

LICENSING COMMITTEE

Thursday, 30th April 2015

at 5.30 pm

PLEASE NOTE TIME OF MEETING

Committee Rooms 1 and 2 - Civic Centre

This meeting is open to the public

Members

Councillor Tucker (Chair)
Councillor Lewzey (Vice-Chair)
Councillor Galton
Councillor Painton
Councillor Parnell
Councillor Spicer
Councillor Vassiliou
Councillor Whitbread

Contacts

Democratic Support Officer
Sue Lawrence
Tel: 023 8083 3569
Email: susan.lawrence@southampton.gov.uk

Head of Legal and Democratic Services
Richard Ivory
Tel. 023 8083 2794
Email: richard.ivory@southampton.gov.uk

PUBLIC INFORMATION

Role of this Committee

The Committee publishes and implements a statement of licensing policy. It appoints Sub-Committees to deal with individual licensing applications and associated matters for which the Council as Licensing Authority is responsible.

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Southampton City Council's Priorities:

- Jobs for local people
- Prevention and early intervention
- Protecting vulnerable people
- Affordable housing
- Services for all
- City pride
- A sustainable Council

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones:- Please switch your mobile telephones to silent whilst in the meeting

Use of Social Media:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting

Fire Procedure – Should the fire alarm sound during the meeting leave the building by the nearest available exit and assemble in the Civic Centre forecourt car park.

Access – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2014/15:

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

TERMS OF REFERENCE

The terms of reference of the Licensing Committee are contained in Part 3 (Schedule 2) of the Council's Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 4.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

- (iv) Any beneficial interest in land which is within the area of Southampton.

- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are available via the Council's website

1 APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)

To note any changes in membership of the Committee made in accordance with Council Procedure Rule 4.3.

2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

3 STATEMENT FROM THE CHAIR

4 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)

(Pages 1 - 8)

To approve and sign as a correct record the Minutes of the meeting held on 9th April 2015 and to deal with any matters arising, attached.

5 EXCLUSION OF THE PRESS AND PUBLIC

At a predetermined point during the consideration of the following item the Committee may move into private session in order to receive legal advice when determining issues. The parties to the hearing, press and the public, unless otherwise excluded by Section 100A(4) Local Government Act 1972, will be invited to return immediately following that private session at which time the matter will be determined and the decision of the Committee will be announced.

6 GAMBLING ACT 2005 - LARGE CASINO LICENCE: DETERMINATION OF DATE OF CLOSURE OF STAGE 2

(Pages 9 - 38)

Report of the Head of Legal and Democratic Services requesting the Committee consider and resolve whether to alter its decision to extend the closing date of Stage 2 of the casino licensing competition, attached.

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SOUTHAMPTON CITY COUNCIL
LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 9 APRIL 2015

Present: Councillors Tucker (Chair), Galton, Painton, Parnell, Spicer, Vassiliou and Whitbread

Apologies: Councillors Lewzey, Lloyd and Pope

19. **DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

Members stated that the interests declared at the meeting of 16 December 2014 remained unchanged and thus reaffirmed the following and remained in the meeting during the consideration of the matter:

“Councillors Galton, Hammond, Whitbread, Vassiliou, Spicer and Painton declared personal interests, in view of Councillor Galton’s respective status as being a member of Mint Casino (now Genting) and having visited the Genting Casino approximately twelve months ago and being a member of Grosvenor Leisureworld, Councillor Hammond’s respective status of visiting Gala Bournemouth about five years ago and Grosvenor Brighton about two years ago and a casino in Southend about 10 years ago, Councillor Whitbread’s respective status as holding membership of Grosvenor Leisureworld and visiting in the last four months, Councillor Vassiliou’s respective status as being a member of Grosvenor Leisureworld and Genting Casino, Councillor Spicer’s respective status as holding membership of Grosvenor Leisureworld and visiting recently and Councillor Painton’s respective status as holding membership of Genting Casino.”

20. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meeting held on 16 December 2014 be approved and signed as a correct record.

21. **EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED that the parties to the hearing, press and public be excluded at a predetermined point in accordance with Section 100A(4) Local Government Act 1972 whilst the Committee reaches its decision.

22. **GAMBLING ACT 2005 - LARGE CASINO LICENCE: PROPOSAL TO AMEND LOCATION AND OTHER ISSUES**

The Committee considered the report of the Head of Legal and Democratic Services detailing a proposal to amend the location of the large casino and other issues.

Mr Herd (Global Gaming Ventures Ltd), Mr Walsh and Mr Battey (Kymeira), Ros Cassy (Friends of Town Quay Park), Mr Linecar (Southampton Commons and Parks Protection Society), Mr Heslop (Counsel, Aspers), and Mr Bishop, Anna Matthias and Mr Wade (Grosvenor) were present and with the consent of the Chair, addressed the meeting.

Mr Nayak and Mr Clifton, on behalf of the developer, Royal Pier Waterfront, answered questions which were raised by the Committee.

The Committee considered the decision in confidential session in accordance with the Local Government Act 1972 Section 100A(4).

RESOLVED that the following decision be approved and notified, as agreed at the meeting, to all applicants in writing after the meeting:

1. The Committee is grateful to those parties and members of the public who attended the meeting and engaged in a constructive discussion.
2. The Committee has carefully considered all of the documents contained in its agenda papers, the supplemental agenda papers and the authorities bundle. It does not repeat the contents of any of that material here.
3. The Committee has also listened carefully to the cogent arguments advanced by the parties, and has taken all such arguments into account. It does not deal here with every matter advanced, but only the main matters necessary for it to reach its decision.
4. The Committee reiterates that it comes to its decision entirely independently of, and uninfluenced by, any other actions or statements by any other part of the Council. It is a statutory licensing committee and is concerned only with matters arising under the Gambling Act itself.
5. The following represents the unanimous view of the Committee.
6. Having considered the documentary material and listened to the flow of debate at the hearing, the Committee reaches the following factual conclusions:
 - (i) RPW has failed, for reasons which it has not explained, to provide any of the basic information to the applicants to enable them to formulate their Stage 2 bids.
 - (ii) This dearth of information will have been apparent to the applicants at the time of the Committee hearing on 16th December 2014 and at all times since, yet it is only today that any applicant has made it clear that they are still lacking such basic information, such that it is not possible for a Stage 2 bid to be made on the revised deadline of 16th April, on an informed basis or at all.
 - (iii) Due to the dearth of basic information, no applicant is able to state that any proposal, be it for the casino location zone as originally proposed or sites WQ2, 3 or 4, is a viable or a commercial proposition.
 - (iv) Conversely, however, other than Grosvenor's suggestion that the original location is less attractive to them than WQ2, 3 or 4, there is no actual evidence that the casino in its originally proposed location would be any less viable than on WQ2, 3 or 4.
 - (v) The first time that it was raised that the casino may need to drop to a lower level was in RPW's letter dated 31st March 2015. The first time it was actually proposed was by Kymeira at the hearing itself.

