of these questions is yes, for the reasons set out below.

QUESTION 1

We submit the application by Aspers Universal Limited (Aspers) for a provisional statement at Stage 1 was sufficiently broad to encompass the location of the casino at plots WQ2, 3 and 4 since these locations are within the red line area described on the plan submitted in support of the application.

We submit the location of the casino in this application was not limited to the area within the blue line but clearly encompassed a casino to be located within the red line area and that that is a fair and proper factual analysis of the way this matter was presented to the Committee.

3 BACKGROUND

(a) Aspers together with four other casino operators were successful in obtaining a Stage 1 provisional statement for a proposed large casino to be constructed within the Royal Pier Waterfront Development (RPWD).

(b) The proposed location of that casino within the RPWD has, since the Stage 1 hearings, been changed by the developer, entirely outside the control of the applicants.

(c) It is understood from a document dated 10th March 2015 released to all applicants by the Committee, that in the light of this change of location and following legal advice from Philip Kolvin QC, SCC is minded to refuse to consider Stage 2 Applications from Aspers and at least three of the other successful Stage 1 Applicants for the RPWD Site.

(d) Without having formed a concluded view the Licensing Committee has been advised that the new casino location may fall outside that indicated in the relevant Stage 1 Plans.

4 We submit this is an unduly strict interpretation of the legislation and is based upon an incorrect factual analysis.

5 We submit that a fair and proper analysis of the Aspers Stage 1 Application and Plan reveals that:

(a) the proposed casino was to be located within the RPWD Site as indicated by the Red Line drawn on the plan submitted around the whole development area and

(b) was not simply limited to the area indicated by the Blue Line which was only included in an attempt to be as comprehensive as possible thereby to assist SCC with as much detail as was then available - including an indication of where it was then intended by the developer to site the casino.

6 JUNE 2014 CORRESPONDENCE

(a) This was an unusual Stage 1 Application, since the location preferred by SCC for the large casino was the prominent waterfront site at the Royal Pier - much of which is to be constructed on reclaimed land.

(b) This clearly presented difficulty to the Applicants in identifying with precision where within the development site, the proposed casino would be constructed, and therefore difficulties in providing a plan in compliance with Regulation 4 (2) of the Gambling Act 2005 (Premises Licences & Provisional Statements Regulation 2007).

(c) In consequence, **on 2nd June 2014** Aspers through its solicitors, Harris Hagan, wrote to SCC highlighting the perceived problem in a bona fide attempt on behalf of <u>all</u> applicants to seek guidance upon it, and in particular, what SCC would regard as acceptable plans for a provisional statement.

(d) The following extracts are pertinent:

> *"… we believe it is highly unlikely that any of the applicants will be able to identify with precision and certainty where within the development the casino premises will ultimately be built. The final location of the casino may vary depending upon a significant number of imponderables such as construction issues, planning permission, commercial negotiations with anchor tenants and possible staging of the overall development. This gives rise to the practical difficulty for applicants in relation to the Royal Pier … as to how to delineate the casino premises on the plan accompanying the application."*
>
> *"… the legal uncertainty does present applicants in Southampton with a dilemma in preparing their applications. Specifically, applicants are faced with a choice of either red lining the premises where they presently expect the casino at the Royal Pier to be located on the basis of the best information available from the developers or red lining the entire development, both of which carry a degree of legal risk (for applicants and counsel alike) … as the premises are likely to vary between provisional statement and premises licence."*
>
> *"… <u>we would very much welcome guidance from Southampton Council on this legal issue as soon as possible</u> to as to enable our client and other potential applicants to prepare their plans accordingly. Otherwise, the danger is that different applicants will take different approaches and the issue will be highlighted at the Stage 1 Licence hearings when, in our experience, some applicants are keen to take every possible legal point against their competitors."* (Underlining added).

(e) As a result of that letter, **on 20th June 2014**, SCC issued guidance based upon the legal advice of Philip Kolvin QC.

(f) The advice was that SCC would

> *"… accept Stage 1 Applications that show a red line around the whole of the proposed development and encourage applicants to make this as comprehensive as possible within the constraints that this situation creates."*

7 STAGE 1 APPLICATION and HEARING

(a) <u>In reliance upon that advice</u>

(b) Aspers submitted a plan in support of its application showing the location of the casino within the red line drawn around the whole of the development and

(c) Adopting the encouragement to be as comprehensive as possible, included a blue line area which represented what was then said to be the expected location of the casino within the red line area.

(d) This complied with Regulation 10(3) of the Regulations which stipulates that where the application relates to premises to be constructed the requirements of Regulation 4 shall be interpreted as a reference to those premises "as they are expected to be when constructed …".

(e) It was made abundantly clear at the public hearing of the Stage 1 Application that the Aspers Plan had been drawn in accordance with the guidance given by SCC in its 20th June 2014 document and that the proposed casino location was to be within the red line area and not simply limited to the blue area.

(f) Counsel (myself) and instructing solicitor's note of what was said in reference to the plan at the hearing is as follows:

> "*The plans are at Appendix 2 and we have large copies if necessary. This is an unusual situation since the site has not yet been developed. The location plan has been drawn on the basis of the advice given by the Committee on 20th June 2014 concerning the delineation of the premises where you said you were prepared to accept a red line around the whole development as proposed. We have therefore drawn a red line around the whole site as to the location of the casino but to assist you we have added the blue area to indicate where the developer proposes the casino is likely to be located. That, we are afraid, is the best we can do."*

(g) Hence this explains the use of the words "location zone/boundary of premises (provisional statement)" and "proposed casino demise (provisional statement)".

(h) An additional plan of the proposed casino itself was submitted, complying with the remaining Regulation 4 requirements. (This was in contra distinction to a number of other applicants who failed so to do - notably the GGV Watermark West Quay Proposal - reference to which will be made later under the issue of exercise of discretion.)

8 SUBMISSIONS

In the above circumstances, we submit:

(a) The Committee could have been in no doubt about the location of the proposed casino as within the red line area.

If the casino location was not to be taken as within the red line area, what was the point of following the advice given by the Committee and what was the object of presenting a red line at all upon the Aspers Plan.

(b) No member of the public could reasonably have been misled in this regard.

(c) If these submissions are or maybe correct, then no issue arises at Stage 2 since the new location of the proposed casino still remains within the red line area and has simply moved within it. It still remains within the location indicated on the Aspers location plan. The matter would be different if the new location were now outside that development.

9 We note SCC's view as expressed in its 10th March 2015 document in respect of the Genting Application that there is at least room for an argument that the position of the casino was not fixed by the blue line but was moveable within the red line. We submit if this is accurate, then the same position should appertain in respect of the Aspers Application.

10 We observe it would be ironic and contrary to the spirit of the legislation that Aspers should now be penalised at Stage 2 when attempting to follow the guidance issued by SCC by presenting as much information as possible in its plan when, for example, Genting, who provided only a vague and somewhat unhelpful plan, with as little information as possible, stand to be rewarded.

11 CONCLUSION - AS TO QUESTION 1

In all the circumstances, we invite SCC to conclude that, having regard in particular to:

Harris Hagan's letter of 2nd June 2014;

The response of SCC of 20th June 2014 and

The way the application was presented at the Stage 1 Public Hearing

the plan submitted on behalf of Aspers Universal Limited clearly encompasses plots WQ2, 3 and 4 within the red line area and therefore does not fall outside the application site.

If the Committee were so to conclude that no issue either legal or factual would arise at Stage 2.

QUESTION 2

12 It is submitted that SCC clearly has a discretion to consider late applications notwithstanding the closing date of its competition and the commencement of Stage 2.

13 By Regulation 7 subparagraph 2, of the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licence) Regulations 2008 SCC are not required to consider an application made after the relevant closing date.

The wording of this regulation admits of the clear proposition that SCC has a discretion to consider any application made after the closing date.

14 The wording of Regulation 7(2) stands in stark contrast to that of Regulation 7(1) which deals with applications made before the closing date.
By Regulation 7(1) SCC *"may not consider an application that is made before the closing date"*.

15 In the circumstances, it is clear that SCC have a discretion to consider late applications.

16 This is supported by the decision of the Leeds Licensing Committee of 14th February 2013, as advised by Philip Kolvin QC in respect of a similar large casino application.

The Committee concluded (decision page 3)

> *"It was common ground between the legal adviser to the Committee [Philip Kolvin QC] and the applicant's solicitor that the Committee did have discretion to consider a late application notwithstanding the closing date"*

QUESTION 3

17 We submit SCC should exercise its discretion to accept new applications from all the RPWD applicants, for the following reasons:

(a) The circumstances set out under our submissions re question 1.

It was the clear intention of all RPWD applicants to apply for a provisional statement for a casino to be located within the RPWD area and that was made clear at the Stage 1 hearing.

The new proposed location of the casino is within that development.

Any deficiency in plans submitted at Stage 1 was purely technical and occurred in good faith in an attempt to comply with the guidance issued by SCC and its legal adviser.

(b) There can be no prejudice by admitting late applications.

The RPWD is not scheduled for completion until 2019. There can be no prejudice to SCC or any of the applicants by reason only of the delay caused by the submission of further Stage 1 applications by the successful Stage 1 applicants.

