

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	GAMBLING ACT 2005 – LARGE CASINO LICENCE: PROPOSAL TO AMEND LOCATION AND OTHER ISSUES		
DATE OF DECISION:	9 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	
<p>The Licensing Committee is requested to consider and resolve accordingly:</p> <ol style="list-style-type: none"> 1. In the case of each of the applicants in respect of applications for the Royal Pier Waterfront (RPW) site, whether may they show their proposed casino on any or all of plots WQ2, WQ3 or WQ4 at stage 2 of the casino licence competition under the Gambling Act 2005 2. Whether the Council, as Licensing Authority, has a discretion to accept new Stage 1 applications? 3. If so, should the Council exercise its discretion to accept such applications 	
<p>The report details the issue that the five RPW applicants have encountered with their proposal to position the proposed Large Casino at a location that does not match their Stage 1 submission.</p> <p>For reasons that will become clear, the Licensing Service does not have one particular course of action to recommend. The competing arguments range from doing nothing and letting the process continue through to restarting the whole competition.</p> <p>NOTE: At the time of writing the Council had yet to receive the legal arguments and authorities that the Applicants have been asked to provide prior to the meeting. These will be circulated as soon as they arrive and made publically available.</p>	
RECOMMENDATIONS:	
	(i) that the Committee consider this report and the supporting information and evidence provided by the Applicants;
	(ii) determine whether any and if so which of the applicants may show their casinos at Stage 2 of the competition on the RPW site at plots WQ2, WQ3 or WQ4;
	(iii) determine whether it has a discretion to permit the submission of new Stage 1 applications, whether for the said plots or elsewhere;

	(iv)	if so, determine whether it should exercise its discretion to permit such submission; and
	(v)	Consider the various requests and resolve to continue the process retaining the original closure date for Stage 2 applications of 16 th April 2015.

REASONS FOR REPORT RECOMMENDATIONS

1	<p>Members will recall that a revised timetable for Stage 2 of the Casino Licence process was agreed at an earlier meeting where it was determined that Stage 2 would commence on 1st January 2015 and conclude on 16th April 2015. Since that meeting certain Applicants that submitted a proposal for the RPW site have indicated that at Stage 2 they wish to show their proposed casino on plots WQ2 and/or 3 and/or 4. Due to the information contained in their respective Stage 1 application, the Licensing Service has reached the provisional view that, subject to contrary legal argument, in all but one case this would not be legally permissible. A map of the proposal is attached as Appendix 1.</p> <p>Given the range of views expressed, it has been considered appropriate to seek the ruling of the Licensing Committee following full argument of the respective positions.</p>
---	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2	This report details the range of options open to Members and detailed legal arguments will be heard in the course of the meeting.
---	-----------------------------------------------------------------------------------------------------------------------------------

DETAIL (Including consultation carried out)

3	On 23 rd January 2015 the Council received a letter from Clifton Davies, Solicitors, in respect of applications made for the Royal Pier Waterfront development. The letter was addressed to Mr Nayak of RPW (Southampton) Ltd, the developers. This letter is attached as Appendix 2.
4	Reference is made within the letter to advice that the Council gave in terms of the need for a 'red line' around the proposed development where the casino might be placed. This advice was placed on the Council's website in June 2014 and remains there at the time of writing this report. The decision to provide the advice followed queries from potential applicants as to how to indicate the proposed location given the fact that the intended location was on land to be reclaimed. The advice is detailed below in paragraph 6.
5	<p>“Note on submission of Stage 1 Applications that involve the proposed new development at Royal Pier</p> <p>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:</p> <p>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.</p>

	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.”
6	<p>The Council replied to the letter by way of a detailed letter dated 26th February 2015 which is to be found at Appendix 3. The essential point of the letter was that the proposed premises at Stage 2 of the competition must be the same premises as indicated on the Stage 1 application. The letter also references the ‘red line’ advice given by the Council before Stage 1 concluded and notes that had this advice been followed it is doubtful whether the Council would be faced with the current issue.</p> <p>The letter did not deal with whether there is discretion to re-open Stage 1 and accept new Stage 1 applications at this stage of the process, because the proposal had not been raised in correspondence at that time.</p>
7	A copy of the letter was sent to each of the Applicants.
8	<p>On 13th March 2015 the Authority received via e mail a letter addressed to the Chief Executive from the Managing Director of Grosvenor Casinos Ltd who have 2 applications in the process, one for RPW and one for their existing site at Leisureworld. Their letter is attached as Appendix 4.</p> <p>Grosvenor are effectively requesting that the Authority restart Stage 1 of the process so that new sites could come forward for consideration.</p>
9	<p>On 16th March 2015 the Authority received via e mail a letter addressed to the Chief Executive from Harris Hagan, Solicitors acting for Aspers Universal Ltd. This letter is attached as Appendix 5. Enclosed with this letter was a copy of a letter that Harris Hagan had sent to the Authority in June 2014. This letter is attached as Appendix 6. Their position is that there is no need to restart the whole process, rather to open Stage 1 of the process to the extent of permitting the existing applicants to make new Stage 1 applications for the revised site.</p>
10	<p>On 17th March 2015 the Authority received via email a letter addressed to the Chief Executive from Kymeira Casino Ltd. The letter is attached as Appendix 7.</p>
11	<p>The Council’s documentation ‘Stage 2 Application Form Notes for Guidance’ is attached as Appendix 8. Paragraph 2.1 states, ‘The applicant should give the title and number of each plan submitted as part of the application. This should include and conform with the plans submitted at Stage 1’.</p>
12	<p>Each of the Applicants were sent identical letters by email on 22nd March 2015 alerting them to the convening of the Licensing Committee and the proposal as to how the matters will be dealt with. A copy of the letter to Kymeira Casino Ltd is attached as Appendix 9 as an example.</p> <p>Each of the parties making relevant representations at Stage 1 has also been notified of these issues and invited to attend this meeting. A sample copy of the letters to those parties is attached at Appendix 20.</p>
13	<p>Paragraph 15.28 of the Council’s Gambling Statement of Principles states:</p> <p>The Council and the Licensing Authority does have a preferred specific location for a large casino as part of the Royal Pier and Mayflower Park redevelopment project. This site was previously identified (amongst others) as part of the Council’s submission to the Casino Advisory Panel. However, all proposals will be judged on their own individual merits regardless of their location.</p> <p>Nevertheless, given the importance placed on the ability of the proposal to</p>

