

Southampton City Council

Gambling Act 2005

Competition for grant of large casino premises licence

Procedure Note

February 2013

DRAFT

1 Introduction

- 1.1 In May 2008 Parliament gave Southampton City Council (“the Authority”) the right to grant a premises licence for a large casino under the Gambling Act 2005.¹
- 1.2 Before granting such a licence, the Authority must hold a competition.
- 1.3 The purpose of this Procedure Note is to inform potential applicants of the rules of the competition. It is published to conform with the requirements set by Parliament and the Secretary of State,² and to ensure that the competition process is both transparent and fair.

2 What is a large casino?

- 2.1 The definition of a large casino is set out in the Gambling Act 2005 and in Regulations. Applicants should take advice as to the detailed statutory requirements. What follows is a general guide.
- 2.2 A large casino is a casino³ in which the combined floor area of those parts of the casino which are used to provide facilities for gambling is at least 1,500 square metres but less than 3,500 square metres.⁴ The table gaming area itself must be at least 1,000 square metres, and may comprise a number of separate areas, although no area under 125 square metres may be taken into account.⁵
- 2.3 The casino may offer gaming machines of categories B, C or D.⁶ The number of gaming machines must be no more than 5 times the number of gaming tables used in the casino, and must in any case not exceed 150.
- 2.4 The casino may also make facilities available for betting, bingo and betting on the outcome of a virtual game, race, competition or other event or process.⁷

¹ The Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008 (SI 2008/1327).

² Gambling Act 2005, Part 8 and Schedule 9; The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 (SI 2008/469); The Code of Practice for Determinations under Paragraphs 4 and 5 of the Schedule 9 to the Gambling Act 2005 relating to Large and Small Casinos (“Competition Code of Practice”).

³ The definition of a casino is set out in section 7 of the Gambling Act 2005.

⁴ The Categories of Casinos Regulations 2008 (SI 2008/1330).

⁵ Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007 (SI 2007/1409).

⁶ Section 172 Gambling Act 2005, The Categories of Gaming Machines Regulations 2007 (SI 2007/2158).

⁷ Sections 172, 174 Gambling Act 2005.

- 2.5 There must be one or more non-gambling area(s) totalling at least 500 square metres. The total area may include, but must not solely comprise, lobby and toilet facilities. Each non-gambling area (other than the lobby and toilet facilities) must offer recreational facilities at all times that gambling facilities are being provided on the premises.⁸

3 The two stage application process

- 3.1 Parliament has provided for a two-stage application process.⁹
- 3.2 At Stage 1 applicants must apply for a casino premises licence or provisional statement. Applications will be judged in the same way as for all other premises licences under the Gambling Act 2005, according to the principles in section 153.
- 3.3 If there is only one successful applicant, the Gambling Act 2005 requires that the licence (or, as the case may be, the provisional statement) will be awarded to that applicant.
- 3.4 If there is more than one successful applicant, Stage 2 of the competition will be activated. The licence (or provisional statement) will then be awarded to the application which would, in the Authority's opinion, be likely if granted to result in the greatest benefit to the Authority's area.
- 3.5 Further detail of the procedure, including the rules of the competition, are set out below.

4 Stage 1 of the competition

- 4.1 The procedure at Stage 1 of the competition is set out briefly below. Applicants should take legal advice on these provisions, if further detail is required.
- 4.2 An application for a premises licence or a provisional statement must be made to the Authority in the form and manner prescribed by the Gambling Act 2005 (Premises Licence and Provisional Statements) Regulations 2007¹⁰ ("the Application Regulations") and must be accompanied by the appropriate fee.¹¹ The application must be made by the "closing date" set out in section 9 below.
- 4.3 An application for a premises licence may only be made by a person who:

⁸ Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007 (SI 2007/1409).

⁹ Schedule 9 Gambling Act 2005.

¹⁰ SI 2007/459.

¹¹ The fees are set out in the fees schedule enclosed with this Pack.

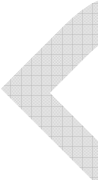
- i) holds a casino operating licence or has made an application for such an operating licence which has not yet been determined; and
- ii) has a right to occupy the premises to which the application relates.¹²

4.4 If the applicant cannot satisfy these requirements, the applicant may nevertheless apply for a provisional statement.¹³

4.5 Following the making of the application, the applicant must give notice to the responsible authorities, advertise the application and display a site notice, all in accordance with the Application Regulations.¹⁴

4.6 It is important to note that an application made before the closing date is to be treated as if it were made on the closing date.¹⁵ Therefore, the period for representations specified in notices to responsible authorities, advertisements and site notices must be calculated from the closing date and not the date when the application was in fact made. Furthermore, in calculating the period within which notice of the application has to be given to responsible authorities, the period within which the application must be advertised, and the period during which site notices have to be displayed, the closing date must again be substituted for the date when the application was actually made.