The limited delay of a few months will have no prejudicial effect to SCC, nor indeed to any of the applicants now regarded as successfully moving to Stage 2.

In this regard it should be noted that as SCC will be aware, from its evaluation criteria and scoring matrix at Paragraph 3 - Financial - the Council acknowledges that it is not expecting a financial contribution from the casino operator during the first 5 years of operation of the casino in the light of the upfront costs involved for the successful applicant.

(c) There is a clear and substantial benefit to SCC in allowing all 5 RPWD applicants to progress to Stage 2 since this will re-establish a serious competitive tension in relation to the RPWD Site.

This competitive tension is the main purpose of the two stage competition and without it SCC is unlikely to be presented with proper competing financial propositions.

Allowing late applications from the successful RPWD applicants will undoubtedly enhance the likely benefit to SCC, regardless of whether RPWD is finally chosen as the preferred location.

(d) The exercise of SCC's discretion in favour of late applications would not involve an expression of preference for one site or another but would represent simply a common sense attempt to maximise the financial

options for SCC in relation to determining which applicant is likely to provide the greatest benefit to the local authority.

(e) It is understood that GGV may seek to argue that if the Committee's discretion is exercised as we submit it should be, they will be prejudiced in particular in relation to their application concerning Watermark West Quay. It may be that Genting will support this proposition, they having apparently, in the opinion of the Committee, provided a plan in respect of RPWD that is at least arguably compliant with the Regulations.

We submit:

(i) Any such propositions of prejudice should be carefully scrutinised against the background of simple commercial interest rather than advantage over benefit to the local community. It is obvious that in the absence of competing applicants, those whom the Committee regard as having successfully moved to Stage 2, will be greatly advantaged by not having to meet competing financial proposals, and SCC will thereby be disadvantaged.

(ii) It is difficult to see how exercising the discretion as we suggest, could in any way credibly result in unfairness. We have not seen any argument advanced to suggest real prejudice would exist.

However, we submit that even if any prejudice were founded, the benefits to SCC of a proper competition and the severe prejudice suffered by the RPWD applicants who would be eliminated from the competition through a matter entirely beyond their control would outweigh any argument advanced by the other applicants.

18 We understand that GGV may seek to place reliance upon the decisions of the Leeds Licensing Committee of 30th January 2013 and 14th February 2013.

If so,

(a) The Leeds Licensing Committee made it perfectly clear it was not setting any precedent, nor could it and that the decisions made were based entirely upon the specific facts as they applied in that case to Leeds.

(b) In the Leeds Large Casino Competition, the application to consider a late submission was 11 months after the advertised closing date Stage 2 applications had already been made and the overall circumstances were wholly distinguishable from the position here.

(i) It was envisaged in the Leeds Competition that there would be two casinos on separate premises within the overall development site - one temporary to allow the applicant and the Council to earn revenues whilst the permanent casino was under construction and then a second permanent casino. The contemplation was that the premises licence would at some stage be varied so as to relate to

premises to which it did not previously. Arguably, this was contrary to Section 187 of the Gambling Act 2005.

In respect of the applications made here to SCC, the final location of the casino has yet to be established but it will be within the contemplated location site of RPWD.

(ii) Unlike in Leeds, it was very clearly understood by all applicants in the competition in Southampton that the proposed location as displayed on Stage 1 plans was based upon the latest information available from the developer and that the casino would be built within the RPWD site. That has not changed.

(iii) The proposal rejected by the Leeds Committee was, of course, for a location outside that originally contemplated by the plans submitted at Stage 1 whereas that is not the case in Southampton.

(iv) There can therefore be no question of any unfair advantage at Stage 2 as a result of the developer's decision to relocate the casino within the RPWD site. All applicants were aware they were competing against the possibility of a casino location sited within the RPWD area.

(v) That was not the case in Leeds.

(vi) It follows this is not an application for different premises outside the application area which clearly was of concern to the Leeds Committee by reason of the fact that interested parties would not have had a proper opportunity to make representations at Stage 1.

CONCLUSION

We submit the approach the Committee are invited to take will:

(a) Achieve the aim of the legislation which is to generate the best benefit for the local community,

(b) Will not prejudice any member of the public and

(c) Will not present, despite protestations to the contrary any unfair advantage to competing commercial interests or provide any unfair prejudice.

We observe that it was Harris Hagan, on behalf of Aspers, who first suggested the approach the Committee might take in an attempt to resolve this unusual situation on behalf of not just Aspers, but all applicants in respect of the RPWD site. This was a

suggestion made in the best interest of all those involved including, of course, SCC rather than from any commercial interest or other tactical position.

We submit that the arguments advanced in this submission are fair, reasonable and meet the interests of SCC and the wording and spirit of the legislation.

Any delay in restarting the process or allowing the successful Stage 1 applicants to resubmit plans, cannot provide a proper basis for SCC not to exercise its undoubted discretion to allow late applications with amended plans to cover the location of a proposed casino within the area originally contemplated.

We have not seen any submissions in particular by GGV and therefore invite the Committee to allow us the opportunity to respond to those submissions and to expand these if necessary.

MARTIN S HESLOP QC
2 Hare Court
Temple
London EC4Y 7BH

30th March 2015

SUBMISSIONS ON BEHALF OF

GLOBAL GAMING VENTURES (SOUTHAMPTON) LIMITED

AND

GLOBAL GAMING VENTURES LIMITED]

IN RELATION TO A SPECIAL SCC LICENSING COMMITTEE HEARING ON 9TH APRIL 2015

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1. Introduction

Southampton City Council ('**SCC'**) has decided to convene a special meeting of its Licensing Committee on 9th April 2015 to consider three issues relating to the future conduct of the Gambling Act 2005 Large Casino Competition (**the 'Competition'**). SCC has asked that all parties detail their position in respect of the issues in hand in advance of the hearing.

Accordingly, these submissions are made on behalf of Global Gaming Ventures (Southampton) Limited ('**GGVS' or the 'GGV Applicant'**) which is an affiliated company of Global Gaming Ventures Limited **('GGV')**.

2. Summary of the GGV Applicant's views on SCC's Key Questions

The GGV Applicant's submissions in relation to the key issues raised by SSC can be summarised as follows:

Issue raised by SCC	*GGV Applicant's Submission*	*Reference*
1. In the case of each of the applicants, may they show the proposed casino on any or all of plots WQ2, WQ3 or WQ4 at Stage 2 of the casino licence competition	**No. Applicants may not show the proposed casino on any or all of plots WQ2, WQ3 or WQ4 at Stage 2** The premises for which the licence is issued after completion of Stage 2 must be the same premises as those described in the Stage 1 application. This, in turn, means that the premises must be both (1) the same as set out in the narrative description of the premises in the Stage 1 application and (2) located within the boundaries indicated by the applicant on the plans accompanying such Stage 1 application. SCC's own legal advice from leading counsel is quite clear on this. The matter was also addressed in detail in the Leeds casino competition (where GGV was a party) and a clear decision was arrived at that the casino location could not move between Stage 1 and Stage 2. It appears from the plans submitted on Page 11 (in Appendix 1) of the Licensing Committee papers for the hearing that plots WQ2, WQ3 and WQ4 are not even contiguous with the Royal Pier Waterfront ('**RPW**') site	**Para 6** **Para 7** **Authorities Bundle (Leeds Decision)**

	itself as a significant part of Mayflower Park is located between them. GGV submits that there is accordingly no basis on which these blocks of land could be regarded as forming a single premises with the RPW site even if the relevant applicants had tried to define it in Stage 1 (which, in fact, they did not do anyway, presumably because they, like GGV, were unaware that this additional land was related to RPW and/or potentially available as a location for the casino). GGV also notes that WQ2,WQ3 and WQ4 do not appear to form part of 'the site' referred to in the disclosure in Para 15.12 of SCC's Gambling Policy regarding a possible *ex ante* preferred site (albeit that such preference must, in any event, be disregarded by the Licensing Committee for the purposes of the Competition).	
2. *Does SCC have a discretion to accept new applications following the completion of Stage 1 and, as is the case here, the commencement of Stage 2 of the competition*	**No**. **There is no discretion to accept a late Stage 1 application after Stage 2 has commenced. There is also no discretion anyway to accept a late application for the purpose of improving the prospects of one applicant (or class of applicant) in the Competition.** The limited discretion provided to SCC under the Gambling (Inviting Competing Application for Large and Small Casino Premises Licences) Regulations 2008 ('the Gambling Act Regulations') cannot and does not extend to these circumstances. A discretion to accept a late Stage 1 application cannot exist after Stage 2 has started. This is clear, if for no other reason, because Stage 2 does not start until after the expiry of the period for appeals and challenges arising from Stage 1 which would clearly not be possible in relation to a late Stage 1 application accepted after Stage 2 has commenced. Furthermore, in the absence of re-opening Stage 1, a late applicant with a new or changed scheme would entirely circumvent the regulatory tests in Stage 1 The position here is even worse. After the hearing on 16th December 2014, the SCC Licensing Committee stated that Stage 2 would '*commence on 1st January 2015 and close on 16th April 2015*'. Given that the Licensing Committee hearing on 9th April cannot consider any substantive late applications (since there is none disclosed so far) any such applications would necessarily be submitted or determined not only after the	**Para 9**

