

**ASPERS UNIVERSAL LIMITED**

**SOUTHAMPTON**

**LARGE CASINO COMPETITION**

**SUBMISSIONS**

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

**HEARING  
9th April 2015**

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

## **INTRODUCTION**

- 1 By their letter of 21st March 2015, Southampton City Council (SCC) invited written submissions in respect of the following 3 questions.
  - (1) In the case of each of the applicants, may they show their proposed casino on any or all of plots WQ2, WQ3 or WQ4 at Stage 2 of the Casino licence competition.
  - (2) Does the Council have a discretion to accept new applications following the completion of Stage 1 and, as is the case here, the commencement of Stage 2 of the competition.
  - (3) If so, should the Council exercise its discretion to accept such applications.
  
- 2 It is respectfully submitted the answer to each of these questions is yes, for the reasons set out below.

## QUESTION 1

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

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

### 3 BACKGROUND

- (a) Aspers together with four other casino operators were successful in obtaining a Stage 1 provisional statement for a proposed large casino to be constructed within the Royal Pier Waterfront Development (RPWD).
- (b) The proposed location of that casino within the RPWD has, since the Stage 1 hearings, been changed by the developer, entirely outside the control of the applicants.
- (c) It is understood from a document dated 10th March 2015 released to all applicants by the Committee, that in the light of this change of location and following legal advice from Philip Kolvin QC, SCC is minded to refuse to consider Stage 2 Applications from Aspers and at least three of the other successful Stage 1 Applicants for the RPWD Site.
- (d) Without having formed a concluded view the Licensing Committee has been advised that the new casino location may fall outside that indicated in the relevant Stage 1 Plans.

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

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

- (a) the proposed casino was to be located within the RPWD Site as indicated by the Red Line drawn on the plan submitted around the whole development area and
- (b) was not simply limited to the area indicated by the Blue Line which was only included in an attempt to be as comprehensive as possible thereby to assist SCC with as much detail as was then available - including an indication of where it was then intended by the developer to site the casino.

6 JUNE 2014 CORRESPONDENCE

- (a) This was an unusual Stage 1 Application, since the location preferred by SCC for the large casino was the prominent waterfront site at the Royal Pier - much of which is to be constructed on reclaimed land.
- (b) This clearly presented difficulty to the Applicants in identifying with precision where within the development site, the proposed casino would be constructed, and therefore difficulties in providing a plan in compliance with Regulation 4 (2) of the Gambling Act 2005 (Premises Licences & Provisional Statements Regulation 2007).
- (c) In consequence, **on 2nd June 2014** Aspers through its solicitors, Harris Hagan, wrote to SCC highlighting the perceived problem in a bona fide attempt on behalf of all applicants to seek guidance upon it, and in particular, what SCC would regard as acceptable plans for a provisional statement.
- (d) The following extracts are pertinent:

*“... we believe it is highly unlikely that any of the applicants will be able to identify with precision and certainty where within the development the casino premises will ultimately be built. The final location of the casino may vary depending upon a significant number of imponderables such as construction issues, planning permission, commercial negotiations with anchor tenants and possible staging of the overall development. This gives rise to the practical difficulty for applicants in relation to the Royal Pier ... as to how to delineate the casino premises on the plan accompanying the application.”*

*“... the legal uncertainty does present applicants in Southampton with a dilemma in preparing their applications. Specifically, applicants are faced with a choice of either red lining the premises where they presently expect the casino at the Royal Pier to be located on the basis of the best information available from the developers or red lining the entire development, both of which carry a degree of legal risk (for applicants and counsel alike) ... as the premises are likely to vary between provisional statement and premises licence.”*

*“... we would very much welcome guidance from Southampton Council on this legal issue as soon as possible to as to enable our client and other potential applicants to prepare their plans accordingly. Otherwise, the danger is that different applicants will take different approaches and the issue will be highlighted at the Stage 1 Licence hearings when, in our experience, some applicants are keen to take every possible legal point against their competitors.”*  
(Underlining added).

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

(f) The advice was that SCC would

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

## 7 STAGE 1 APPLICATION and HEARING

(a) In reliance upon that advice

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

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

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

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

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

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

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

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

## 8 SUBMISSIONS

In the above circumstances, we submit:

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

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

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

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

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

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

## 11 CONCLUSION - AS TO QUESTION 1

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

Harris Hagan's letter of 2nd June 2014;

The response of SCC of 20th June 2014 and

The way the application was presented at the Stage 1 Public Hearing the plan submitted on behalf of Aspers Universal Limited clearly encompasses plots WQ2, 3 and 4 within the red line area and therefore does not fall outside the application site.

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

## QUESTION 2

- 12 It is submitted that SCC clearly has a discretion to consider late applications notwithstanding the closing date of its competition and the commencement of Stage 2.
- 13 By Regulation 7 subparagraph 2, of the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licence) Regulations 2008 SCC are not required to consider an application made after the relevant closing date.

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

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

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

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

The Committee concluded (decision page 3)

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



### QUESTION 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We submit:

- (i) Any such propositions of prejudice should be carefully scrutinised against the background of simple commercial interest rather than advantage over benefit to the local community. It is obvious that in the absence of competing applicants, those whom the Committee regard as having successfully moved to Stage 2, will be greatly advantaged by not having to meet competing financial proposals, and SCC will thereby be disadvantaged.
- (ii) It is difficult to see how exercising the discretion as we suggest, could in any way credibly result in unfairness. We have not seen any argument advanced to suggest real prejudice would exist.

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

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

If so,

- (a) The Leeds Licensing Committee made it perfectly clear it was not setting any precedent, nor could it and that the decisions made were based entirely upon the specific facts as they applied in that case to Leeds.
- (b) In the Leeds Large Casino Competition, the application to consider a late submission was 11 months after the advertised closing date Stage 2 applications had already been made and the overall circumstances were wholly distinguishable from the position here.
- (i) It was envisaged in the Leeds Competition that there would be two casinos on separate premises within the overall development site - one temporary to allow the applicant and the Council to earn revenues whilst the permanent casino was under construction and then a second permanent casino. The contemplation was that the premises licence would at some stage be varied so as to relate to

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

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

- (ii) Unlike in Leeds, it was very clearly understood by all applicants in the competition in Southampton that the proposed location as displayed on Stage 1 plans was based upon the latest information available from the developer and that the casino would be built within the RPWD site. That has not changed.
- (iii) The proposal rejected by the Leeds Committee was, of course, for a location outside that originally contemplated by the plans submitted at Stage 1 whereas that is not the case in Southampton.
- (iv) There can therefore be no question of any unfair advantage at Stage 2 as a result of the developer's decision to relocate the casino within the RPWD site. All applicants were aware they were competing against the possibility of a casino location sited within the RPWD area.
- (v) That was not the case in Leeds.
- (vi) It follows this is not an application for different premises outside the application area which clearly was of concern to the Leeds Committee by reason of the fact that interested parties would not have had a proper opportunity to make representations at Stage 1.

## **CONCLUSION**

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

- (a) Achieve the aim of the legislation which is to generate the best benefit for the local community,
- (b) Will not prejudice any member of the public and
- (c) Will not present, despite protestations to the contrary any unfair advantage to competing commercial interests or provide any unfair prejudice.

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

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

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

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

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

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30th March 2015