- (vi) In RPW's letter it stated that it was putting together information concerning the casino that would be made available to all applicants. In the event, it failed to do even that. It did not seek to defend the allegation made by all applicants present that it had provided no information at all.
- (vii) Neither any applicant nor RPW itself claimed responsibility for the suggestion that the casino should be moved to WQ2, 3 or 4. For example, in Grosvenor's written submissions at page 37 they stated that all five applicants were caught by the decision of the developer to move the physical position of the casino. This was expressly disavowed by RPW, which intimated that Grosvenor was the moving force behind the change. Although the Committee expressed some perplexity at what it saw as a lack of frankness at some level, in the event it has not affected the outcome of this hearing.
7. Against that background, the Committee can now proceed to deal with the issues raised.
 8. The first issue is whether it is open to any applicant to show their casino at Stage 2 of the competition on plots WQ2, 3 or 4.
 9. The issue effectively breaks down into two: can the provisional decisions to grant the provisional statements in each case be taken to encompass plots WQ2, 3 or 4; if not can the Council accept Stage 2 applications for those plots in any event?
 10. Having heard the arguments, the Committee is satisfied that principles and conclusions set out in the Council's letter to the Lucent Group dated 26th February 2015 are correct, subject to what is mentioned below in relation to Genting.
 11. For Aspers, Mr Heslop QC pointed to the application plan and the red line drawn which did encompass the wider site. However, it is quite clear from the application form itself and the documented appended to it that the location of the casino applied for was the casino location zone shown on the plan bounded by the blue line.
 12. He also argued that the Council's advice note set out at paragraph 5 of the report and/or his own oral submissions to the Stage 1 hearing meant that the application was for the wider site including plots WQ2-4. The Committee disagrees. The application form and plan have a statutory status in that they represent what has been applied for, what is consulted upon and what is granted. That cannot be affected by what the Council said, because it was up to the applicant what it applied for, and in this case what it applied for was clearly shown. Nor can it be affected by an oral statement made to a hearing; otherwise the scope of a grant could be affected by a chance remark unheard by members of the public who decided whether or not to object to the application based on the contents of the application form and plan the subject of statutory consultation.
 13. Mr Heslop also suggested that no member of the public or indeed the Committee could have been misled by what was being applied for. In fact, Mrs. Cassy was very clear that she and the members of Friends of Town Quay Park had a clear belief that the application was for the casino location zone. This impression was shared by the members of the Committee itself.
 14. The essential point made by Grosvenor in their written submissions is that permitting flexibility is for the overall good of the area. However, this does not answer the prior question of what has so far been granted, which does not turn on the merits of permitting migration.

15. So far as Genting is concerned, the Council's letter of 26th February 2015 suggested that the position was ambiguous, and that there was at least room for argument that the position of the casino was not fixed by the blue line but was moveable within the red line. However, the Committee considers that the ambiguity is to be resolved against Genting for the reasons explained in writing by GGV, namely that the descriptor in the application was that the casino was to be built on land reclaimed from the River Test, which clearly does not include plots WQ2, 3 and 4. Genting knew that the Council considered the position ambiguous, and knew that the hearing was being convened to consider these matters, but has elected not to attend or even make submissions, leaving the Committee with no choice but to reach its conclusions unassisted by contrary argument. However, the Committee does take the view that GGV's point is correct and that it is impossible to reconcile a statement that the casino will be built on land reclaimed from the river with a suggestion that the casino is to be built on existing land some considerable distance away.
16. The remaining part of the first issue is whether the Committee has a discretion nonetheless to allow applicants to move their proposed casinos to different locations at Stage 2. For the reasons given in the Council's letter of 26th February 2015, and as accepted or contended by at least two of the applicants appearing at the hearing, the answer is no. The location of the casino at Stage 2 is to be the same location as the casino the subject of the provisional grant at Stage 1. In any event, even if there were a discretion, it would plainly be wrong to exercise it in favour of such a large migration from a multi-use building as part of a wider development to a stand-alone site facing an important park, when such a move would have been strongly opposed by the representative groups appearing before the Committee today, and conceivably by others. To do so without the consultation inherent at Stage 1 would in the Committee's view be plainly unacceptable in terms of democracy and transparency.
17. The second issue is whether the Committee has a discretion to permit new Stage 1 applications to be made for plots WQ2, 3 or 4 and, if so, whether it should exercise it in favour of such applications.
18. The Committee considers that it does have such a discretion. As has been observed, regulation 7(2) of the Gambling (Inviting Competing Applications for Large and Small Casinos) Regulations 2008, confers a discretion upon the licensing authority, and does not seek to limit that discretion temporally or in any other way.
19. However, the Committee does not consider that it would be appropriate to exercise its discretion in favour of such a course. This would involve re-opening Stage 1 of the process even once Stage 2 of the process has commenced, and over 9 months after the original Stage 1 applications were received. It would inconvenience members of the public who have already devoted time and energy to participation in these processes and who would now be engaged in opposing the new proposal. It would risk delaying the entire process by an indeterminate period because of the potential for appeal of the Stage 1 decisions. Notably, neither those applicants seeking the exercise of the discretion nor the developer could offer any evidence, let alone assurance, that the exercise of latitude would even bring forth a viable scheme since, seemingly, no viability analysis has been conducted by anybody. Nor, as has been stated above, is it at all clear that the casino cannot be developed in its original location or that the Royal Pier development will founder unless the casino is permitted to migrate. While there are arguments in favour of re-opening Stage 1, including

- that applicants who wish to invest in Southampton may otherwise be disadvantaged by conduct of the developer which is outwith their control, the merits of latitude need to be weighed against the demerits. It is, at root, a balancing exercise. In the view of the Committee, the balance falls against allowing an untested new site to come into the mix.
20. This leaves the issue recently raised of whether the level of proposed casino can be lowered whilst remaining within the same footprint.
 21. The position is as follows:
 - Aspers stated in their application that the casino would be located on the ground floor of a building with four or more levels.
 - Genting stated that it would be located at ground and mezzanine levels of a building anticipated to have three or more upper levels.
 - GGV stated that the casino would be at the ground floor level of a multi-storey building.
 - Grosvenor stated that it would be at ground floor level with three or more upper levels.
 - Kymeira stated that it would be at ground floor with principal entrance from the street with other uses above on four levels plus mezzanine.
 22. Thus, all of the applicants are more or less in the same boat so far as descriptors are concerned.
 23. The only party to argue in favour of being permitted to drop a level was Kymeira. Mr Walsh QC suggested that there was a discretion to permit movement at Stage 2. However, for the reasons given above and in the letter of 26th February, there is none. He also relied on an argument that section 205 of the Gambling Act 2005 was predicated on the ability to alter features between the provisional statement granted and the ensuing premises licence application. However, that is an entirely different matter from the question of whether the location can be altered between Stages 1 and 2 of the provisional statement application itself. In any case, the Committee disagrees that in the specific context of the casino licensing competition it is open to an applicant to gain a grant of a provisional statement for site A, whose regulatory compliance will have been assessed at Stage 1 and benefits will have been assessed at Stage 2, and then try to get a grant of a premises licence thereafter based on a different site entirely. That, it seems to the Committee, would subvert the whole basis of the competitive process. The Committee therefore rejects the notion of discretion.
 24. However, that is not the end of the issue. The Committee takes the view that in the normal case “ground floor” means the floor nearest the ground. However, the notable feature of this case is that there is no ground. The site is currently the sea. No elevations are shown in the plans. No datum levels are given. The precise finished levels are therefore a matter for the developers and operators. Two casinos could therefore be devised at entirely different levels, each being at ground floor level.
 25. To take an example, the casino might be built on a level which is open to the air at the back but underground at the front. It might then be termed by the operator the basement, the ground floor or the first floor. It may have a street passing its entrance for customer drop-off, even if the street has development on a platform above it. The developer might legitimately term the street as being at ground floor level.
 26. In the particular circumstances of this case, therefore, the Committee does not believe that the ultimate level of the casino is set in stone: rather it is writ in water. For that reason, the Committee does not consider it appropriate to dictate