	commencement of Stage 2 but after Stage 2 has actually closed.	
3. *If so, should the Council exercise its discretion to accept such applications*	**No. The situation here is one in which the exercise of a discretionary remedy would be completely unjustified and perverse.** As stated above, GGV is clear that SCC has no discretion to accept late applications at this point anyway. But even if it were accepted (and it is not) that such a discretion exists, there are numerous reasons why SCC should not exercise it in this particular case. These reasons include: • The overriding requirement of proceeding with a fair and transparent Competition process and not unfairly favouring one applicant or class of applicant. • Avoiding yet more delay (perhaps 5-6 months minimum for representations, Stage 1 hearings and possible appeals) to an already excessively prolonged and expensive process • The suggestion has arisen far too late in the process – just a few days before the end of Stage 2 and six months after the end of Stage 1. Accordingly, any late applications could only be considered after Stage 1 and Stage 2 have both closed. • SCC may well be asked to exercise its discretion repeatedly to allow late applications by several different parties (though probably for only one underlying scheme). Each of these applications will need to be considered separately. • The conduct of the potential late applicants is not such as to merit a discretionary remedy since the problems, (insofar as we can tell) appear to be of their own making (or that of their developer partner). • A lack of candour and transparency by the prospective late applicants about what the problem at RPW is, showing absence of the openness and good faith that is required of those seeking discretionary assistance • The RPW applicants have taken months to raise the issue of a discretionary late Stage 1 application with SCC when they fully knew that time is of the essence in a casino competition.	

3. Importance of fairness and transparency

SCC is legally required to conduct the Competition in accordance with the DCMS Code of Practice and the principles of natural justice. The Competition must be fair (and seen to be fair) and transparent and properly conducted.

At the hearing on 16th December GGV argued, and the Licensing Committee agreed, that the rules of the Competition (including the timetable) could not legitimately be changed midway through the process simply for the benefit of one applicant, sub-set of applicants or an individual development scheme.

The full text of this ruling is contained in the combined Authorities Bundle supplied to the Licensing Committee on behalf of all of the Competition applicants, however we particular draw your attention to the following extract:

'The Committee rejects the proposal that the procedure be aborted. The Committee has no reason to believe that the framework which it adopted for the granting of casino licences is unfair, and any challenge to it should have been brought when it was adopted. To abort the procedure now would, as GGV submitted, potentially allow yet further applicants into the competition, which would be unfair on existing applicants, and would result in a great deal of aborted costs.'

Adding extra 'competitive tension' or the uncertain prospect of possible additional benefits are also not a legitimate reason for making the process unjust and/or unfair. This remains the case today, just as it was in December, even though some of the RPW applicants (the '**RPW Applicants**') have now re-badged their original December suggestions (delay or starting again) under a new name (discretionary re-opening of Stage 1)

No reason has been advanced by the RPW Applicants or Lucent for the proposed move to the new land at WQ2, WQ3 and WQ4. We surmise that this failure to disclose is because the move arises, *inter alia* from fatal flaws or other material weaknesses in the earlier RPW scheme and the RPW Applicants are concerned that disclosure of these fatal flaws or other material weaknesses in the RPW scheme will undermine their chances in Stage 2 of the Competition, whatever the outcome of the hearing on 9th April.

This lack of transparency and apparent gaming of the system is completely at odds with the clean hands that should be expected of someone asserting that they should be the beneficiary of a discretionary remedy. This is particularly the case if some of the RPW Applicants have privately informed the SCC Licensing or Economic Development teams (or parts thereof) of the problems with the RPW site whilst withholding the same information from other competing applicants.

4. SCC preferences outside the Competition process must be disregarded

SCC's published Gambling Policy Para 15.12 discloses an *ex ante* policy preference to see the casino licence awarded to RPW. We trust, however, that it is accepted all round that any such SCC preference **must not** be allowed to influence the conduct of the Competition by

the Licensing Committee which must manage the Competition on an open and fair basis in accordance with the statutory provisions. 1 This is also very clearly stated in the Gambling Policy. We reproduce the following extract to show exactly what was set out:

'15.12 Southampton City Council intends to enter into a contract with development partners for the Royal Pier development and a casino element is intended to be part of the Royal Pier development with an application for a large casino premises licence forthcoming in relation to the site. This information is set out here so as to ensure that potential applicants are aware of this likelihood so as to ensure transparency. As a consequence, there can be no reason for the procedure to be or be perceived to be unfair in any way or perceived to be unfair by any applicant.

15.13 The Licensing Authority's decision will not be prejudged and where advice is sought, this will be impartial advice.'

We submit that SCC's preference for RPW was determined largely or entirely on the basis that the casino was to be situated in or near the building referred to in the plans as RP2.1 on the southern tip of RPW and on land to be reclaimed from the Test as part of a large regenerative scheme there. We submit that this policy preference did not extend to and does not extend to the existing land on the other side of Mayflower Park and referred to as WQ2, WQ3 and WQ4.

There are a number of clear reasons why we draw this conclusion, including the very name 'Royal Pier ***Waterfront'*** (our italics). (WQ2 WQ3 and WQ4 are not on the waterfront). In discussions with SCC officers over many years and at earlier hearings (e.g. at Stage 1 or on 16th December 2014) no reference was ever made to a location outside the RPW site (as generally understood).

Furthermore we have been told that SCC has regularly referenced its policy preference with statements about reclaiming land from the River Test, regeneration of the waterfront area, moving the Red Funnel terminal and 'anchoring' a major infrastructure project.

GGV asserts that these statements are not consistent with the use of the WQ2, WQ3 and WQ4 land and therefore the SCC Gambling Policy disclosure in this context did not and does not extend to having a preference for a scheme outside the RPW site itself (i.e. outside the areas marked RP on the plan in the Licensing Committee pack). A scheme in a different location does not become an RPW scheme merely because the developer calls it an RPW scheme.

We also note that all five RPW Applicants appear to have believed that the possible locations for a casino on the RPW site did not in any event include land on the other side of Mayflower Park such as WQ2, WQ3 and WQ4.

[1] *SCC's preference for RP is a legally irrelevant consideration for the purposes of the Competition and must not be applied so that it precludes the proper exercise of discretion. (R v Harrow LBC ex p Carter (1992) 91 LGR 46.)*

For example, Aspers clearly identifies the address and location of its proposed casino as a 'Casino Location Zone, Boundary of Premises' which is a much larger area than its 'Proposed Casino Demise' and which therefore allows for some adjustments during final master-planning and constructions. However this 'Casino Location Zone goes nowhere near WQ2, WQ3 and WQ4. We submit that this is because (a) Aspers did not anticipate the casino ever being on this land and (b) including this land in its blue-lined 'Casino Location Zone' would have left the application open to challenge on the basis that this could not reasonably have been regarded as a single premises. We submit that Genting's application may have been informed by a similar analysis.

That is why none of them properly referenced such land in their narrative descriptions at Stage 1 and/or the accompanying redlined and/or blue-lined plans and is also why the careful guidance given by SCC and Lucent in this regard did not identify or specify or otherwise direct applicants to consider this land. GGV can confirm that until it received the copy correspondence from SCC earlier this month it had no idea that any of the parties was considering the WQ2, WQ3 and WQ4 land as a possible location.

It is equally unclear whether any such SCC preference for RPW has been reviewed in light of the unspecified recent and continuing delays and other problems with the RPW scheme generally, the existence of which, we presume, SCC like everyone else was unaware of until recently. Whether SCC would maintain a preference for RPW in its Gambling Policy whilst knowing of these problems is unclear. Fortunately, however, the Competition is there to permit the Licensing Committee to make a proper and informed judgement about the maximisation of the public benefits with full knowledge of these issues.

The relevance of the above is that GGV would normally expect a council to reject out of hand a request at this point from an existing or prospective applicant which wanted either to move its application to a new location or which asked for a discretionary acceptance of a new Stage 1 application. We submit that the Economic Development Department of SCC has bent over backwards to accommodate the RPW and the RPW Applicants with the risk that such applicants will be perceived to get a more sympathetic hearing than they deserve or other applicants would receive.

In any event though, the preferences of SCC (whether fair and legitimate or not and up to date or not and covering WQ2, WQ3 and WQ4 or not - and we submit in each case they are not) **must not** be allowed to influence the Licensing Committee's management of the Competition. [2] This must be managed impartially in accordance with the legislative rules. This applies to consideration of moving sites between Stage 1 and Stage 2, to using discretion to accept a late application and also to any consideration of a decision to stop the Competition and start a new one for the purpose of permitting a new scheme (e.g. a 'WQ2 Casino') to compete with the existing applicants. This would be obviously and manifestly

[2] *Neither the existence of a development agreement between SCC and Lucent at RP, nor SCC's stated preference for the RP site should affect the exercise of their discretion. A claimant may challenge an exercise or non-exercise of discretion by a local authority on the ground that the discretion has been fettered by an agreement between the authority and a third party.* (*R v Liverpool Corporation ex p Liverpool Taxi Fleet Operators' Association [1972] 2 QC 299*)

unfair as the Committee itself recognised on 16th December 2014 in the decision referred to above.

