

<b>DECISION-MAKER:</b>	COUNCIL		
<b>SUBJECT:</b>	LARGE CASINO – DRAFT APPLICATION PROCESS AND EVALUATION CRITERIA FOR CONSULTATION		
<b>DATE OF DECISION:</b>	16 JANUARY 2013		
<b>REPORT OF:</b>	HEAD OF LEGAL, HR AND DEMOCATIC SERVICES		
<b><u>CONTACT DETAILS</u></b>			
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#### **STATEMENT OF CONFIDENTIALITY**

None

#### **BRIEF SUMMARY**

As members will be aware the Gambling Act 2005 provides the Council with the opportunity to grant a Large Casino Premises Licence. It is the only authority in the South of England (outside London) to be able to do so.

In accordance with the Act the determination of the licence at both Stage 1 and Stage 2 will be a matter for the Licensing Committee. Stage 1 will broadly follow the same process as any other gambling premises licence, while Stage 2 will follow a bespoke process.

This report outlines the process for determining the large casino licence and seeks approval of the draft evaluation criteria for Stage 2 of the process which will be subject to a short consultation with both the trade and public.

#### **RECOMMENDATIONS:**

- (i) That Council note the process to be followed for determining the large casino licence;
- (ii) That Council approve the draft evaluation criteria for consultation, the final version of which is to be used at Stage 2 of the large casino licence process.
- (iii) The consultation results and revised criteria (if any) be considered for adoption by Council at its meeting on 20<sup>th</sup> March 2013.

## **REASONS FOR REPORT RECOMMENDATIONS**

1. It is necessary for the Council to evaluate any applications for a large casino in a fair and reasonable manner and for potential applicants to understand that criteria before applying. It is appropriate before adopting the criteria for the trade and public to have the opportunity to comment on and suggest revisions to the Council.

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. To not undertake a short consultation prior to adoption may lead to judicial challenge by applicants

## **DETAIL (Including consultation carried out)**

3. The Gambling Act 2005 (the Act) significantly changed the legislation governing the licensing of casinos. The Act, associated regulations and a Code of Practice describe the process to be followed before a large casino licence can be issued. This process includes:
  - Updating the Statement of Licensing Principles to include a statement of principles the Council will apply when determining the casino applications (which the Council did at the November meeting)
  - Development of an application pack including a procedure note which describes the process the Council proposes to follow and how the principles will be applied when determining the licence
  - Advertisement of the “competition” and commencement of a two stage application process
    - Stage 1 broadly follows the same process as for all gambling premises licence application determinations
    - Stage 2 follows an evaluation process which determines which of the competing applications would result in the greatest benefit to the authority’s area (this being the test set out in the Gambling Act itself).
4. Although the process at Stage 1 follows the same legislative process set out in the Gambling Act 2005 and applied to all gambling premises licence applications (similar to that used for Licensing Act applications), the Government has given authorities very little guidance as to how the process at Stage 2 is to be organised other than:
  - applicants are to be given an equal opportunity
  - that an authority may engage in discussions with applicants with a view to the particulars of the application being refined, supplemented or altered so as to maximise the benefits
  - that an authority may not discuss the details of an application with other applicants without the applicant’s permission
  - that there has to be a protocol governing the storage of confidential information; and

- that legal agreements may be made to secure the benefits offered conditional on the grant of a licence
5. Beyond this there is no guidance, so the procedure is for each authority to decide. There is no requirement for a public hearing or representations at Stage 2, merely a requirement that the authority come to a decision. Having said that other authorities within the group of 16 that were granted the ability to issue a licence have undertaken and completed the competition process and avoided significant legal challenge and therefore best practice has been established. It is not the intention to deviate away from that position. Much of the information before the committee at Stage 2 will be commercially confidential and therefore by necessity much of this stage will be dealt with by the committee in private.

### Development of the Application Process

6. An application process has been developed which is robust and mitigates the risk of legal challenge by being fair and transparent. This process is set out in the draft Procedure Note at Appendix 1 to this report.

### *Stage 1 Determination*

7. The process begins with the Council advertising the competition in the trade press and national media.
8. Once the application process has been advertised, applicants have three months in which to make their Stage 1 application. This will follow the same basic process as for all gambling licence applications which has the following steps:
- Application received by the Licensing Authority
  - 28 day consultation period - advertised by site notice and newspaper advert
  - If relevant representations are received, the application will be determined by a Licensing Committee hearing
  - If there is only one application but no relevant representations are received, the application will be automatically granted. If there is more than one application but no representations are received, all applications will be provisionally granted and the process will move to stage 2.
  - Applicants are advised which applications would, if there were an unlimited number of licences available, be considered to be granted
9. At Stage 1 representations may be received from any responsible authority or interested party. The legislation provides that for the purpose of this process any other applicant can be considered to be an interested party.
10. It is proposed that Stage 1 is advertised by the end of April 2013, which will lead to determination of Stage 1 taking place in August 2013.