- to the developer or the operators that the casino has to be fully or partially open to the air on all, or indeed any, sides. It is entitled to term the base floor the ground floor, at whatever datum level it happens to be.
27. Although the Committee views this as a matter of right rather than a matter of discretion, it does not consider that in so far as this implies some flexibility in the interpretation of the provisional decision to grant, then the approach disadvantages any party. For members of the public, it is extremely unlikely that putting the casino out of sight underground will occasion more protest than placing it in full view. For those applicants who are competing with the Royal Pier site, it is a tenuous argument at best that the casino may not move up or down within the same footprint. The only reason to object would be to try to eliminate a competitor.
 28. The final question is whether the deadline for submission of Stage 2 bids should be extended. The Committee has given anxious consideration to this issue. It involves weighing a number of imponderables. On the one hand, the Committee has great sympathy for the submissions of those parties which are ready to submit their bids for different sites, and which have assembled the information and worked hard to put in their bids on time. Why should the advantage they have secured through their diligence be set at naught by overlooking the dilatoriness of others? Furthermore, there has already been a considerable delay in the progress of Stage 2 following the extension granted in December 2014, at which point the Committee specifically rejected the proposal of a July 2015 deadline. To accede to a further delay now would be to grant something previously rejected. What is more, the deadline throughout has been clear, and it has only been at this hearing that any party has even suggested that it needs to be moved yet again. It is being moved to accommodate the submission of a scheme whose viability is currently unknown. Finally, if the Committee has refused permission for Stage 1 to be re-opened, why should it permit Stage 2 to be extended? This is an undeniably powerful suite of arguments.
 29. The contrary arguments are also weighty. It is fair to say that there has been at least room for legitimate debate as to whether the application site can or should be shown as WQ2, which debate has occasioned delay. The reality is that, given the imminence of the deadline, to refuse any extension would be to terminate the prospect of any candidate scheme on the Royal Pier site. The Committee parts company with GGV when it submits that the Committee may not even take account of the benefits of the Royal Pier site since that would be to prefer one applicant over another. Rather, the entire purpose of the competition is to benefit the area and the people of Southampton, and to refuse the oxygen of an extension would be to choke off five of the seven applications made in this case and any of the potential benefits of the casino on the Royal Pier site. Further, the analysis of the case as GGV versus the rest is inaccurate. GGV have never withdrawn their candidacy for the Royal Pier site. The situation is different from a re-opening of Stage 1, which involves a different site altogether and an indeterminate delay because of the possibility of appeals by disappointed applicants or objectors.
 30. For the Committee, these are finely balanced arguments. However, the decisive point for the Committee is that while the delay has been, on any view, regrettable to say the least, responsibility for it does not lie with the applicants. While it took some robust questioning from the Committee to arrive at a clear understanding of the situation, it has become obvious that the applicants have done their level best to get information. It is a source of considerable concern for the Committee

that discussions apparently started so late, seemingly only briefly before the Stage 1 hearings. But that should have left quite long enough for appropriate information to be furnished to the applicants to enable them to submit their bids, particularly given the note of urgency which will have been injected into the proceedings by the extension decision in December 2014, which set a clear deadline. But the applicants have been unstinting in their efforts to elicit the information they need from RPW. The Committee is extremely loath effectively to impose the ultimate sanction on those applicants, who want to invest in Southampton for the good of the economy and citizens of Southampton, on account of the default of another.

31. In these very difficult circumstances, the Committee has decided on narrow balance that it ought not yet to turn its back on Royal Pier. It has decided to grant a further 3 months from today, i.e. noon on 10th July 2015, for the submission of the Stage 2 bids. From the tenor of this decision, it will be appreciated that any further extension is most unlikely to be viewed with equanimity.

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Agenda Item 6

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	GAMBLING ACT 2005 – LARGE CASINO LICENCE: DETERMINATION OF DATE OF CLOSURE OF STAGE 2		
DATE OF DECISION:	30 APRIL 2015		
REPORT OF:	HEAD OF LEGAL AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name: Martin Grout	Tel:	023 8083 2749
	E-mail: casino @southampton.gov.uk		
Director	Name: Dawn Baxendale	Tel:	023 8083 2966
	E-mail: dawn.baxendale@southampton.gov.uk		

STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

The Licensing Committee is requested to consider and resolve whether to alter its decision to extend the closing date of Stage 2 of the casino licensing competition to 10th July 2015.

The report details the issue that has arisen following the previous Licensing Committee meeting whereby a comprehensive decision notice with reasons was issued. Having heard those parties and members of the public attending, Members ruled that Stage 1 of the process would not be reopened, that the process would not be halted but that a new revised closing date for Stage 2 of the process would be implemented. The effect of this was to move the closing date from 16th April 2015 to midday 10th July 2015. One of the Applicants, GGV, have submitted an objection to that decision.

RECOMMENDATIONS:

- 1 (i) That the Committee consider this report and the supporting information and evidence provided by the Applicants;
- (ii) That the Committee determine whether the decision to move the closing date for the process should remain at the revised date of 10th July 2015; or
- (iii) That another revised date of 14th May 2015 as per the suggestion by Global Gaming Ventures Ltd be introduced; or
- (iv) That in the light of the information placed before the Committee, a different date for the closure of the competition be determined.

REASONS FOR REPORT RECOMMENDATIONS

- 2 Members will recall that a revised timetable for Stage 2 of the Casino Licence process was agreed at an earlier meeting in December 2014 where it was determined that Stage 2 would commence on 1st January 2015 and conclude on 16th April 2015. Since that meeting Members heard full and competing arguments relating to proposals for different locations for the site that were not reflected in the Applicants Stage 1 submissions for the Royal

Pier Waterfront development. During the meeting it became apparent that certain applicants would be unable to meet the closing date for Stage 2 of 16th April 2015. Having heard argument on the matter, the Committee determined to extend the date to 10th July 2015. One applicant, GGV, argues that the process and / or the decision was unfair. The purpose of this meeting is to consider the arguments of GGV and any other parties making submissions, and consider whether the closing date should be changed again, and if so to what date.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3 This report focusses on the single issue of the Stage 2 closing date and details the range of options open to Members and detailed submissions will be heard in the course of the meeting.

DETAIL (Including consultation carried out)

- 4 Following the 9th April 2015 Licensing Committee meeting, the detailed decision with reasons document was sent to all Applicants on 10th April 2015. The document is attached as Appendix 1.
- 5 Within the document Members approved a new closure date of Stage 2 as being three months from the issue of the decision notice, ie 12 noon on Friday 10th July 2015 (Paragraphs 28 – 31).
- 6 This drew a prompt response from GGV who objected to the new closing date. Their letter dated 10th April 2015 is attached as Appendix 2. They claim that the Committee did not have a mandate to revise the closing date other than was mentioned in the original report that would allow for a short delay to 14th May that would take account of the delay incurred. GGV see this as a pragmatic solution given the proximity of the 9th April meeting to the then closure date of 16th April.
- 7 The Council replied by way of a letter dated 15th April and a copy of that is attached as Appendix 3.
- 8 GGV responded on 16th April 2015 and their reply is attached as Appendix 4.
- 9 On 16th April 2015, each applicant was sent a letter via e mail only, setting out GGV's objection to the revised July closure date together with all the correspondence mentioned above. They were asked to provide written comments no later than Wednesday 22nd April and GGV were asked to provide their written comments by the following Monday, 27th April.
- 10 This issue is fundamental to the process and the Council needs to be in a position to arrange the timetable for the Casino Advisory panel to assess the applications. The lack of certainty over a closure date means that this part of the process may, in itself, be subject to delays.
- 11 At the 9th April meeting the subject of the closure date was discussed and Members may recall Mr Heslop QC on behalf of Aspers, suggested after prompting, that a three month delay would be acceptable to his clients. The general consensus among the other applicants appeared to be that RPW Ltd had not been able to provide the very specific and detailed information that applicants must have in order to submit their Stage 2 application. Members gave consideration to the opposing arguments for further delay and delivered a decision accordingly. However, GGV argue that the process adopted was unfair and / or the decision itself was unfair. Any complaint of procedural unfairness is cured by holding this hearing. Members will wish principally to consider whether there is substance in the substantive complaint.

RESOURCE IMPLICATIONS

Capital/Revenue

- 12 There are no direct financial implications from this report save that if applicants withdraw from being able to submit detailed Stage 2 applications in respect of the RPW site, this may materially impact on the competition and the ability to achieve the “greatest benefit” [to the City] test as envisaged under the Gambling Act 2005.

Property/Other

- 13 None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

- 14 Gambling Act 2005.

Other Legal Implications:

- 15 The question of the closing date of Stage 2 is a matter of discretion for the Council. It must be exercised on rational grounds, taking account of all material considerations and omitting all irrelevant considerations. In making its decision, the Council must seek to be fair to all parties, and take into account the objective of the competition to achieve benefit to the area of Southampton.
- 16 Any challenge to the Council’s decision would be by way of judicial review at the suit of a party whose submission that the closing date should be extended or reduced, as the case may be, was not accepted. The challenge would need to be brought on the basis that the Council has misunderstood its own legal powers or has exercised its discretion irrationally, or by taking account of immaterial considerations or failing to take account of material considerations.