	deliver large scale physical regeneration and tourism potential, areas of Southampton that already have substantial visitors/tourists would be most likely to be at a disadvantage when judged against a proposal which anchors a new infrastructure project.
14	If Members choose to retain the current process as it currently stands, they are requested to permit a short extension of time to allow for Applicants to progress their applications to the point of submission. A period of 3 weeks is suggested bringing the closing date to Thursday 7 th May 2015.
15	A copy of the Stage 1 application and plan for Aspers is attached as Appendix 10 and 11 respectively.
16	A copy of the Stage 1 application and plan for Genting is attached as Appendix 12 and 13 respectively.
17	A copy of the Stage 1 application and plan for GGV (RP) is attached as Appendix 14 and 15 respectively.
18	A copy of the Stage 1 application and plan for Grosvenor is attached as Appendix 16 and 17 respectively.
19	A copy of the Stage 1 application and plan for Kymeira is attached as Appendix 18 and 19 respectively.
20	Notice of the meeting was conveyed to the three 'interested parties' and a copy of the e mail is attached as Appendix 20.
22	Written submissions and a composite bundle of authorities is expected to be received before the meeting and will be made publically available.

RESOURCE IMPLICATIONS

Capital/Revenue

23	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

24	None
----	------

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

25	Gambling Act 2005
----	-------------------

Other Legal Implications:

26	<p>Whether the Council has power to permit Stage 2 applications to be made by any applicant in respect of RPW plots WQ2, WQ3 and/or WQ4 is a question of law which involves:</p> <p>a) interpreting the provisional decision to grant a provisional statement to the applicant in question, so as to ascertain whether or not the grant was in relation to a site including the said plots;</p> <p>b) if it does not, considering whether the Council has a discretion to accept a Stage 2 application for a site other than the subject of the Stage 1 grant, and if so whether it should exercise its discretion so as to permit such an application. The discretion must be exercised on rational grounds, taking account of all relevant considerations.</p>
----	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>Whether the Council has a discretion to re-open Stage 1 either in its totality or in a more limited respect at this stage of the process is a question of law. If it does have such a discretion, the discretion must be exercised on rational grounds, taking account of all relevant considerations.</p> <p>Any challenge to the Council's decision would be by way of judicial review, at the suit of an applicant which is disappointed either that it has been refused permission to site its proposal on one of the said plots or that one of its rivals has been granted such permission, or at the suit of a member of the public with standing to bring judicial review proceedings in either case. 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.</p>
POLICY FRAMEWORK IMPLICATIONS	
27	None

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	Bargate
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Map of the proposed revised location
2.	Letter from Clifton Davies dated 23 rd January 2015
3.	Letter from SCCS to Lucent dated 26 th February 2015
4.	Letter dated 13 th March 2015 from Grosvenor Casinos Ltd to Chief Executive SCC
5.	Letter dated 16 th March 2015 from Harris Hagan to Chief Executive SCC
6.	Letter dated 2 nd June 2014 from Harris Hagan to Licensing SCC
7.	Letter dated 17 th March 2015 from Kymeira Casino Ltd to Chief Executive SCC
8.	Stage 2 Application Form Notes for Guidance SCC Document
9.	Letter dated 21 st March 2015 sent to each Applicant. Example shown relates to Kymeira Casino Ltd
10.	Aspers Stage 1 Application
11.	Aspers Stage 1 Plan
12.	Genting Stage 1 Application
13.	Genting Stage 1 Plan
14.	GGV (RP) Stage 1 Application
15.	GGV (RP) Stage 1 Plan
16.	Grosvenor Stage 1 Application
17.	Grosvenor Stage 1 Plan

18.	Kymeira Stage 1 Application	
19.	Kymeira Stage 1 Plan	
20.	Email to 3 Stage 1 'interested parties' informing them of them of the meeting	
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)	