### *Stage 2 Determination*

11. Assuming there is more than one application, once Stage 1 has completed and the appeal period is over and any appeals dispensed with, the process will move into Stage 2. All successful Stage 1 applicants will be advised of the start of Stage 2, and inviting their detailed applications
12. The initial applications will be reviewed and confidential, detailed negotiations will begin with each applicant with a view to the application being refined, supplemented or altered so as to maximise the benefits in accordance with the Act and adopted evaluation criteria; It is recommended this is carried out through an expert advisory panel detailed further below.
13. Once the negotiations have come to an end, applicants will be asked to make their “final and best” application. It is this application that will be scored against the evaluation criteria and an overall score provided. To separate the roles it is not recommended that Licensing Committee members sit on the advisory panel. The Panel will compile a comprehensive report for consideration by the Licensing Committee.
14. The Licensing Committee will consider each application and determine which one, if granted, would bring the greatest benefit to the area
15. The Licensing Committee will make a “minded to grant” decision on their chosen applicant and instruct officers to finalise the legal agreement which will bind the applicant to the benefits proposed in their application. Once this is completed the Licensing Committee will reconvene to formally grant the licence.
16. Notice of rejection is then given to all the unsuccessful applicants. There is no right of appeal against the committee’s decision save for judicial review.

### Development of the Evaluation Criteria

17. At stage 2 of the process, applications will be measured against a predefined set of evaluation criteria. Draft evaluation criteria have been developed in consultation with external specialist advisors and are outlined below and reproduced at Appendix 2 to this report.
18. The draft evaluation criteria comprise 3 main scored criteria, which can be summarised as follows:
  - Location – the Council has publicly identified a preferred location for the casino being the Royal Pier waterfront redevelopment. This is recognised by awarding 500 points to applicants who propose a casino in keeping with this preference. By law, other locations cannot be ruled out as it is up to the applicant to decide where they believe the casino should be sited. However, fewer points are available to applicants proposing to locate a casino in: an alternative central area; an out of town mixed use / commercial location; or a predominately residential location.
  - Problem gambling – applicants are expected to demonstrate that they have adequate policies and programmes in place to deal with problem gambling and vulnerable people. This criteria has been set with a pass or fail scoring mechanism whereby only those applicants with adequate

policies and programmes will secure a 'pass' equating to 1000 points while those that 'fail' receive nil points in this category.

- Financial Contribution – the opportunity for an applicant to offer a lump sum payment to the Council, an annual contribution, or a combination of both. Scores under this criteria range from 0 to 200 for the highest overall financial offer.
19. Once Council approves the draft evaluation criteria, the criteria will be the subject of a consultation with interested parties and the public via the Council's website before a final draft is brought back to Council in March.

#### Application Process/Use of an Advisory Panel

20. To assist in the evaluation, applicants will be asked to provide a number of standard documents which will form the Stage 2 Application. This will allow a like-for-like comparison of the applications. From the experience of other councils who have already undergone this process it is expected that these documents will be extensive. There is a requirement that the Stage 2 applications be kept securely and confidentially, and therefore tight document control will be important to ensure that confidentiality is not breached.
21. Members of the Licensing Committee are strongly advised to draw on specialist advice in evaluating the applications, to provide detailed technical analysis especially in relation to areas relating to finance and credit assumptions, socio-economic impacts, health and potential addiction impacts, and the credibility/viability of the casino offer.
22. One option for this kind of evaluation would consist of an initial review by the Licensing Committee, who would advise officers of which specialist they will require a report from. The report would be obtained and brought back to the Licensing Committee at a later date. However this approach would lead to excessive delays in the evaluation of applications, as each external advisor would need to be procured which is a process that can take up to three months.
23. In order to streamline the process and to keep control of documentation and timescales, it is strongly recommended that an Advisory Panel is used to evaluate the applications, oversee negotiations and provide the Licensing Committee with an evaluation report before they meet to determine the licence. Negotiations would be undertaken by officers at the request of the Advisory Panel.
24. A detailed proposal for the Advisory Panel Terms of Reference will be considered by Licensing Committee in February. However, the broad proposal is as follows:
- The Advisory Panel will be completely independent of the decision making process, avoiding bias.
  - They will undertake an initial review of the applications and oversee the negotiation with applicants.