4.7 The effect of this is as follows (dates provided as indicative). Where the closing date for Stage 1 Applications is ____ 2013, the Applicant is required to:

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- issue notice of the application to responsible authorities by ____/13.
 - advertise the application in a local newspaper within 10 working days of the closing date i.e. by ____/13.
 - display a notice at the premises for at least 28 consecutive days, starting on the closing date i.e. from ____/13.
 - The last date for representations to be specified in notices to responsible authorities, advertisements and site notices is 28 days after the closing date.

¹² Section 159 Gambling Act 2005.

¹³ Section 204 Gambling Act 2005.

¹⁴ Sections 159-160 Gambling Act 2005.

¹⁵ Regulation 7(3), Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008.

4.8 Representations may be made on the application by responsible authorities and interested parties, as defined by the Act.¹⁶ For this purpose, each competing applicant for the casino premises licence is an interested party and so can make representations in relation to each of the competing applications.¹⁷ The period for representations is 28 days beginning on the closing date. If the Authority considers a representation to be vexatious, frivolous or certainly not such as to influence its determination of the application, it will disregard it.¹⁸

4.9 Unless the applicant and also interested parties or responsible authorities consent to a determination without a hearing, the Authority must hold a hearing to consider each application if:

- a) there remain live representations from interested parties or responsible authorities;
- b) the Authority proposes to attach an individual condition to the premises licence;
- c) the Authority proposes to exclude a default condition from the licence.¹⁹

4.10 In considering the merits of the application at Stage 1, the Authority will apply the test set out in section 153 of the Gambling Act 2005. In particular, the Authority will aim to permit the use of premises for gambling insofar as the Authority think it is:

- (a) in accordance with any relevant code of practice issued by the Gambling Commission;²⁰
- (b) in accordance with any relevant Guidance issued by the Gambling Commission;²¹
- (c) reasonably consistent with the licensing objectives²² (subject to paragraphs (a) and (b)), and

¹⁶ Sections 157, 158, 161 Gambling Act 2005.

¹⁷ Schedule 9 paragraph 4, Gambling Act 2005.

¹⁸ Section 162 Gambling Act 2005.

¹⁹ Section 162 Gambling Act 2005.

²⁰ Under section 24 of the Gambling Act 2005. The current codes of practice are obtainable from the Commission's web-site: www.gamblingcommission.gov.uk.

²¹ Under section 25 of the Gambling Act 2005. The current Guidance is obtainable from the Commission's web-site: www.gamblingcommission.gov.uk.

²² The licensing objectives are: (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.

- (d) in accordance with the statement published by the Authority under section 349²³ (subject to paragraphs (a) – (c)).

In making its determination, the Authority must disregard:

- (1) the expected demand for the proposed facilities;²⁴
- (2) whether or not the proposal is likely to be permitted in accordance with the law relating to planning or building.²⁵

4.11 The determination at Stage 1 will be made by the Authority's Licensing Committee ('the Licensing Committee'). Any hearing will be conducted in accordance with the appropriate hearings regulations.²⁶

4.12 Following the Stage 1 procedure, if there is only one successful applicant, a casino premises licence (or provisional statement as the case may be) will be awarded to that applicant. If there is more than one successful applicant, then all of the successful applicants will be invited to participate in Stage 2 of the competition.²⁷

4.13 There is a right of appeal against the Authority's decision at Stage 1 of the process. Pending completion of the appeal, Stage 2 of the competition will be suspended.²⁸

Extraneous information or material

4.14 It is important to note that the only information the Authority can take into account at Stage 1 is information material to the judgment it has to make under section 153 of the Gambling Act 2005. Therefore:

- 1) no information, other than information required by the Application Regulations, may be included in or submitted with an application.²⁹
- 2) in making its determination at Stage 1, the Authority will not take into account any information which is relevant to a

²³ The Authority's Statement of Principles is obtainable from the Authority's web-site: www.southampton.gov.uk.

²⁴ Section 153 Gambling Act 2005.

²⁵ Section 210 Gambling Act 2005.

²⁶ Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (SI 2007/173).

²⁷ Schedule 9, Gambling Act 2005.

²⁸ Schedule 9, Gambling Act 2005.