In this context we note two further points:

a. SCC Website

The official website of SCC currently contains the statement that *'The new casino is likely to be located at the proposed £450 million Royal Pier development although two of the bids were for different sites'*.
(http:www.southampton.gov.uk/news/article.aspx?id=tcm:63-365043).

GGV respectfully considers it most unattractive that other parts of SCC are second guessing the eventual decisions of the Licensing Committee and the outcome of the Competition in this fashion. There is no basis upon which to decide that such an outcome is 'likely' or otherwise.

b. Separation of functions

GGV continues to be deeply troubled by the inability of SCC to maintain a proper separation between its different functions. After the most unfortunate private meeting between SCC Licensing and Lucent/Kymeira on 30th September we thought this would be well understood and respected. Yet we note, for example, that on 26th February 2015 an officer of the Economic Development part of SCC sent the legal advice of SCC's QC about licensing matters to Lucent, the RPW developer (which is also the parent company of an RPW Applicant). The officer asked them whether '*you intend to share [the advice] with [the other applicants] or whether you wish us to do so*'. It should have been obvious that all applicants were entitled to see the advice contemporaneously and should not have to rely on Lucent to supply it. Lucent did not, in fact, share the advice and it was two weeks later that other applicants received it from the Legal and Democratic Services unit of SCC (which we would have expected to deal with the matter in any event).

5. The process has been too protracted and further delays are unacceptable

The casino premises licence which is the subject of the Competition was authorised by the Gambling Act 2005 which received Royal Assent 10 years ago next month. By any standards, the process of issuing the Southampton licence has been extraordinarily prolonged. Whilst a part of the delay is for reasons outside the control of SCC, it should be noted that that the first of the Gambling Act 2005 casinos (Newham) actually opened in late 2011 (three and a half years ago). Southampton is still some way from issuing the licence let alone getting to the point at which construction can commence or the casino can be opened. This results in a loss of benefits to SCC and the city and its citizens as well as prejudice to the applicants who legitimately wish to progress their projects in a timely fashion.

Public policy requires that at some stage the importance of reaching a decision acquires primacy over other considerations. This is why the Competition is structured as it is, with a strict and public timetable and clearly defined procedures. It is unacceptable that this process should be abandoned or delayed to assist one scheme/group of applicants who

want to re-jig their applications in order to improve their chances in Stage 2. This point was addressed in the SCC Licensing Committee hearing on 16th December 2014 and, we are pleased that the Committee concurred and chose to press on with the Competition.

6. <u>Stage 1/Stage 2 premises must be the same and redlining is fixed</u>

We do not propose to repeat the advice of SCC's QC on this matter as set out clearly and in detail in the letter of 26th February from Ms Compton of SCC to Lucent. We note that Mr Kolvin, who advises SCC, is the most eminent barrister active in this field and has been involved in most of the Gambling Act 2005 competitions. We understand his reasoning and regard his main conclusions as being an accurate statement of the settled law as it is now well understood by casino operators (including GGV) and many other specialist lawyers and professionals in the UK casino industry.

GGV recognises that the rules regarding the location of casinos are particular to the political and legislative circumstances under which these licenses came into being. GGV's principals were involved in discussions with DCMS Ministers and other legislators at the time the Gambling Act 2005 was being finalised and taken though parliament. Gambling Act 2005 casinos (unlike earlier Gaming Act 1968 casinos) are not permitted to move or to relocate. The point at which the location is 'locked in' for this purpose must necessarily be Stage 1.

The public policy reason for this is partly that councils should not be placed in a position whereby they approve one scheme only to find pressure later for the licence to be used in a different scheme. However it is also about the need to get to a proper and timely conclusion. If new or amended schemes could arise during Stage 2 then it is obvious that fairness and due process would require that such new or amended schemes would have to go through the same Stage 1 tests as other applications. If this were not the case then the Stage 1 regulatory tests would be entirely circumvented. However replaying Stage 1 for the new scheme entering the Competition during Stage 2 would require a period for representations (28 days) and a period for appeals (3 months). Since Stage 2 cannot start (or re-start) until the appeals period has ended, there would potentially be significant further delay with the risk that yet further delays might follow if other parties then changed their schemes. There would be no end to the process.

It therefore follows that the Stage 2 applications must be for the same scheme as the Stage 1 applications. The shift by the RPW Applicants to WQ2, WQ3, and WQ4 would involve moving several hundred metres to a location which is actually closer to GGV's Watermark site than it is to the original RPW casino site. The WQ2, WQ3 and WQ4 land would seem not to be contiguous to the remainder of the RPW site as there is a part of Mayflower Park in the middle.

We consider that, on the basis of the information currently available to us, the lack of physical proximity and commercial or other linkages between WQ2, WQ3 and WQ4 and the earlier RPW casino location would not permit these to be legitimately regarded as one single premises for the purposes of the Competition, even had the RPW Applicants tried to describe them in this way in their applications (which they did not).

All or most of the RPW Applicants did not, we submit, even know that the WQ2, WQ3 and WQ4 land was either available as a possible site for the casino and/or related to the RPW development proper at all when they submitted at Stage 1. For example, Aspers gives the address of its proposed casino as 'Casino Location Zone, Royal Pier Waterfront' and then shows the Casino Location Zone as being a (large) area covering the southern part of the RPW but terminating hundreds of yards from WQ2, WQ3 and WQ4. There is no basis to argue that premises described as being at a marked and delineated 'Casino Location Zone' on the southern tip of RPW actually extend to cover a plot of land on the other side of Mayflower Park and which is most clearly not in the indicated 'Casino Location Zone'.

The Committee will be aware that certain outside parties (including the Southampton Commons & Parks Protection Society, the City of Southampton Society and the Friends of Town Quay Park) sought to make representations about the RPW Stage 1 applications. It might be expected that some of these bodies or others, will seek to make similar (or different) representations about the new proposed location at WQ2, WQ3 or WQ4 (which immediately adjoin Mayflower Park). How is this to occur if the RPW Applicants' schemes change privately between Stage 1 and Stage 2? Sending these parties details of the hearing on 9th April will not suffice, if for no other reason than (1) there is not enough time for them to consider the matter and frame their representations and (2) there may also be other unidentified parties who wish to make representations and who have not been contacted.

It is clearly unrealistic to imagine that representations could only be made at the point when the premises licence has been granted and is being varied to bring it into line with the new (and completely different) scheme because if the representations were found to be valid at that point then the entire Competition would need to start again. That cannot be correct.

7. The Leeds Case

GGV was itself involved in the similar situation which arose in 2013 in Leeds and which was argued at length by leading counsel in front of the Licensing Committee there. The Leeds Licensing Committee Decisions are included in the Authorities Bundle.

In Leeds, the applicant (GGV) wished to change its casino location to a different part of the same Eastgate Development because the developer (Hammerson – who are also GGV's partners in Southampton) had altered the scheme phasing in the period between Stage 1 and Stage 2 of the casino competition. The intention was to operate the casino in one part of Eastgate initially and then move it back to the original preferred space when construction had been completed some years later.

The move being sought by the applicant was to a location to the other side of a road (Eastgate) which runs through the middle of the Eastgate scheme (which is a very large and regenerative two phase urban retail and leisure project). The new proposed location was, in fact, just 50 yards or so north of the original location and was part of the same single mall scheme.

The decision in Leeds was very clear though and it was that the Stage 2 location had to be on 'all fours' with that described at Stage 1. No moving of the location was permitted.

Leeds Council was also asked to consider exercising discretion and accepting a late Stage 1 application to permit the applicant to submit a revised redline including an additional part of the Eastgate complex. The application was made during Stage 2 of the Leeds competition (just as in Southampton). The application was rejected.

For the record, what GGV and Hammerson did after this decision was to accept that this was the law taking its course. GGV went on to win the Leeds casino competition with a scheme on the original location and construction of the renamed 'Victoria Gate' complex has now been underway for well over a year with the casino opening scheduled for September 29th 2016.

8. <u>Impossible to distinguish the Genting application</u>

Mr Kolvin's advice to SCC tentatively floats the idea of a distinction between the Genting Stage 1 application for RPW and the other RPW Applicants on the basis that the Genting plans show a boundary line which apparently includes the WQ2, WQ3 and WQ4 land.

We consider that any attempt to draw such a distinction is doomed to fail because the Genting Stage 1 application states:

> ***'The application relates to the following premises or proposed premises:***
>
> ***Casino premises to be known as Genting Casino and to be constructed on plot of land to be reclaimed from the River Test (and expected to be situated at building identified as Building RPW2 1) Royal Pier Waterfront, Mayflower Park, Southampton SO14 2AQ (and as more particularly shown on the site plan accompanying this application)'***

The plan accompanying the application identifies the Genting Casino site by means of a blue-lined area on the southern part of the Royal Pier and which is captioned '*Expected boundary or perimeter of the casino*'. This location is consistent with the narrative description.