- Once the final application is received, the Advisory Panel will provide one report per application detailing the benefits offered and committed to, with an evaluation of how credible that offer is.
  - The Advisory Panel will score each application using the standard evaluation criteria provided in the Stage 2 evaluation methodology.
  - The Advisory Panel will present each report to the Licensing Committee and be available to respond to any questions about the evaluation. The Advisory Panel will not select a preferred applicant, but merely make an analysis of each application.
25. The benefits of this approach are:
- It will be easier to control timescales and to set realistic deadlines
  - Specialist officers from the Council will be able to plan and dedicate time to the process
  - External advisors can be procured providing the best value for money for the Council
  - Expertise in negotiations and conclusion of legal documents can be procured
  - The Council can better ensure it meets the requirements of confidentiality and document control
26. The Licensing Committee will then discuss the applications and the report from the Advisory Panel and select their preferred applicant. If further information is required, the Licensing Committee may request this from the Advisory Panel before making their determination.
27. The Licensing Committee will instruct the Head of Legal, HR and Democratic Services to finalise the legal agreement and once this is done will reconvene to grant the licence.
28. In addition it is important that the members who start the evaluation process at Stage 2 are the same members who make the final decision. This will be easier to achieve if member involvement is concentrated within a smaller timeframe.
29. It is proposed that wherever possible internal advisers are used in order to provide value for money. However there are some areas where the specialism required is outside of the expertise of the Council and external specialists will be sourced.

### Process and Timetable

30. It is proposed that the Advisory Panel will be managed by the Head of Legal, HR and Democratic Services or one of his Senior Solicitors.
31. The proposed timetable is as follows:

Activity	Date
Advertisement of competition/application process	April 2013
Stage 1 Committee hearings	August/September 2013
The applicants will submit information required by the Stage 2 Evaluation Methodology demonstrating how their application, if granted, would be likely to result in the greatest benefit to the Council's area.	October 2013
Initial review of applications by Advisory Panel	Nov/Dec 2013
Dialogue meetings - applicants will be invited to participate in dialogue with the Council in order to refine, supplement or otherwise alter their application in order to maximise the benefits to the Council's area.	January 2014
Applicants will respond to the dialogue with a final and best application	January 2014
Advisory Panel's evaluation reports presented to the Licensing Committee	March 2014
Selection of preferred applicant by the Licensing Committee (minded to grant decision)	April 2014
Finalisation of Schedule 9 agreement (by legal advisors)	April 2014
Grant of licence	May 2014

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

32. The large casino provides the Council with the opportunity to secure benefits for the city. Although the development of the revised Policy and application pack, as well as the upcoming application process has had a cost associated with it, the project is being delivered within the ring fenced Gambling Act budget. In addition there will be an application fee of £10,000 per applicant and annual premises licence fees should a licence be granted.

### **Property/Other**

33. None. Any potential landholding interests of the Council are to be considered separately from the strict regulatory process

## **LEGAL IMPLICATIONS**

### **Statutory power to undertake proposals in the report:**

34. Gambling Act 2005. Southampton is one of the 8 cities identified nationally by the Casino Advisory Panel to be given the authority to grant a large casino premises licence.

35. Applicants dissatisfied with the process have recourse by way of appeal to the Magistrates Court at the end of Stage 1 and Judicial Review of the decision made at the end of Stage 2. Therefore, the application pack has been developed with transparency and fairness as a prime consideration.

**Other Legal Implications:**

36. The Gambling Act 2005 has three licensing objectives:
- a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
  - b) ensuring that gambling is conducted in a fair and open way, and
  - c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

The licensing authority, in exercising their functions under the Act, shall aim to permit the use of premises for gambling in so far as it thinks it is reasonably consistent with the licensing objectives. The Council has produced a revised Policy with this in mind and has taken special consideration of the protection of children and vulnerable people.

**POLICY FRAMEWORK IMPLICATIONS**

37. The application pack is based upon the principles as described in the Gambling Act 2005 Statement of Licensing Policy. Applicants for the large casino are expected to read the Policy before making their application and the Council will refer to the Policy when making its decisions.

**KEY DECISION?** No

<b>WARDS/COMMUNITIES AFFECTED:</b>	none
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**SUPPORTING DOCUMENTATION**

**Appendices**

1.	Draft Procedure note
2.	Draft Evaluation criteria

**Documents In Members' Rooms**

1.	None.
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**Equality Impact Assessment**

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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**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.	Revised Gambling Act 2005 Statement of Licensing Policy 2010-2012	
2.	Gambling Act 2005 Statement of Licensing Policy Consultation Report	
3.	Stage 2 Evaluation Methodology	