POLICY FRAMEWORK IMPLICATIONS

- 17 None

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED: Bargate

SUPPORTING DOCUMENTATION

Appendices

1. Decision document from Licensing Committee meeting 9th April 2015
2. Letter from GGV dated 10th April 2015
3. Letter SCC Licensing Service to GGV dated 15/4/2015
4. Letter from GGV dated 16th April 2015.
5. Written submission from Grosvenor
6. Written submission from RPW Ltd

Documents In Members' Rooms

1. None

Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out. No

Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

- | Title of Background Paper(s) | Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable) |
|--|--|
| 1. Southampton City Council's Gambling Statement of Licensing Principles
(1 January 2013) | |

SOUTHAMPTON CITY COUNCIL

LICENSING COMMITTEE

9TH APRIL 2015

ROYAL PIER WATERFRONT

DECISION

1. The Committee is grateful to those parties and members of the public who attended the meeting and engaged in a constructive discussion.
2. The Committee has carefully considered all of the documents contained in its agenda papers, the supplemental agenda papers and the authorities bundle. It does not repeat the contents of any of that material here.
3. The Committee has also listened carefully to the cogent arguments advanced by the parties, and has taken all such arguments into account. It does not deal here with every matter advanced, but only the main matters necessary for it to reach its decision.
4. The Committee reiterates that it comes to its decision entirely independently of, and uninfluenced by, any other actions or statements by any other part of the Council. It is a statutory licensing committee and is concerned only with matters arising under the Gambling Act itself.
5. The following represents the unanimous view of the Committee.
6. Having considered the documentary material and listened to the flow of debate at the hearing, the Committee reaches the following factual conclusions:

(1) RPW has failed, for reasons which it has not explained, to provide any of the basic information to the applicants to enable them to formulate their Stage 2 bids.

(2) This dearth of information will have been apparent to the applicants at the time of the Committee hearing on 16th December 2014 and at all times since, yet it is only today that any applicant has made it clear that they are still lacking such basic information, such that it is not possible for a Stage 2 bid to be made on the revised deadline of 16th April, on an informed basis or at all.

(3) Due to the dearth of basic information, no applicant is able to state that any proposal, be it for the casino location zone as originally proposed or sites WQ2, 3 or 4, is a viable or a commercial proposition.

(4) Conversely, however, other than Grosvenor's suggestion that the original location is less attractive to them than WQ2, 3 or 4, there is no actual evidence that the casino in its originally proposed location would be any less viable than on WQ2, 3 or 4.

(5) The first time that it was raised that the casino may need to drop to a lower level was in RPW's letter dated 31st March 2015. The first time it was actually proposed was by Kymeira at the hearing itself.

(6) In RPW's letter it stated that it was putting together information concerning the casino that would be made available to all applicants. In the event, it failed to do even that. It did not seek to defend the allegation made by all applicants present that it had provided no information at all.

(7) Neither any applicant nor RPW itself claimed responsibility for the suggestion that the casino should be moved to WQ2, 3 or 4. For example, in Grosvenor's written submissions at page 37 they stated that all five applicants were caught by the decision of the developer to move the physical position of the casino. This was expressly disavowed by RPW, which intimated that Grosvenor was the moving force behind the change. Although the Committee expressed some perplexity at what it saw as a lack of frankness at some level, in the event it has not affected the outcome of this hearing.

7. Against that background, the Committee can now proceed to deal with the issues raised.
8. The first issue is whether it is open to any applicant to show their casino at Stage 2 of the competition on plots WQ2, 3 or 4.
9. The issue effectively breaks down into two: can the provisional decisions to grant the provisional statements in each case be taken to encompass plots WQ2, 3 or 4; if not can the Council accept Stage 2 applications for those plots in any event?
10. Having heard the arguments, the Committee is satisfied that principles and conclusions set out in the Council's letter to the Lucent Group dated 26th February 2015 are correct, subject to what is mentioned below in relation to Genting.
11. For Aspers, Mr. Heslop QC pointed to the application plan and the red line drawn which did encompass the wider site. However, it is quite clear from the application form itself and the documented appended to it that the location of the casino applied for was the casino location zone shown on the plan bounded by the blue line.
12. He also argued that the Council's advice note set out at paragraph 5 of the report and/or his own oral submissions to the Stage 1 hearing meant that the application was for the wider site including plots WQ2-4. The Committee disagrees. The application form and plan have a statutory status in that they represent what has been applied for, what is consulted upon and what is granted. That cannot be affected by what the Council said, because it was up to the applicant what it applied for, and in this case what it applied for was clearly shown. Nor can it be affected by an oral statement made to a hearing; otherwise the scope of a grant could be affected by a chance remark unheard by members of the public who decided whether or not to object to the application based on the contents of the application form and plan the subject of statutory consultation.
13. Mr. Heslop also suggested that no member of the public or indeed the Committee could have been misled by what was being applied for. In fact, Mrs. Cassy was very clear that she and the members of Friends of Town Quay Park had a clear belief that

the application was for the casino location zone. This impression was shared by the members of the Committee itself.

14. The essential point made by Grosvenor in their written submissions is that permitting flexibility is for the overall good of the area. However, this does not answer the prior question of what has so far been granted, which does not turn on the merits of permitting migration.
15. So far as Genting is concerned, the Council's letter of 26th February 2015 suggested that the position was ambiguous, and that there was at least room for argument that the position of the casino was not fixed by the blue line but was moveable within the red line. However, the Committee considers that the ambiguity is to be resolved against Genting for the reasons explained in writing by GGV, namely that the descriptor in the application was that the casino was to be built on land reclaimed from the River Test, which clearly does not include plots WQ2, 3 and 4. Genting knew that the Council considered the position ambiguous, and knew that the hearing was being convened to consider these matters, but has elected not to attend or even make submissions, leaving the Committee with no choice but to reach its conclusions unassisted by contrary argument. However, the Committee does take the view that GGV's point is correct and that it is impossible to reconcile a statement that the casino will be built on land reclaimed from the river with a suggestion that the casino is to be built on existing land some considerable distance away.
16. The remaining part of the first issue is whether the Committee has a discretion nonetheless to allow applicants to move their proposed casinos to different locations at Stage 2. For the reasons given in the Council's letter of 26th February 2015, and as accepted or contended by at least two of the applicants appearing at the hearing, the answer is no. The location of the casino at Stage 2 is to be the same location as the casino the subject of the provisional grant at Stage 1. In any event, even if there were a discretion, it would plainly be wrong to exercise it in favour of such a large migration from a multi-use building as part of a wider development to a stand-alone site facing an important park, when such a move would have been strongly opposed by the representative groups appearing before the Committee today, and conceivably by

others. To do so without the consultation inherent at Stage 1 would in the Committee's view be plainly unacceptable in terms of democracy and transparency.

17. The second issue is whether the Committee has a discretion to permit new Stage 1 applications to be made for plots WQ2, 3 or 4 and, if so, whether it should exercise it in favour of such applications.
18. The Committee considers that it does have such a discretion. As has been observed, regulation 7(2) of the Gambling (Inviting Competing Applications for Large and Small Casinos) Regulations 2008, confers a discretion upon the licensing authority, and does not seek to limit that discretion temporally or in any other way.
19. However, the Committee does not consider that it would be appropriate to exercise its discretion in favour of such a course. This would involve re-opening Stage 1 of the process even once Stage 2 of the process has commenced, and over 9 months after the original Stage 1 applications were received. It would inconvenience members of the public who have already devoted time and energy to participation in these processes and who would now be engaged in opposing the new proposal. It would risk delaying the entire process by an indeterminate period because of the potential for appeal of the Stage 1 decisions. Notably, neither those applicants seeking the exercise of the discretion nor the developer could offer any evidence, let alone assurance, that the exercise of latitude would even bring forth a viable scheme since, seemingly, no viability analysis has been conducted by anybody. Nor, as has been stated above, is it at all clear that the casino cannot be developed in its original location or that the Royal Pier development will founder unless the casino is permitted to migrate. While there are arguments in favour of re-opening Stage 1, including that applicants who wish to invest in Southampton may otherwise be disadvantaged by conduct of the developer which is outwith their control, the merits of latitude need to be weighed against the demerits. It is, at root, a balancing exercise. In the view of the Committee, the balance falls against allowing an untested new site to come into the mix.
20. This leaves the issue recently raised of whether the level of proposed casino can be lowered whilst remaining within the same footprint.