We consider that claiming that the WQ2, WQ3 and WQ4 land falls within the narrative description of the premises given above is a complete non-starter. It is quite obvious that no reasonable person reading this description of 'reclaimed land' 'at building RPW2.1' 'as shown on the plan' could conclude that it actually means a plot of non-reclaimed land on the other side of Mayflower Park a quarter of a mile or so to the North and nowhere near Building RPW2.1 or the 'expected boundary or perimeter of the casino' as shown on the plan and indeed not even contiguous with the RPW site itself.

The casino site boundary is, in reality, clearly the blue line, which is no less effective for being blue rather than red. The red line has no practical significance because it is not connected either to the narrative description or to the mind of the applicant. The words in the legend which suggest that the red line is the boundary of the 'premises' do not change this because the legend gives no definition of what this means and in any case the legend cannot overrule the much more detailed narrative description of the premises in the substantive text.

If the applicant wanted the boundary of the premises for Competition purposes to be this red line then, as a minimum, the narrative description would have needed to be consistent with this. As noted above, however, we submit that the enlarged site (including WQ2, WQ3 and WQ4) is, in any event, obviously not capable of comprising a single 'premises' for the purposes of the Competition as there is no physical or meaningful commercial linkage between WQ2, WQ3 and WQ4 and the earlier specified RPW location. All or most RPW Applicants appear to have been entirely unaware in any event that this land was a possible casino location and/or formed part of the RPW scheme when they were preparing their Stage 1 applications. If they were aware, then we suggest that presumably they excluded the land from their premises description because they considered that this land could not possibly form a single premises with RPW for the purposes of the Competition.

9. <u>Lack of continuing SCC discretion</u>

The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 ('the Gambling Act Regulations') do provide some discretion for councils to accept late applications for Stage 1.[3] This is not in contention. The same argument about using a discretionary late application to move location was advanced (unsuccessfully) in the Leeds case. However, the discretion is not an unlimited discretion and we submit that there is manifestly no discretion at all to accept a late application in the following circumstances:

a. <u>After Stage 2 has commenced</u>

The structure of the Competition is based on the assumption that Stage 1 has been completed before Stage 2 commences. There is a gap between Stage 1 and Stage 2 which is there to make sure that Appeals from Stage 1 have been dealt with and are resolved before Stage 2 starts in order to make this even clearer. The Stage 2 process is not to be cluttered up by holdover issues from Stage 1.

The Licensing Committee hearing on 16th December 2014 set the dates for Stage 2. The applicants were notified by Mr Grout on 1st January 2015 that *'this part of the process would commence today, 1st January 2015 and close on Thursday 16th April 2015'.* SCC's website currently states that '*On 16th December 2014 the Licensing Committee decided that stage two of the process will commence on 1 January 2015 and close on 16 April 2015 at 17:00*'.

As far as we are aware, no late applications have so far been made and the Licensing Committee is not expecting to consider any substantive applications on 9th April and will not be meeting again before 5pm on 16th April. Therefore any actual late application now would actually be submitted or determined after the closing of Stage 2 as well as Stage 1.

[3] *Statutory power conferred on local authorities for public purposes can validly be used only in the way that Parliament, when conferring that power, is presumed to have intended*. *<u>(R v Tower Hamlets London Borough Council, Ex parte Chetnik Developments Ltd. – [1988] A.C. 858)</u>*

The process becomes completely unworkable if a council's discretion to accept a late entry extends into, let alone beyond, Stage 2. If the commencement of Stage 2 is not the backstop for a possible exercise of discretion what is the actual backstop date? Does it run for ever? What is the process? Should the entirety of Stage 2 be automatically stopped or recommenced when a late application is accepted? Or when the late application is made? Is there a prohibition on parties bringing back failed Stage 1 applications in a new form during or after Stage 2 and hence do failed Stage 1 applicants get a second or third chance to improve their applications? Could the licence actually be awarded whilst the Appeals process from a late Stage 1 applicant is still underway?

The complexities and risk of unfairness arising from the scenarios set out above show exactly why there was never any intention by the legislators that Stage 1 could be re-opened retrospectively during Stage 2 (or later) to allow in new schemes whether these are completely new ones or re-worked versions of troubled earlier applications.

b. <u>For ineligible purposes</u>

We submit that the discretion to accept late applications is there to permit applicants to correct administrative shortcomings or to deal with other minor, obvious or uncontested errors or problems. For example, there have been several situations in other casino competitions where applicants delivered their papers to the wrong council premises or were slightly late or missed out elements which were quickly spotted and easily corrected (such as a failure to identify a primary entrance).

The discretion is not there, however, to allow a council the means of influencing the outcome of the Competition which must be run and scored in accordance with the pre-determined rules. This applies equally to (1) influencing the outcome for the purposes of helping one class of applicant and (2) seeking to spice up the Competition by helping weaker schemes to compete better with stronger ones or (3) allowing in some completely new schemes.

Under the DCMS Code of Practice competitions are to be conducted fairly and be seen to be conducted fairly. Using the council's discretion to allow one applicant or class of applicant to polish up and improve or change their applications out of time (or indeed to submit completely new and different schemes) is so far from being a proper exercise of discretion that there can surely be no discretion whatsoever to accept a late application for this purpose.

10. <u>If a discretion does exist, it should not be used</u>

As noted above, GGV does not accept that there is a discretion to accept new Stage 1 applications either (1) this late in the process or (2) for the purpose of helping one class of applicant.

However, even if such discretion were to exist, GGV is of the view that the current situation is as far from justifying use of discretion as it is possible to envisage. This is for the following reasons:

a) *Fairness and transparency*

The Competition must be fair and must be seen to be fair. SCC is already on risk of being seen to appear biased in favour of the RPW Applicants (e.g. re the meeting on 30th September and the comments on SCC's own website referred to in Paragraph 4 above). Using a discretionary remedy in favour of one scheme (and it is only one scheme, albeit with several applicants) runs the risk of breaching the DCMS Code and of legal challenge.

The Licensing Committee must consider whether it would use its discretion in a similar fashion for other applicants. We submit that it would not.

b) *Delay/timeliness*

The design, preparation and conduct of the Competition has already been a tremendously prolonged and expensive process. Three additional months have already been added to the timetable as a consequence of the failed request for a much longer time extension by certain of the RPW Applicants in December 2014.

If SCC exercises its discretion to allow a late Stage 1 application then as an absolute minimum, a further 4-5 months will need to be added to the timetable to allow for representations and a period for possible appeals. This will further delay the receipt of financial and other benefits for SCC and the citizens of Southampton and it will also put the other applicants to considerable additional cost. Applicants such as GGV have organised their management teams and professional advisers so as to be ready for the submission of Stage 2 presentations on 16th April. Why should those who are ready to comply with the Competition timetable be penalised to help those who are not?

c) *Multiple late applications*

SCC would probably face several late applications requesting discretion. These would each be different. Possibly, some parties might wish to make new late applications whilst also keeping their existing RPW applications alive. Genting might choose to try to retain and distinguish its existing application, for example, hopeless though GGV consider this to be. Possibly completely new entrants might wish to join the Competition.

Whilst SCC would no doubt consider each application for discretion on an individual basis, we would see it as a recipe for disaster if different conclusions were reached or if there is no overall policy framework to deal with cases which, necessarily, will be subtly (or not subtly) different.

GGV's view is that the multiple nature of the discretionary remedy being asked for is not only inconsistent with fairness and the nature of any discretionary power but will result in inevitable further delay and wrangling. Opening Pandora's Box would produce disaster.

d) Applicant behaviour/Transparency

GGV expects that SCC would not wish to exercise its discretion to favour an applicant or a class of applicant which had failed to be candid and open in the manner in which it/they had participated in the Competition.

None of Lucent, Kymeira or the other RPW applicants appear to have shared with the Licensing Committee (let alone the other applicants) the nature of the problems currently affecting the first RPW scheme. We speculate that this is because they are worried that if the Committee becomes aware of these problems it will damage the RPW Applicants' chances of success in Stage 2, come what may. It would appear from the submissions by Aspers and Grosvenor that they have been aware of these problems for some time and indeed we presume that it was the same unspecified difficulties that caused Lucent to approach SCC to ask for a delay on 30th September 2014 (over six months ago).

But whatever the reason, it is surely not the behaviour to be expected of a party or parties asking for a discretionary remedy? Even if the RPW Applicants 'spill the beans' on April 9th and disclose what the problem is, this will be too late to allow proper consideration. If they wanted discretionary help they needed to behave in good faith.

e) Timing

It would seem likely that at the time of the December 16th 2014 Licensing Committee hearing (and probably for some considerable time before this) the RPW developers were aware of the problems with the RPW site. By 16th December 2014 they were certainly aware of the importance which GGV and SCC placed on a timely outcome.

Therefore it sits ill that months and months later there has still been no late application for SCC even to consider. The Competition is like other legal processes insofar as parties which wish to challenge the process need to move expeditiously so as to protect the legitimate interest of others in proceeding with certainty. The RPW Applicants are hopelessly out of time if they want to make late applications and have them considered on a discretionary basis. If there was a time for this it was many, many months ago before Stage 2 commenced. Interested applicants in the Competition have had many years to select an appropriate site for their application.

