Global Gaming Ventures (Southampton) Limited
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(Registered in England. Registered Number 09055769)

27th 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 30th April 2015

We are writing to respond to the submissions from Aspers Universal Ltd, Genting Casinos UK Ltd, Grosvenor Casinos Ltd, Kymeira Casino Ltd and RPW Southampton Ltd in relation to the Licensing Committee hearing convened for 30th April 2015.

We do not propose to repeat what we have already said in our letters of 10th April and 16th April and which set out the basis of our concerns. Rather, we want to focus just on the core issues raised in the submissions referred to above.

Proposed delay to Stage 2

1. Several of the submissions and the letter dated 15th April from Mr Grout of SCC assert that the Licensing Committee meeting on 9th April fully considered arguments for and against a possible delay to Stage 2. However this is not accurate.
2. What the Licensing Committee meeting actually considered was whether to exercise discretion to accept one or more late Stage 1 applications. This would in turn have required that Stage 1 be re-opened, and hence delayed Stage 2. One of the strongest objections to late Stage 1 applications was indeed the delay that would result and we are pleased that the Licensing Committee recognised this and declined to exercise any discretion to allow any such new applications.
3. But considering delay as one aspect of whether to accept a late Stage 1 application is quite different from considering a delay to the Stage 2 deadline in isolation.

4. This can most obviously be seen by looking at the arguments in favour of delay. The argument advanced for permitting late Stage 1 applications was that this was a means to allow the RPW applicants to move to different premises (i.e. the WQ2, WQ3 and WQ4 site). Delay would have been an unfortunate side effect of such a decision but not its central purpose.

5. The basis for a decision to delay Stage 2 in isolation is, however, quite different. The possible move of premises has now been dealt with and hence is irrelevant. The only argument in favour of the solo delay is that one scheme has been unable or unwilling to advance to the point at which proper Stage 2 applications can be made and is asking the Committee for the 'oxygen of an extension'.. The objections which we have to a delay for this reason are quite different from the objections to a delay which is ancillary to a late Stage 1 application (albeit that there are powerful objections to both).

6. We submit that it is clear that the hearing on 9th April never specifically addressed the possibility of a delay to Stage 2 as a discrete issue. It only considered delay as a negative side effect of re-opening Stage 1 to permit the premises move.

Decision of 9th April

7. In the decision dated 10th April, the Licensing Committee said '*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'.*

8. However, the applicants are not all in the same position and have different views and different degrees of responsibility.

9. For example, the directors of RPW Southampton Limited (the prospective developer of Royal Pier) and Kymeira Casino Limited (an applicant) are the same people (Mr Charles Flynn and Mr Ernest Battey in both cases). Therefore the proposition that the applicant is not responsible for the failure of the developer to produce information is simply not true in the case of Kymeira. RPW/Kymeira have been aware since at least autumn 2014 of the nature of the information needed for Stage 2 (and indeed GGV later sent them a full list in January 2015, shortly after the December Licensing Committee hearing). The fact that RPW has apparently failed to produce any of the information to any applicant remains entirely unexplained.

10. We also note that it is not simply that RPW have failed to supply all the required information. It seems they have provided absolutely no information, even where this is clearly available (for example, project updates). As GGV said to the Committee in December 2014, it is perfectly possible to submit a Stage 2 proposal that is not fully developed. The Panel and the Licensing Committee would then make an assessment of the benefits arising from such a scheme in light of the published evaluation matrix. It does not automatically follow that a less developed scheme would necessarily lose, although admittedly a hopeless scheme would.

11. The position of the other RPW applicants is extremely varied. Global Gaming Ventures (RP) Limited stated at the 9th April hearing that it was not intending to make a submission on 16th April. Genting Casinos (UK) Limited chose not to attend the hearing on 9th April and has previously suggested in December that the competition should be re-started to allow additional sites to emerge. Grosvenor Casinos Limited said at the

hearing on 9th April that it was unsure as to the commercial viability of a casino at the RP site, that it did not expect to be interested in operating on a basement level and that it was focussing its attention on its Leisure World application.

12. We submit that to conclude that the 'decisive point' in the decision was the lack of applicant responsibility is just not tenable. The five RPW applicants are each in quite different situations. A generalisation is not possible and hence the assortment of differing positions is not a reasonable basis for a 'decisive point'. It is also unclear which, if any, of the RP applicants has made a determined effort to engage with RPW and comply with the revised timetable set down by the Committee on 16th December 2014. None of the RPW applicants has filed any evidence in this regard.

13. Furthermore, we wish to emphasise that the Licensing Committee is judging **applications**, not **applicants**. Applications are made up of a number of different elements (site, scheme, developer quality, deliverability and public benefits, for example) and are to be measured in accordance with the competition's published evaluation matrix. Lack of deliverability or commercial viability or funding or any other uncertainty is a relevant matter for consideration in the Stage 2 process. It is not a reason to delay the Stage 2 process. The purpose of the Competition is precisely to judge these matters.

Fairness

14. The core of GGV's argument, however, is that the law (in the form of the legally binding DCMS Code, General Principle 3.1) requires the Competition to be run fairly.

15. The law does not say that some element of unfairness can be permitted if there is a public benefit. It says simply and clearly that the competition **must** be run fairly.

16. 'Fair is defined by the Oxford English Dictionary as 'treating people equally without favouritism or discrimination'. Aiding a preferred scheme by repeatedly giving it the oxygen of an extension when it can't or won't comply with the published timetable is unfair because it is favouritism. Would such repeated extensions be available to all schemes or only the preferred one? We submit that such extensions would not be available to other schemes.

17. The law (General Principal 3.2.2) also requires that the rules of the Competition are not pre-selected to favour a particular applicant or applicants. Pre-selected means pre-selected before the Competition but it also means pre-selected by way of a change in the rules or procedure during the Competition so as to favour a particular applicant or applicants.

18. The law (General Principal 3.3) also says:

    'A licensing authority must ensure that any pre-existing contract, arrangement or other relationship they have with any person does not affect the procedure so as to make it unfair (or appear unfair) to any applicant'

19. We draw your attention particularly to the words *'(or appear unfair)'.* It is clear that merely the appearance of unfairness is enough to require the Licensing Committee to desist from a particular course. It does not even require actual unfairness.

20. We submit that repeatedly extending the Stage 2 deadline to permit a defaulting class of favoured applicants more time to prepare or improve their submissions against the repeatedly and forcefully expressed objections of another applicant that is ready and willing to proceed in accordance with the Committee's direction, is either obviously unfair or (as an absolute minimum) it obviously *appears* unfair.

21. The Committee considered the timetable in 16th December 2014 and decided that an extension to 16th April was fair. As a pragmatic matter, GGV would accept that given the extra hearing on 9th April 2015 a further two week extension to allow applicants to accommodate the decision made at the second hearing might be unobjectionable. But nothing has changed such as to justify a further three months.

22. In the mix of different issues being considered on 9th April we submit that the Licensing Committee lost sight of the fundamental principle of acting fairly and being seen to act fairly. It felt that it was able to change the rules to permit a further extension because it was acting, it believed, in pursuit of a public benefit and to support a preferred scheme, even though a further extension either was or appeared unfair.

23. This is not a permissible course, however, – fairness and the appearance of fairness, quite properly and correctly, must take precedence over all other considerations.

24. We therefore respectfully request that the Committee reconsiders its decision and sets a new Stage 2 deadline of 5pm on Thursday 14th May 2015.

Yours sincerely

Tony Wollenberg
Chairman