21. The position is as follows:

- Aspers stated in their application that the casino would be located on the ground floor of a building with four or more levels.
- Genting stated that it would be located at ground and mezzanine levels of a building anticipated to have three or more upper levels.
- GGV stated that the casino would be at the ground floor level of a multi-storey building.
- Grosvenor stated that it would be at ground floor level with three or more upper levels.
- Kymeira stated that it would be at ground floor with principal entrance from the street with other uses above on four levels plus mezzanine.

22. Thus, all of the applicants are more or less in the same boat so far as descriptors are concerned.

23. The only party to argue in favour of being permitted to drop a level was Kymeira. Mr. Walsh QC suggested that there was a discretion to permit movement at Stage 2. However, for the reasons given above and in the letter of 26th February, there is none. He also relied on an argument that section 205 of the Gambling Act 2005 was predicated on the ability to alter features between the provisional statement granted and the ensuing premises licence application. However, that is an entirely different matter from the question of whether the location can be altered between Stages 1 and 2 of the provisional statement application itself. In any case, the Committee disagrees that in the specific context of the casino licensing competition it is open to an applicant to gain a grant of a provisional statement for site A, whose regulatory compliance will have been assessed at Stage 1 and benefits will have been assessed at Stage 2, and then try to get a grant of a premises licence thereafter based on a different site entirely. That, it seems to the Committee, would subvert the whole basis of the competitive process. The Committee therefore rejects the notion of discretion.

24. However, that is not the end of the issue. The Committee takes the view that in the normal case “ground floor” means the floor nearest the ground. However, the notable feature of this case is that there is no ground. The site is currently the sea. No elevations are shown in the plans. No datum levels are given. The precise finished levels are therefore a matter for the developers and operators. Two casinos could therefore be devised at entirely different levels, each being at ground floor level.
25. To take an example, the casino might be built on a level which is open to the air at the back but underground at the front. It might then be termed by the operator the basement, the ground floor or the first floor. It may have a street passing its entrance for customer drop-off, even if the street has development on a platform above it. The developer might legitimately term the street as being at ground floor level.
26. In the particular circumstances of this case, therefore, the Committee does not believe that the ultimate level of the casino is set in stone: rather it is writ in water. For that reason, the Committee does not consider it appropriate to dictate to the developer or the operators that the casino has to be fully or partially open to the air on all, or indeed any, sides. It is entitled to term the base floor the ground floor, at whatever datum level it happens to be.
27. Although the Committee views this as a matter of right rather than a matter of discretion, it does not consider that in so far as this implies some flexibility in the interpretation of the provisional decision to grant, then the approach disadvantages any party. For members of the public, it is extremely unlikely that putting the casino out of sight underground will occasion more protest than placing it in full view. For those applicants who are competing with the Royal Pier site, it is a tenuous argument at best that the casino may not move up or down within the same footprint. The only reason to object would be to try to eliminate a competitor.
28. The final question is whether the deadline for submission of Stage 2 bids should be extended. The Committee has given anxious consideration to this issue. It involves weighing a number of imponderables. On the one hand, the Committee has great sympathy for the submissions of those parties which are ready to submit their bids for

different sites, and which have assembled the information and worked hard to put in their bids on time. Why should the advantage they have secured through their diligence be set at naught by overlooking the dilatoriness of others? Furthermore, there has already been a considerable delay in the progress of Stage 2 following the extension granted in December 2014, at which point the Committee specifically rejected the proposal of a July 2015 deadline. To accede to a further delay now would be to grant something previously rejected. What is more, the deadline throughout has been clear, and it has only been at this hearing that any party has even suggested that it needs to be moved yet again. It is being moved to accommodate the submission of a scheme whose viability is currently unknown. Finally, if the Committee has refused permission for Stage 1 to be re-opened, why should it permit Stage 2 to be extended? This is an undeniably powerful suite of arguments.

29. The contrary arguments are also weighty. It is fair to say that there has been at least room for legitimate debate as to whether the application site can or should be shown as WQ2, which debate has occasioned delay. The reality is that, given the imminence of the deadline, to refuse any extension would be to terminate the prospect of any candidate scheme on the Royal Pier site. The Committee parts company with GGV when it submits that the Committee may not even take account of the benefits of the Royal Pier site since that would be to prefer one applicant over another. Rather, the entire purpose of the competition is to benefit the area and the people of Southampton, and to refuse the oxygen of an extension would be to choke off five of the seven applications made in this case and any of the potential benefits of the casino on the Royal Pier site. Further, the analysis of the case as GGV versus the rest is inaccurate. GGV have never withdrawn their candidacy for the Royal Pier site. The situation is different from a re-opening of Stage 1, which involves a different site altogether and an indeterminate delay because of the possibility of appeals by disappointed applicants or objectors.

30. For the Committee, these are finely balanced arguments. However, the decisive point for the Committee is that while the delay has been, on any view, regrettable to say the least, responsibility for it does not lie with the applicants. While it took some robust questioning from the Committee to arrive at a clear understanding of the

situation, it has become obvious that the applicants have done their level best to get information. It is a source of considerable concern for the Committee that discussions apparently started so late, seemingly only briefly before the Stage 1 hearings. But that should have left quite long enough for appropriate information to be furnished to the applicants to enable them to submit their bids, particularly given the note of urgency which will have been injected into the proceedings by the extension decision in December 2014, which set a clear deadline. But the applicants have been unstinting in their efforts to elicit the information they need from RPW. The Committee is extremely loath effectively to impose the ultimate sanction on those applicants, who want to invest in Southampton for the good of the economy and citizens of Southampton, on account of the default of another.

31. In these very difficult circumstances, the Committee has decided on narrow balance that it ought not yet turn its back on Royal Pier. It has decided to grant a further 3 months from today, i.e. noon on 10th July 2015, for the submission of the Stage 2 bids. From the tenor of this decision, it will be appreciated that any further extension is most unlikely to be viewed with equanimity.

Matthew Tucker
Chairman

10th April 2015

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Agenda Item 6

Appendix 2



Global Gaming Ventures (Southampton) Limited
11 John Princes Street
London W1G 0JR

(Registered in England. Registered Number 09055769)

10th April 2015

URGENT – BY EMAIL

Martin Grout Esq
Licensing Officer
Southampton City Council
Civic Centre
Civic Centre Road
Southampton SO14 7LS.

Dear Mr Grout

Casino Competition (the “Competition”): Licensing Committee Meeting 9th April 2015

We refer to the decision of the Licensing Committee dated 9th April 2015 and which we received today. We have extremely serious concerns (which are set out below) and we wish to draw this to your attention immediately. We are still considering our position which is therefore entirely reserved.

The Licensing Committee has decided to extend the closure of Stage 2 of the Competition by three months. This results in precisely the same delay as was requested by certain Competition applicants last year and which was considered and rejected by the Licensing Committee at a hearing on 16th December 2015 at which we were represented.

Yesterday’s Licensing Committee meeting had a very specific Agenda. It was to consider whether (1) certain applicants were free to include the WQ2, WQ3 and WQ4 land in their Stage 2 applications, (2) whether the Council has a discretion to accept late applications for Stage 1 and (3) if it did have a discretion to accept such late applications whether it would exercise such discretion in favour of certain applicants.

The Agenda for yesterday’s meeting **did not** include considering a possible delay of three months to the closure of Stage 2.