11. Potential prejudice to the GGV Applicant

The current situation continues to give rise to serious concerns. The GGV Applicant is entitled to expect that the Competition will be properly and fairly carried out in accordance with the DCMS Code of Practice and other applicable legal requirements and in accordance with the standards of fairness and propriety that can be expected of a major city council undertaking a quasi-judicial process. On this basis, GGV and the GGV Applicant (which are privately owned businesses) have incurred significant legal fees and architectural and design and other consultancy costs in relation to this competition as well as making an extremely large commitment of time and effort by their directors and senior management.

Any changes which result in an undue delay to the Competition (or abandonment and restarting of the Competition) or which permit other applicants to submit 'new, improved' schemes or otherwise prevent the Competition from proceeding in accordance with the announced timetable and methodology will be prejudicial to the GGV Applicant insofar as:

i. The RPW Applicants are advantaged and permitted to change (and presumably improve) their schemes or to submit new schemes and therefore the GGV Applicant has a reduced chance of winning the Competition

ii. Lucent, as developer of the RPW, is able to secure improved letting terms (e.g. a higher rent or a lump sum in exchange for its support) from parties (which potentially include another GGV affiliate) as a result of the delay and the move to WQ2, WQ3 and WQ4.

iii. The GGV Applicant is required to spend additional management time and effort and incur additional legal costs as a result of the need to address issues relating to the Competition process and which it believes have no merit.

In addition, GGV notes that its partners at Hammerson are faced with a series of important and time sensitive decisions about the scope and design of Phase 2 of the Watermark West Quays scheme. The additional delays and uncertainties around the Competition continue to add cost and difficulty to this and potentially threaten to damage the prospects for a timely, successful and optimal progression of this important project.

In our submission regarding the SCC hearing on December 16th, GGV said:

> *'The SCC Licensing Committee should make a clear determination that all SCC officers involved in running the Competition process (or managing or supervising such process or managing or supervising individuals involved in the process) are in a quasi-judicial position and accordingly are to refrain from:*
>
> *i. Lobbying for or otherwise supporting, advocating, assisting or advantaging any applicant*
>
> *ii. Being involved in any SCC decisions which may have the primary or secondary purpose of advantaging any Competition applicant*
>
> *iii. Meeting or otherwise discussing or corresponding with Lucent or any individual applicant or group of applicants about the conduct and progress of the Competition otherwise than through the formal and transparent Competition process.*

GGV wishes to make clear, for the avoidance of doubt, that without limiting the scope of the above, its clear view is that the Legal and Democratic Services Department should not be involved in any capacity as an advocate for the Royal Pier schemes and should be absolutely forbidden from seeking to change the rules and conduct of the Competition so as to advantage individual schemes or applicants.'

We remain very concerned that SCC officers are still not paying sufficient attention to the need for impartiality. For example, why was the licensing advice from Mr Kolvin disseminated via the Economic Development Department directly or indirectly to certain RPW Applicants on 26th February whilst it was not sent to others until 10th March? A two week delay is material in these circumstances and such a lack of even-handedness is a serious concern.

We therefore respectfully ask again that the Licensing Committee makes it quite clear that lobbying of the Committee itself or the Licensing and Democratic Services Department by other parts of SCC with a view to changing the rules (or the interpretation of the rules) to favour one class of applicant or one scheme is self-evidently unacceptable.

12. <u>Vital Action which the GGV Applicant is Seeking from SCC</u>

GGV recognises and welcomes that the Licensing Committee has clearly stated that it will at all times run the Competition on a fair and open basis in accordance with the DCMS Code and relevant legal requirements.

To this end, GGV respectfully asks that:

i) The Committee continues to conduct the Competition in accordance with the announced timetable and methodology.

ii) The Committee accepts the advice of leading counsel (as set out in the letter of 26th February 2015) and refuses to accept Stage 2 applications which purport to be on the WQ2, WQ3 and WQ4 land, whether from Aspers, Rank/Grosvenor, Kymeira and GGV(RP) Limited or from Genting.

iii) The Committee declines to accept the argument that the Genting application can be distinguished from the others so as to permit an application relating to WQ2, WQ3 and WQ4

iv) The Committee refuses to exercise discretion to accept any late Stage 1 applications on the basis that (a) it no longer has any such discretion as Stage 1 has ended and Stage 2 has commenced and (b) if it did have any such discretion this would not be a case where the exercise of such discretion is warranted.

13. <u>Other Points</u>

GGV remains very eager to develop and operate a casino in Southampton. It is a great city and GGV will be proud to be present here. GGV expects to develop an international standard casino which will be fitting and appropriate addition to a city of the standing (and with the ambition) of Southampton.

Phase 1 of the Watermark, West Quays scheme has recently begun full scale construction and will open late next year. A webcam has been installed and Committee members can view it on http://hammerson.reachtimelapse.co.uk/westquaywatermark/ if they wish to see the progress being made. GGV hopes very much that Phase 2, containing the casino, can be completed soon afterwards to bring additional regeneration, jobs, investment, vibrancy and other benefits to the city and its citizens whilst they are still young enough to enjoy them.

As we said in December, it is because of our enthusiasm to be in Southampton that we want to win (as we believe we can) in a fair, open and transparent Competition conducted to the highest standards and free of challenge. Such a Competition is surely a reasonable expectation.

Global Gaming Ventures Limited
Global Gaming Ventures (Southampton) Limited
31st March 2015

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KYMEIRA CASINO LIMITED Appendix 24

Martin Grout
Locum Licensing Officer
Licensing – Southampton City Council
PO Box 1767
Southampton
SO18 9LA

31st March 2015

Dear Martin

Large Casino Competition

I refer to your letter dated 21 March and your subsequent email of 29 March confirming the arrangements for the hearing at 11am on 9 April. Please note that Kymeira will be represented at that hearing by Stephen Walsh QC.

May we suggest that, in addition to the three questions posed in your letter of 21 March and in the interests of clarity, the Licensing Committee considers the following question, namely:

- *To what extent (if any) may an applicant vary its:*
  (a) application at Stage 2 and/or
  (b) apply in due course for a premises licence in reliance on any Provisional Statement granted to that applicant
  so as to apply in either case in relation to a premises layout (including footprint (ie boundary and perimeter), internal layout, floor levels, entrances and exits) that differs from that described and/or shown on the applicant's plan at the time of the Stage 1 grant?

We believe that the above question is highly relevant for the next stage of the competition process, since it was not directly posed within the letter dated 26 February 2015 from Barbara Compton of the City Council to Pram Nayak of the Lucent Group, which was instead stated to address solely:

- whether application plans could be amended at Stage 2 "so that the casino site is outside the application site at Stage 1" and
- whether the Advisory Panel can assess a scheme which is "materially different from the subject of a Stage 1 grant"

but nevertheless concluded that:

- there is intended to be no variance between the premises at Stage 1 and the premises at Stage 2 ….. the Act has in mind the same application, with the same boundary and perimeter,
- the boundary has to be fixed at some point, and in the view of the Council it is fixed at Stage 1, and
- in answer to the question "how substantial must the change be before it is not made 'in reliance'" the answer was "the same proposal as was advanced at Stage 1", stated elsewhere within the letter as meaning "on all fours with".

In addition, the clarification sought by the additional question is in the context of the Council's Stage 2 process that envisages that there will be some difference between the plans submitted at Stage 2 and those relied upon at Stage 1.

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Kymeira Casino Limited is registered in the United Kingdom no: 09100886 at 70 Great Bridgewater Street, Manchester, M1 5ES
Directors: Charles M Flynn, Ernest Battey

Whilst Kymeira has already made its position clear in its letter to Dawn Baxendale dated 15 March, we reserve the right to make such submissions at the hearing on 9 April as Counsel thinks fit both in relation to the above-mentioned question that we ask to be considered and in relation to representations made to the Committee by other applicants in response to the three questions posed in your letter dated 21 March 2015.

Yours sincerely

[redacted]

Kirsty Kneen

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[redacted]

Our ref PW/KB/WOO002-1-2/93

Your ref 2014/02562/70SLCP

31 March 2015

Dear Sirs

Large Casino Competition

Please note that we represent the interests of Grosvenor Casinos Limited ("Grosvenor") of Statesman House, Stafferton Way, Maidenhead, SL6 1AY. We have been provided with all of the relevant documentation and correspondence in relation to the issues to be aired at a licensing committee hearing on 9 April 2015 at 11am. We can confirm that Anna Mathias from this office will attend that hearing and represent Grosvenor, along with the relevant company representatives.

We should be grateful if you would take this letter as setting out our written submissions on the three issues outlined in your letter of 21 March 2015. We will amplify these outline submissions at the committee hearing and will be happy to help the Councillors with any additional information they may need.

We can confirm we will cooperate with other applicants so that a "composite authorities bundle" can be prepared and lodged by 2 April 2015.

We have had the opportunity to consider the letter sent by Clifton Davies Consultancy to Mr Nayak of RPW (Southampton) Limited and also the letter sent in response by the Council to Mr Nayak, which contains the broad principles of the Council's position having been advised by Philip Kolvin QC.

We have also had sight of Harris Hagan's letter dated 2 June 2014 headed "Southampton Large Casino Competition - Legal Issue - Delineation of "Premises" on plan accompanying Application" and their letter of 16 March 2015 entitled "Southampton Large Casino Competition Royal Pier Waterfront Development - Legal Issue relating to Delineation of "Premises" in stage 1 applications Proposed Solution".

We can confirm that we have also considered the primary legislation along with the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 and the DCMS "Code of Practice - Determinations under paragraphs 4 and 5 of schedule 9 to the Gambling Act 2005 relating to large and small casinos".

In addition we represented one of the stage two bidders in the Leeds competition for a large casino licence and are aware of the circumstances in which Leeds City Council engaged its discretion to consider late applications for provisional statements, granting the same for London Clubs International and refusing to grant an application by Global Gaming Ventures, then represented by Harris Hagan.

1. **In the case of each of the applicants, may they show their proposed casino on any or all of plots WQ2, WQ3 or WQ4 at Stage 2 of the Casino Licence Competition?**

Having taken into consideration the authority's provisional view as per the letter to Mr Nayak, our clients form the view that the Council's position would be to adopt the strictest of interpretations, were the application by our clients to be excluded from plots WQ2, WQ3 or WQ4. Our clients note that five applications were lodged in the Royal Pier redevelopment scheme, by:-

(i) Aspers;

(ii) Genting;

(iii) GGV;

(iv) Grosvenor; and

(v) Kymeira.

Prior to the applications being lodged, the very real issue as to descriptions of the application site that would comply with the legislation was raised ably in Harris Hagan's letter dated 2 June 2014. In that letter, the legal uncertainty surrounding descriptions which would adequately identify the application site was highlighted to the Licensing Authority. In addition it should be noted that even though guidance was issued by the Authority on 20 June 2014, each of the five applicants interpreted that advice note differently – resulting in a different approach in the way that they described their application in both the description on the application form and the plan attached to the application. This highlights the difficult position that all potential bidders were in when they tried to describe their application site in such a way as to be compliant with the legislation but also so as to give flexibility within such a large mixed-use development scheme. It is hard to believe that statute was intended to be so strictly interpreted in an environment where multiple applicants were negotiating with, and in the hands of, a developer, as to the final position of a casino within a development, part of which is to take place on reclaimed land currently consisting of part of a river.

It is clear that the developer has, subsequent to the grant of the five provisional statements for this scheme, now reconfigured the layout as the development has evolved, and is seeking to place the casino in a different location within this significant scheme.

The Council set out its position at page 9 of the Nayak letter as follows:- "as a matter of legal and common sense, the boundary has to be fixed at some point, and in the view of the council it is fixed at stage 1, when a provisional decision is made to grant an application which has been subject to a process of public consultation." At page 10 this is further highlighted when the Council states that "the purpose of the expression is to ensure that where a provisional statement has been granted, the premises licence application which follows is one in respect of which the regulatory and benefits questions have been asked and answered." Finally the Council states at page 12: "all of these considerations, in the Council's view, lead clearly and inevitably to the same conclusion. The scheme which is assessed at stage 2 must be the same scheme applied for at stage 1, in respect of which a provisional decision to grant has been made. The purpose of stage 2 is to assess the respective benefits of the schemes for which such provisional decisions have been made, and not to permit behind closed doors amendments or prospective amendments to those schemes, outside the gaze, knowledge or participation of other stakeholders in the process."

It is the view of our clients that the overriding position under the Act, Regulations and DCMS Code of Practice is that the process should lead to the issue of a final grant which delivers the greatest of

benefit to the Licensing Authority's area. This must be achieved in a manner which is fair, the same for all applicants and transparent.

Whilst the Authority's position, as set out in the Nayak letter, is strict in its interpretation, we would point to the current state of affairs, namely that all five of the original applicants are caught by the decision of the developer to move the physical position of the casino within the large development. We would suggest on behalf of our clients that the regulatory test would not be infringed by an identical casino offer in a different part of this significant scheme. It was always stressed in pre-application correspondence/discussion and during the stage 1 application and hearings that there was a need for flexibility in the final location of the Casino. Critically, its size/content/layout would not be significantly different if the amended location were to be allowed. It is hard in those circumstances to accept that anyone would be disaffected or prejudiced if the requested changes to the position of the Casino were allowed.

2. **Does the Council have a discretion to accept new applications following the completion of stage 1 and, as is the case here, the commencement of stage 2 of the competition?**

On behalf of our clients we take the view that the Council does have a discretion to accept new applications following the completion of stage 1, and after the commencement of stage 2 of the competition.

Regulation 7(2) of the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 provides that Licensing Authorities "are not required to consider an application made after the closing date." By its very wording the Regulation does not prohibit the consideration of such an application and this clearly gives the Licensing Authority the discretion to consider an application made after the closing date. This Regulation is drafted in direct contrast to Regulation 7(1), which states that the Licensing Authority "may not consider an application before the closing date."

There is nothing in the Statutory Instrument which would preclude the Authority from exercising its discretion to consider new applications following the completion of stage 1. We would invite the Authority therefore to exercise its discretion in favour of considering new applications. Clearly the Authority in making its decision should consider the public interest and regulatory risk to the casino process. The discretion is an absolute discretion and is not limited to any stage of the bidding process.

Having had regard to sections 3.1 and 3.2 of the approved Code of Practice issued by the DCMS, we would submit that this would be a fair outcome, bearing in mind the developer having moved the area in which the proposed casino can be situated. The potential implication of considering an application after the closing date is that, in order to be fair to all applicants, the Council would have to accept any late applications from those parties who have already expressed their intention by having had a stage 1 application considered and granted. There would be no need to recommence the whole of stage 1 and consider brand new applications. If the Council has formed the view that its assessment needs to be completed at the "regulatory test stage of stage 1" this would be a fair, transparent and open solution to this problem. This would in effect cause stage 2 to be suspended pending the outcome of any new stage 1 applications and the time given over for appeal against the outcome of any of those applications. Because of the nature of the fresh applications to be made, we would submit that the overall benefit to the casino competition process would outweigh the modest delay at this stage.

We would suggest that the timing of this is an important factor to bear in mind in the Authority's decision making process.

Leeds provides an interesting comparison. There, London Clubs International had made an application at stage 1 for a premises licence. After stage 1 had been completed, but before stage 2 had commenced,

London Clubs International realised that they had no authorisation to apply for a premises licence (not possessing the correct operating licence) and therefore lodged a subsequent provisional statement application outwith the stage 1 prescribed notice period. The Authority determined to exercise its discretion to allow a late application. The notice provisions were complied with. There were no objections to the application and the provisional statement was granted at stage 1. The stage 2 process was suspended pending consideration of the provisional statement and time given for any appeal. This is a good example of an Authority using its discretion for the greater good of the bidding process.

At a much later stage, Global Gaming Ventures submitted an additional provisional statement application and sought to persuade the Authority to use its discretion to allow a late application. This application was some eleven months into the stage 2 process and only a very short time before the Authority was to determine the best bid. At that stage the five original bids had been reduced to two.

The Licensing Authority considered this late application and determined that its discretion under Regulation 7(2) had to be seen and exercised against a background and context of the overall legislative provisions. In its decision it stated: "at some point the public interest requires a decision to be made and benefits delivered which outweighs the public interest in allowing new, better further or enhanced applications which might potentially enhance the offer. The judgement of the committee, at this time (eleven months into stage 2) and at this stage in the process [is] that point has been reached." To this effect the authority determined that although they had a discretion, which they had exercised in favour of LCI, they would not exercise it at this stage in the proceedings in favour of Global Gaming Ventures.

When judging the current situation in Southampton against the same statutory and benefit of the public tests, we would submit on behalf of our clients that this position has not been reached, and that late applications should therefore be considered. For all the reasons set out above, and below in answer to question 3, we submit that it is in the greater public interest to allow new applications by applicants with stage 1 provisional statements who have had the position of the casino demise altered by a developer.

3. **If so, should the Council exercise its discretion to accept such applications?**

We respectfully submit that it would be in the interests of the public for the Authority to exercise its discretion to allow new applications for the following reasons:-

(i) There is a clear public interest in having an effective process which delivers the greatest benefit to Southampton. Any delay as a result of permitting new stage 1 applications is outweighed by the greater benefit to the public good, particularly at this stage of the overall process, when any delay would be minimal, given the anticipated development timescales envisaged for each of the sites. It is hard to believe that there would or could be any real or substantial opposition to relicensing the original provisional statements in a different part of the overall scheme.

(ii) At some point the public interest requires a decision to be made and benefits delivered which outweighs the public interest in allowing new, better further or enhanced applications which might potentially enhance the offer. This stage has not been reached in Southampton as we are still ahead of the current stage 2 bid deadline. We would suggest that, to use the Leeds example, Southampton is much closer to the "LCI situation" than the "GGV situation" and should therefore use its positive discretion for the best benefit of the overall bidding process.

(iii) It was always clear and understood by Southampton City Council that all five applicants were applying for a provisional statement for a casino to be located anywhere within the Royal Pier Waterfront Development. The fact that the developer has chosen a different position within the

overall scheme for the casino to be situated should not deprive the original applicants of the flexibility to have their stage 2 applications considered in the amended position.