We submit that the Licensing Committee was fully aware in December 2014 that a delay of this kind to Stage 2 was a matter requiring proper notice and one for which it was necessary to hear arguments from applicants and other interested parties. That is why the hearing on

16th December was convened. We respectfully submit that it is quite obvious that to reverse the December 16th decision must equally require a similar proper hearing.

The fact that various forms of delay were touched on in yesterday's discussions in general terms does not reduce or eliminate the need to listen to considered arguments from all interested parties (including those not present yesterday) about a specific proposal which is properly itemized in advance on the Agenda.

The Licensing Committee says in its decision that it needed to weigh "finely balanced arguments". But the Committee has not heard the arguments (finely balanced or otherwise) because no one knew that a delay of three months was proposed and therefore no one was able to consider the matter properly.

GGV would clearly be seriously prejudiced by a three month delay, not least as several applicants will now have three months to prepare the applications which they were unable or unwilling to prepare and submit next week in accordance with the published timetable. To quote from the Committee's decision, you are offering certain favoured applicants the "oxygen of an extension". We submit that the gift of oxygen to favoured applicants in this fashion should only have occurred (if it should have occurred at all) after a proper hearing with notice and after listening to proper arguments.

We would appreciate an urgent response, since, as you will be aware, time is of the essence since we believe the original Stage 2 timetable must be re-instated (as nearly as is now possible).

Yours sincerely

Tony Wollenberg
Chairman



Direct dial: 023 8083 2749

Our ref:

Your ref:

E-mail: martin.grout@southampton.gov.uk

Please ask for: Martin Grout

Global Gaming Ventures (RP) Ltd
11 John Princes Street
London
W1G 0TR

15th April 2015

Dear Sirs,

Casino Competition (the "Competition"): Licensing Committee Meeting 9th April 2015

Thank you for your letter dated 10th April 2015.

We note your concerns, which we understand to be:

- That the Licensing Committee decided to extend the closure of Stage 2 of the Competition by three months.
- This results in precisely the same delay as was requested by certain Competition applicants last year and which was considered and rejected by the Licensing Committee at a hearing on 16th December 2014.
- The agenda for the meeting of 9th April 2015 did not include extending the closure of Stage 2.
- Although delay was discussed at the meeting, parties were not able to consider the matter properly.
- GGV would be seriously prejudiced by a three month delay, including because several applicants will now have three months to prepare the applications which they were unable or unwilling to prepare and submit next week in accordance with the published timetable.

At the outset of the hearing, the Committee considered whether to discuss Kymeira's argument, which had been notified in advance, that the location of the casino could move vertically within the same footprint. You opposed discussion on that matter too, but the Committee decided that it was better that the debate be had and the matter clarified, to enable the preparation of Stage 2 bids.

The upshot was that there were now three sites in play on the Royal Pier: the original Casino Location Zone, a vertical variant thereof and Plots WQ2, 3 and 4. It would only be following the Committee's decision about whether the latter two could be the subject of Stage 2 bids, whether as a matter of right or discretion, that parties would be in a position to prepare their Stage 2 bids. That created a difficulty since the deadline was one week away.

Accordingly, parties were asked to address the issue of how long would be needed to submit Stage 2 bids, on the basis that the further plots were and were not in play. Nobody, including you, suggested that this matter should not be addressed or that more time was needed for preparation of arguments. Indeed, with four of the five applicants before the Committee together

If you require this letter or future correspondence from us in a different format (e.g. tape, Braille or disc) please do not hesitate to let us know.

with the main residential objectors, it was an obvious piece of case management to consider the matter at that hearing.

Accordingly, argument was heard from all parties, which continued into the late afternoon. Following such argument, the parties were specifically asked whether there was anything more they wished to say. There wasn't. The Committee therefore retired and came to a balanced decision. The arguments for and against delaying closure of Stage 2 were fully set out and considered, including the arguments to which you have referred above.

We are therefore in some difficulty understanding the nature of your complaint, other than that, on this matter, the Committee came to a decision with which you do not agree. We are satisfied that no unfairness has occurred.

In your letter, you appear to suggest that because the Committee held a hearing in December to consider the extension of Stage 2, it must therefore adopt precisely the same procedure if it wishes to consider a further extension. There is no statutory or jurisprudential basis for that assertion. In December, the Committee decided to convene a hearing to consider the arguments. In April, it was convenient to consider the matter at what was effectively a case management hearing.

However, if you persist in your view that the manner in which the determination was reached has occasioned unfairness, and in particular if there are arguments which were not put on 9th April, we would respectfully suggest that the proper course is to write a letter setting out your position, which will be placed before the Committee for a decision as to whether it is necessary to re-open this element of the debate.

Yours faithfully,



Locum Licensing Officer
for Head of Legal and Democratic Services

Agenda Item 6

Appendix 4



Global Gaming Ventures (Southampton) Limited
11 John Princes Street
London W1G 0JR

(Registered in England. Registered Number 09055769)

16th April 2015

URGENT – BY EMAIL

Martin Grout Esq
Licensing Officer
Southampton City Council
Civic Centre Road
Southampton SO14 7LS.

Dear Mr Grout

Casino Competition (the ‘Competition’): Licensing Committee Meeting 9th April 2015

We refer to your letter of 15th April regarding the above. GGV is unable to accept the arguments you advance, and accordingly we request that this matter be put before the Licensing Committee (the ‘Committee’) as a matter of urgency. Our position is as follows:

1. The legal obligation on the Committee to run the Competition fairly takes precedence over all other considerations. A decision to allow a favoured scheme or applicants an extra three months (especially coming, as it does, on top of an earlier three month extension for the same applicants) to prepare, change or improve their applications is self-evidently unfair to those applicants that have complied with the rules and are ready to submit on the appointed day. The prospect (real or imaginary) of an unidentified public benefit cannot justify such a gross procedural unfairness.
2. In Paragraphs 28 to 31 of the 9th April decision the Committee explains how it arrived at its view and the ‘finely balanced’ arguments it weighed. However at no point does the Committee address the basic question of whether the extension is consistent with the fair conduct of the Competition. We submit that had it asked itself this fundamental question (as it ought) the conclusion would have been that a further extension is obviously unfair.
3. Your letter of 15th April asserts that a part of the hearing on 9th April was a ‘case management conference’. But the hearing was not a case management conference, it was a hearing convened to decide on the three questions which were set out on

the agenda. Extending Stage 2 for three months was not one of them and consideration of such an extension was not on the agenda. One applicant (Genting) and at least one interested party (the Watermark developer, Hammerson) were not present on 9th April and, being entirely unaware of any case management issues being under consideration, could not therefore make their views known. Since Hammerson (via its planning consultants) has twice previously written to the Committee to state that further delays should be avoided, it might well be that it would have opposed an extension to the Stage 2 deadline.

4. In any event, if 9th April was a case management conference we would have expected the Committee to ask the applicants explicitly during the meeting what they thought about a further three month delay to Stage 2 or indeed a range of possible periods of delay. There was no such question. Had there been, GGV would most certainly have objected in the strongest possible terms. We have always stressed to the Committee the importance of sticking to its published rules and the agreed timetable and we had objected (successfully) to an extension to July when this was addressed in December.
5. As your letter of 15th April correctly observes, we opposed the addition of a fourth item to the agenda on 9th April regarding a request for broad guidance from Kymeira about the acceptable extent of possible changes to premises between Stage 1 and Stage 2. After listening to arguments, the Committee ultimately agreed to consider just a much narrower question on vertical movement on the same footprint (this being a possibility raised by counsel for RPW only on the day of the hearing).
6. But in any event, we are totally at a loss to see why the vertical travel issue is at all relevant to a possible delay to Stage 2. Whichever decision the Committee made on this subject, it was clear that the Royal Pier applicants were still unable or unwilling to submit their applications on time. It cannot seriously be contended that belatedly asking for guidance on the vertical travel point on the day of the hearing entitles the enquirer to a three month extension regardless of the answer.
7. Although GGV's arguments did not fully prevail and a part of Kymeira's question dated 3rd April 2015 was addressed, this was at least formally decided by the Committee (after retiring to consider it) and added to the agenda. There was no equivalent proposal to add to the agenda consideration of the possibility of a three month delay to Stage 2. Indeed, we are unable to ascertain where the idea of a three month delay came from. None of the Royal Pier applicants proposed this. Had it been proposed to add it to the agenda GGV would certainly have objected, however and the Committee could then have heard arguments and made a proper decision on how to address it.
8. We reserve our position on the procedural issue of whether, having decided in December that notice and a public hearing was needed to consider extending Stage 2 to July, the Committee was free to reverse its decision later without notice or a public hearing. But we submit that to make such a decision without even drawing the attention of applicants and other interested parties to the fact that this was

being considered (and hence without hearing their views) is clearly unfair and procedurally flawed. The minutes of the Committee meeting on 16th December 2014 describe the then decision to refuse a July extension and extend only to 16th April as 'fair' and representing 'a proportionate balance'. What has changed since December?