(iv) Southampton City Council should exercise its discretion as it would not result in an unfair competition and/or prejudice to applicants in relation to other sites. There would, by contrast, be prejudice suffered by the applicants in the Royal Pier Waterfront Development site if they are eliminated from stage 2 of the process due to circumstances beyond their control. This is made worse by the fact that all those applicants made it clear at the stage 1 hearings that their application related to the whole site. It is hard to believe that allowing those who have successfully navigated the stage 1 process to practically "substitute" their provisional statement for one in a different location within the same scheme would generate any unfairness or risk to regulation.

(v) In its letter of 26th February 2015, Southampton Council referred to concerns about late changes at Stage 2 being made "behind closed doors". We do not believe this would be the case if discretion were now used to permit late stage 1 applications. Indeed, any members of the public and other interested parties would then have every opportunity to make representations if they had any new and specific concerns about the revised location (although we understand very few such concerns have been expressed during the process to date).

(vi) Southampton City Council should provide a fair and equal opportunity for existing applicants to submit applications in a format which would be acceptable to the council. This should be undertaken in such a way as to give flexibility as to the final location of the casino, even if the proposed location were to be required to move again in the future within the same development, given the anticipated development timeframe. This was always the intention of all applicants in the scheme and this was expressed in pre-application correspondence and meetings and throughout the stage 1 process. It would be against the public interest for the competition at Stage 2 to be artificially reduced at this stage.

We would reserve the right to raise further submissions at the hearing to determine this issue.

Yours faithfully

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EVERSHEDS

Mr Martin Grout
Southampton City Council
Licensing Services
Civic Centre
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SO14 7LY

Date 1 April 2015
Your ref
Our ref ROBERDA/051949-010517
Direct dial 0845 497 8146
Direct fax 0845 497 8888
[redacted]

By E-Mail [redacted]

Dear Sirs

Southampton Large Casino Competition

As you are aware we act on behalf of Genting Casinos UK Limited in respect of its Large Casino Provisional Statement application and write further to your letter of 21 March 2015.

We are advised by our client that it has nothing further to add in this matter and accordingly, it will not be making any submissions.

We can confirm that our client will not be attending the hearing on 9 April 2015.

Yours faithfully

[redacted]

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BY EMAIL

31st March 2015
19314/A3/PN

Dear Members

SOUTHAMPTON CITY COUNCIL LICENSING COMMITTEE 9 APRIL 2015 -
LARGE CASINO LICENSE: PROPOSAL TO AMEND LOCATION AND OTHER ISSUES

We act on behalf of Hammerson Plc (Hammerson) the owners of WestQuay Shopping Centre and the developers of the planned Watermark WestQuay scheme. We write in relation to the forthcoming Licensing Committee on 9 April 2015.

You will be aware that we previously wrote to you via letter dated 11 December 2014 setting out Hammerson's view of the importance of keeping to the agreed casino licencing programme. At that time we felt that any further delay to the process would raise considerable doubt as to the timing and deliverability of a large casino in Southampton, which in turn would affect the momentum in investor confidence within the City. A copy of our 11 December 2014 letter is attached for completeness.

We have now had an opportunity to review the report that will be presented to the 9 April 2015 Licensing Committee and whilst do not wish to comment on the legal matters raised in the report, we do request that members give very careful consideration to any outcomes that delay the process further.

Since the last Committee, Hammerson has commenced work on Phase 1 of the Watermark WestQuay scheme and are now in active discussions with senior officers at SCC in relation to Phase 2. It is therefore extremely important to maintain developer confidence in the City.

Should a revised timetable, facilitating further delay, be approved by Members of the Licensing Committee, the granting of a large casino license for Southampton would likely slip out of 2015 and there is the very tangible possibility that this key scheme, and opportunity for the city, would suffer further slippage. Hammerson therefore reiterate the importance of keeping to the existing agreed programme.

We trust that this letter will be taken into consideration at the forthcoming Licensing Committee meeting on 9th April 2015 and should you require anything further or have any queries in the meantime, please do not hesitate to contact Paul Newton at this office.

Yours faithfully,

[redacted]

BARTON WILLMORE

cc. Robert Allan – Hammerson Plc

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BY EMAIL

11th December 2014

19314/A3/PT/PN

Dear Members

SOUTHAMPTON CITY COUNCIL LICENSING COMMITTEE 16 DECEMBER 2014 - LARGE CASINO LICENSE: PROPOSAL TO DELAY COMMENCEMENT OF STAGE 2

We act on behalf of the owners of WestQuay Shopping Centre and the planned Watermark WestQuay scheme and write in relation to the forthcoming Licensing Committee and the proposed delay in the commencement of Stage 2 of the large casino license competition in Southampton.

Hammerson are major long-term stakeholders in the city with the opening of WestQuay Shopping Centre in September 2000. Further investment in the city is planned with the Watermark WestQuay retail and leisure development with Phase 1 due to open in Autumn 2016. The Shopping Centre has approximately 17 million visitors per year and currently employs approximately 3,000 people in full and part time jobs and an additional 500 end use jobs will be created through Phase 1 of Watermark WestQuay. As a result of Hammerson's existing and planned investment in the city and responsibility as a key stakeholder in the success of Southampton, their keen interest in relation to the granting of a large casino license is justified.

Hammerson are encouraged by the current progress of redevelopment and regeneration schemes across Southampton, noting the recent new arts complex and cultural centre development, Southampton Central station plaza works, Itchen Riverside proposals and of course the forthcoming Watermark WestQuay development. The Royal Pier Waterfront public exhibition earlier this week represents further positive investment in Southampton on a key VIP site.

Despite the positive signs shown by this recent investment in Southampton, Hammerson are keen to stress the importance of this momentum being maintained to ensure the delivery and programmes associated with current ongoing schemes. As a result, Hammerson question the proposed revision to the timetable relating to Stage 2 of the large casino license competition to allow further delay in this process. Any further delay would, in Hammerson's view, raise considerable doubt as to the timing and deliverability of a large casino, affecting the current momentum in investor confidence in Southampton.

Should a revised timetable, facilitating further delay, be approved by Members of the Licensing Committee, the granting of a large casino license for Southampton would likely slip out of 2015 and there is the very tangible possibility that this key scheme, and opportunity for the city, having lost momentum would then suffer further slippage. Hammerson reiterate the importance of keeping to the existing agreed programme therefore.

We trust that this letter will be taken into consideration at the forthcoming Licensing Committee meeting on 16th December 2014 and should you require anything further or have any queries in the meantime, please do not hesitate to contact either Peter Twemlow or Paul Newton at this office.

Yours faithfully,

[redacted]

BARTON WILLMORE

RPW
(Southampton) Limited

Andrew Herd
GGV
[redacted]

31 March 2015

Dear Andrew

Southampton Large Casino Competition Stage Two: Royal Pier Waterfront Development ("RPWD")

You will have seen the letter dated 26 February to RPW Ltd from Barbara Compton of Southampton City Council setting out what we understand to be the advice of Philip Kolvin QC and the letter from our advisors Clifton Davies Consultancy Limited dated 23 January, to which reference is made in Barbara Compton's letter.

The questions addressed in Barbara Compton's letter arose from a proposal to change the location of the casino on the RPWD site. That proposal itself arose from comments made and preferences expressed by certain of the successful Stage 1 applicants whilst this company was determining whether to enter into any agreement at this stage with any one or more of the applicants. In the event it determined not to do so.

The letter from Clifton Davies sought to establish what flexibility might be allowed in relation to Stage 2 issues arising from the above-mentioned proposal. However the City Council's response to that proposal, (which rejected the Clifton Davies approach), has required RPW to reconsider again how best to locate the casino on the reclamation platform. Notwithstanding that we understood from the 20 June 2014 guidance that it had been accepted by the Council that the precise location of the casino could ultimately change to anywhere within the overall RPWD site, reflecting, amongst other things, the fact that part of the RPWD site has to be reclaimed from the River Test.

As a result of which our present thinking is that whilst the casino would be located in the same "casino location zone", there may need to be some adjustments made. In order to accommodate the casino within the same, or similar, platform shown by applicants at Stage 1, we are considering whether part of the casino will need to be dropped a floor level below that previously proposed.

In addition, we have received a request from one of the above-mentioned applicants for "a detailed project update on Royal Pier which places all applicants on the same information footing".

With this in mind, we are putting together some of information concerning, amongst other things, the casino element of the RPWD that will be made available imminently to all applicants contemplating a Stage 2 application. Clearly it will be for each such applicant to determine, in reliance on independent professional advice received by each in light of what was said in Barbara Compton's letter of 26 February, on what basis to proceed both (a) in relation to the hearing before the Licensing Committee that we understand is scheduled for 9 April and (b) with its Stage Two application,

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including choice of location within the development site. For our part, it is our intention to engage in due course with the winner of the Large Casino Competition if that winner's premises licence is for the RPWD site regardless of whether the location is as originally identified or elsewhere within the overall site.

A letter in precisely this form is being sent to all applicants whom we understand to be contemplating a Stage 2 application. We have indicated to the Council that we are willing to attend before the Licensing Committee on 9 April to assist them and the applicants, should that be thought desirable and we are therefore copying this letter to Martin Grout for his information.

Yours sincerely

[redacted]

Nick Condon
RPW Project Director

cc: Martin Grout, Southampton City Council

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