9. Box 13 in the Committee briefing papers for 9th April did suggest that consideration be given to a much shorter 3 week delay to 7th May to allow applicants time to adjust their Stage 2 applications in light of the outcome on 9th April. We are at a loss to understand why the Committee seems not to have considered this possibility. An applicant that was ready to proceed to Stage 2 submissions on 16th April would perfectly easily be able to incorporate any impact of the Committee's decision in an additional three weeks. GGV would have accepted such a delay as a pragmatic decision rather than being as obviously unfair as the much longer delay to 10th July.
10. We also note that during the hearing on 9th April no applicant actually asked the Licensing Committee for a three month delay (presumably, in the case of at least two of them because they had already asked for the same delay in December and been turned down). The period of 2-3 months was mentioned by counsel for Aspers only in response to a question from the Licensing Committee's legal adviser about how long it would take to prepare a new bid.

It is impossible to avoid mentioning (again) that Southampton City Council has expressed a preference to see the casino licence go to the Royal Pier and stressing (once again) that the Committee must be seen to be entirely uninfluenced by this view.

As it happens, GGV believes that this preference for RPW cannot survive the scrutiny which is involved in Stage 2 of the Competition for numerous reasons including a hopeless lack of commercial viability and the undeliverable nature of the scheme in its current structure. We suggest that applicant disclosures at last week's hearing fully support this view.

But this is academic. Come what may the Committee must not let any pre-existing policy preference or relationship with RPW influence or appear to influence its conduct of the Competition. We fear that, distracted by the other issues under consideration on 9th April, the Licensing Committee did not sufficiently consider this vital point.

We submit that it is easy to see the unfairness by looking at the issue in reverse. Had GGV asked for a three month extension to improve our application would we have been given it? If the answer to this is 'No' then the answer must also be 'No' for the Royal Pier applicants.

We feel that there is a gross unfairness here and we therefore respectfully request that the matter be referred back urgently to the Licensing Committee for it to reconsider the Stage 2 timetable and revert to an earlier submission deadline. We believe that 5pm on Thursday 14th May would be a fair and practical date to close Stage 2.

Yours sincerely

Tony Wollenberg
Chairman

Richard Ivory
Head of Legal & Democratic Services
Southampton & Eastleigh Licensing Partnership
Southampton City Council
Licensing Services
Civic Centre
Southampton
SO14 7LY

FAO: Martin.grout@southampton.gov.uk

Our ref PW/KB/GRO002-1-6/2059

Your ref

20 April 2015

Dear Sirs

Large Casino Competition

As you know, we represent Grosvenor Casinos Limited (“Grosvenor”) and write in response to your letter of 16 April 2015. Please treat this letter as written submissions on Grosvenor’s behalf in advance of the Licensing Committee meeting scheduled to take place on 30 April 2015.

We have considered the decision of Southampton’s Licensing Committee following the hearing held on 9 April 2015, postponing the closing date for the Stage 2 Large Casino Competition until 10 July 2015, and subsequent correspondence between Southampton City Council and Global Gaming Ventures (“GGV”).

In relation to the contentions advanced in GGV’s recent correspondence, Grosvenor would merely observe that, of course, it is for the Licensing Committee to manage and control the Casino Competition timetable, subject to the provisions of Schedule 9 to the Gambling Act 2005, the 2008 Competition Regulations and the 2008 Code of Practice issued by DCMS. Further, Grosvenor considers that the Committee was not precluded at the 9 April meeting by the setting of its agenda from considering the question of whether to grant, or from subsequently granting, an extension to the Stage 2 deadline. In so saying, we bear in mind that the only two parties who might conceivably oppose such an extension (GGV themselves and Hammerson) were either present at that hearing or had made written representations to the Committee. Finally, Grosvenor takes the view that the Committee was under no obligation to follow precisely the same procedure as that followed when the question of an extension was considered in December 2014 or, indeed, to arrive at the same conclusion.

For Grosvenor’s part, as stated at the meeting on 9 April, it believes three months to be necessary to prepare a competent Stage 2 bid, taking into account the suggestion by RPW, only very recently advanced in its letter of 31 March 2015, of a basement location for the casino, and the subsequent decision of the Licensing Committee, published on 10 April 2015, as to what the permitted footprint for the casino is to be.

Accordingly, Grosvenor supports a closing date for Stage 2 of the Competition of 10 July 2015 and believes this to represent a sensible, pragmatic solution which is likely to bring about the greatest benefit for the people of Southampton. However, as set out above, Grosvenor acknowledges that the management of the casino timetable, and thus the fixing of the Stage 2 deadline, are entirely matters for the Committee. As it stressed at the 9 April meeting, Grosvenor is ready to submit what it considers to be an extremely

strong Stage 2 bid for the alternative Leisureworld site in any event, and will comply with such deadline as the Committee shall see fit to impose.

Grosvenor does not propose to attend the hearing scheduled to take place on 30 April. No discourtesy to the Committee is intended.

Yours faithfully

Woods Whur

Woods Whur

Dear Martin

This email is written on behalf of our clients RPW Southampton Limited ("RPW"), the developers of the Royal Pier Waterfront Development site, in the hope that it will assist the Licensing Committee to make an informed decision at the hearing now scheduled for 5.30pm on 30 April. It is being copied to all Stage 2 applicants.

Its purpose is to address GGV's suggestion that the deadline for submission of Stage 2 applications should be brought forward to 14 May, notwithstanding that following the hearing on 9 April, having heard from all present at that hearing, the Committee decided that the deadline should instead be noon on 10 July.

The Committee's reasons for deciding on a revised deadline of 10 July are set out at paragraphs 28-31 of their decision. We and our clients will leave it to the affected Stage 2 applicants to make such submissions as they think fit, but the purpose of this communication is to:

- (1) remind the Committee of the Council's original proposal regarding the deadline for submission of Stage 1 and Stage 2 applications,
- (2) repeat what my clients told the Committee on 9 April with regard to the reason why they had been unable to supply Stage 2 plans and information to the Stage 2 applicants, to the extent that it is relevant for the purposes of GGV's above suggestion,
- (3) summarise where my clients currently stand in relation to the provision of revised plans (taking into account paragraphs 24-27 of the decision) and information required by applicants for the purposes of their Stage 2 applications and
- (4) refute erroneous comments made by Andrew Herd on behalf of GGV at the hearing on 9 April upon which the Committee may have sought to rely.

I adopt the same numeration below when addressing each of the above points.

1. The Council's original proposal regarding the deadline for submission of Stage 1 and Stage 2 applications

My clients understand that the original provisional Large Casino Competition timescale proposed by the Council was designed to allow for a six month time period between the signing of the Royal Pier Waterfront development agreement and the commencement of Stage 1, with Stage 2 commencing six months thereafter. Taking into account the date on which the development agreement was subsequently signed, Stage 2 would not have commenced until April 2015 had that original proposed timescale been followed. At a meeting on 30 September 2014 Mr Nayak of my clients explained to representatives of the Council why, by reason of the late signature of the agreement and consequent absence of approval of the Royal Pier Waterfront Masterplan by the parties to that agreement, RPW would not be in a position to provide the detailed plans and information required by the Stage 2 process until, he estimated, six months thereafter, ie the beginning of April 2015 or thereabouts. RPW was of the view that in such circumstances, the most appropriate course would be to delay the commencement of Stage 2 until then with a consequential deadline for submission of Stage 2 applications during July 2015, which would have allowed applicants to consider the Stage 2 plans and documentation in the intervening period. However at a hearing on 16 December 2014, the Committee determined to commence Stage 2 three months earlier on 1 January 2015 with a deadline submission date of 16 April

2015. Taking into account also the circumstances described at paragraph 2 below, it is therefore not inconsistent with what they had previously stated that my clients were unable to have provided the required Stage 2 plans and information to Stage 2 applicants in advance of the 9 April hearing.

2. The reason why RPW had been unable to supply Stage 2 plans and information to the Stage 2 applicants prior to 9 April

As already explained to the Committee, albeit that discussions had taken place with all applicants prior to the submission of the Stage 1 applications, following the Committee's decision on 16 December 2014, my clients commenced detailed discussions with each successful Stage 1 applicant to better understand their respective requirements for a casino within the "casino location zone" that had previously been identified for the purposes of the Stage 1 applications. My clients were of the view that such discussions might result in them identifying a preferred operator with whom they might enter into an agreement for lease, but in the event this proved not to be so. What did transpire however, was that contrary to previous indications certain of the Stage 2 applicants made it clear that they would prefer their casino to be located in a more prominent position on the site. My clients' understanding was that the Council's Advice Note of 20 June 2014 indicating that it would accept Stage 1 applications with a red line around the whole of the proposed development site was intended to allow a degree of flexibility that would enable the casino to be relocated from the original casino location zone to a more prominent location elsewhere on that site. Indeed it remains their view that that is the only interpretation that can be placed on it. The Advice Note stated as follows:

"Note on submission of Stage 1 Applications that involve the proposed new development at Royal Pier.

The Council has been asked to clarify the potential conflict between the Regulations that specify the form and content of an application in so far as it relates to being able to provide a detailed plan of the proposed premises.

Applicants will be aware that The Gambling Act (Premises Licence and Provisional Statements) Regulations 2007 states that the application shall be accompanied by a scale plan of the premises and paragraph 4(2) then states that the plan 'must' show certain design elements. However, this is then relaxed slightly by paragraph 10(3) which states:

Where the application relates to premises which the applicant expects to be constructed or altered, any reference in paragraphs (2) to (9) of regulation 4 to the premises to which the application relates is to have effect for the purposes of this regulation as a reference to those premises as they are expected to be when constructed or altered.

The Council has taken legal advice and is able to state that we will 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."

My clients accordingly made enquiries of those applicants who had expressed a preference for a more prominent site whether they would be interested in a relocation of the casino elsewhere on the RPWD site. The first of the applicants to express a commercial preference for one or more of sites WQ2, 3 or 4 adjacent to West Quay Road in the northern part of the

site was Grosvenor Casinos. They were not alone amongst the applicants in expressing such a preference. My clients are property developers, not casino operators. They are reliant on, and react to, input from those who are experienced in operating casinos. Accordingly my clients raised with the Council the possibility of so relocating the casino and produced changes to the Masterplan to reflect such a relocation. They followed this up by copying to the Council a legal opinion provided by my company on 23 January 2015 explaining why it was considered that such a relocation at the premises licence application stage by the competition winner was permissible under the casino competition licensing process. There then ensued a delay of over a month until Barbara Compton replied on behalf of the Council on 26 February setting out the "provisional" opinion of Philip Kolvin QC disagreeing with the opinion expressed by my company. It was then suggested that a hearing should be held to determine this issue and questions arising from it, and a hearing date of 9 April was fixed. In the interim period, in light of the opinion, albeit provisional, of Mr Kolvin that the casino could not be so relocated, my clients investigated the alternative possibility of reconfiguring the casino layout within the same "footprint" as shown by applicants at Stage 1. However, it was only ever going to be upon the Licensing Committee determining the questions posed to it at the hearing on 9 April that it would be known by both my clients and the Stage 2 applicants to what extent, if any, the plans might diverge at stage 2 from those relied upon at Stage 1. That determination has fundamental bearing on the Masterplan for the site as a whole, which is why my clients could not provide definitive plans and supporting information to the intending Stage 2 applicants (beyond that already publicly available to them) until that determination had been made. In view of the fact that the above was explained to the Committee at the hearing on 9 April, my clients feel aggrieved that the Committee's decision states at paragraph 6(1) that *"RPW has failed, for reasons which it has not explained, to provide any of the basic information to the applicants to enable them to formulate their Stage 2 bids"*.

3. Provision of revised plans and information required by applicants for the purposes of their Stage 2 applications

Arising from the Committee's finding recorded at paragraphs 24-27 of the decision of 9 April 2015, my clients and their architects have been working on reconfiguration of the Masterplan drawings to enable production of revised casino plans within the same "footprint" as was shown in the Stage 1 plans. It is currently anticipated that the initial plans will be circulated to all Stage 2 applicants in accordance with the timetable set out in number 1 below. This will in turn enable consequential changes to the Masterplan such that it, and all other supporting material required for the purposes of Stage 2 submissions, can be provided to all applicants as soon as the same become available (no later than step 2 in the timetable below). Once such information has been circulated to all applicants, my clients will be pleased to re-engage in discussions with all of them in order to address any issues and answer any questions they have arising from the revised plans and information (3 and 4 below). This we believe should enable each applicant to finalise and submit their Stage 2 application within the period of time remaining thereafter.

Provision of information to Operators:

1. w/e 15th May: Initial Masterplan Interim update issue to Operators.

2. 29th May 2015: Issue of RPW developer's design Masterplan, Context, and location information pack: (Drawing Pack identifying the available space for the Casino and its context within the RPW Masterplan):
3. 29th May- 12th June 2015: Period within which queries/ issues should be addressed to RPW by prospective operators.
4. 29th May-26th June 2015: Period within which operator queries will be discussed and/or clarified by RPW.
5. Submissions: 10th July 2015

It is not practicable to compress this timetable any further in the light of the work to be undertaken, to provide prospective operators with sufficient time to request alterations to our proposals, and for our client to give such requests proper consideration.

4 RPW's response to comments made by Andrew Herd on behalf of GGV at the hearing on 9 April

At the hearing on 9 April, the Committee allowed Mr Herd of GGV to make wide-ranging comments on issues that were not relevant to the questions that the Committee had convened to determine. During the course of making such comments, for reasons that will have been best known to GGV, Mr Herd made a number of what my clients regard as unfounded and seriously misleading assertions in relation to the value of the proposed casino to the overall Royal Pier Waterfront development. After Mr Herd had been allowed to make such assertions, on behalf of my clients I invited the Committee to disregard the same as being wholly irrelevant when making their determination. However, for the avoidance of doubt I am instructed by my clients to make it plain that:

- (a) they completely disagree with all that Mr Herd said with regard to the value of the proposed casino on the Royal Pier Waterfront site,
- (b) the financial and regenerative benefits that such a casino would bring are very substantial and
- (c) such a casino is critical to the implementation, and ultimately therefore the success, of the Royal Pier Waterfront development.

My client was unable to refute these wholly misleading assertions at the hearing because the hearing was being held in public and not only did my client not wish to discuss private commercial information, it had also given undertakings to other parties not to discuss the same matters without their prior agreement.

In proceeding as they have done since receiving the Licensing Committee's decision on 10 April, my clients have been working to the revised deadline of 10 July. We trust that the above information will assist both all Stage 2 applicants and the Licensing Committee to conclude what amount of time will be required by such applicants to complete and submit their Stage 2 applications.

Regards

David Clifton

Director

Clifton Davies Consultancy Limited

6 Lettice Street London SW6 4EH

T: +44(0)7703652525

E: dc@cliftondavies.com

www.cliftondavies.com

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