²⁹ Regulation 6, the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 (SI 2008/469) ("the Invitation Regulations).

determination at Stage 2, unless that information is also relevant to the determination at Stage 1.³⁰

- 3) if extraneous information or material is included with the application, the Authority will disregard it and, if possible, return it to the applicant.³¹
- 4) the Authority will not have regard to whether any of the competing applications is more deserving of being granted.³²

5 Stage 2 of the competition

5.1 At Stage 2 of the competition, the Authority will decide which of the remaining applications would be likely to result in the greatest benefit to the Authority's area. To ensure delivery of benefits, the Authority may enter into an agreement with an applicant, whether as to the provision of services or otherwise, and may attach conditions to any licence so as to give effect to the agreement, and may take the agreement into account in judging the competition. A casino premises licence (or provisional statement, as the case may be) will be awarded to the winning applicant.³³

5.2 The decision will be made by the Licensing Committee.

5.3 In general, the procedure will follow the Competition Code of Practice.³⁴ However, the Code leaves individual authorities to determine the detail of their own procedure. The procedure which follows has been determined by the Authority to ensure fairness, equality between applicants and transparency; and also to secure maximum benefits from this process for the area of the Authority.

5.4 At the beginning of Stage 2, applicants will be invited to complete a form demonstrating how their application, if granted, would be likely to result in the greatest benefit to the authority's area.

5.5 A copy of the form is included in this Procedure Note, together with Guidance Notes for completion of the form.

5.6 Applicants will be required to submit detailed information together with their form, to enable applications to be thoroughly evaluated.

³⁰ Ibid.

³¹ Paragraph 4, Competition Code of Practice, see note 2 above.

³² Schedule 9, Gambling Act 2005.

³³ Schedule 9, Gambling Act 2005.

³⁴ See above.

- 5.7 Attached to the form is a draft Schedule 9 Agreement, which is intended to be entered into in respect of the benefits offered by the applicant and to ensure that applications are judged on an equal basis. Applicants are invited to complete the annexes to the agreement detailing the benefits they are offering should they be awarded the casino licence, together with the compensation they are offering should the casino development be delayed or the benefits fail to materialise in full or cease over the period of the Premises Licence. The agreement is likely to be made a condition of the licence, so that any breach of the agreement will also be subject to remedies under the Gambling Act 2005. While it is not obligatory for applicants to offer to enter into the agreement, this is likely to affect the evaluation of the benefits arising to the Authority from the application.
- 5.8 The form will need to be returned to the Authority by the specified closing date for receipt of information relating to Stage 2 as per the timescale set out at Section 10 of this note.
- 5.9 In determining which application is likely to result in the greatest benefit to the area, the applications will be considered against the Principles and Criteria as set out in the attached Evaluation Criteria and Scoring Matrix document.
- 5.10 Under each of the Lead Criteria set out in the Evaluation Criteria Applicants are encouraged to provide as much detail of the benefits proposed so as to support their proposals.

The Advisory Panel

- 5.11 The Authority will constitute a non-statutory panel named the Advisory Panel (the panel). The panel will comprise of the Chair and individuals with expertise relevant to the various evaluation criteria.
- 5.12 Prior to the commencement of Stage 2, the Authority will publish a document titled Members of the Advisory Panel and this will set out the constitution of the Panel. If any objection is taken to the membership of the Advisory Panel, the substance of the objection should be stated prior to submission of the Stage 2 application, so that the objection may be considered, and any necessary action taken.
- 5.13 The function of the Advisory Panel is to evaluate the applications the Authority receives at Stage 2 for the benefit of the Licensing Committee. The Advisory Panel is not a decision-making body, and while the Licensing Committee will take the Panel's evaluations into account, it is not bound to follow them.

- 5.14 All submitted Stage 2 applications will be placed before the Advisory Panel.
- 5.15 The Panel may request officers of the Authority to engage in discussions or negotiations with each Stage 2 applicant with a view to the particulars of their application being refined, supplemented or otherwise altered so as to maximise the benefits to the Authority's area, should the application be granted. If the discussions are with a view to particulars of the application being improved or altered (rather than merely clarified or particularised), the same invitation will be offered to all other applicants to ensure equal treatment. Wherever possible, such discussions will take place in writing to ensure transparency. Where oral discussions occur, these will be fully minuted.
- 5.16 The Panel may elect to interview applicants. If so, all applicants will be interviewed. The purpose of the interview will be to clarify the detail of the application and not be to negotiate with the applicant. All interviews will be minuted.
- 5.17 The applicant will be invited to amend his bid documentation to reflect any clarifications or alterations to the bid arising from the above process. At this stage, any suggested changes going beyond clarifications or amendments which have been agreed will be disregarded.
- 5.18 Following completion of the bid documentation, the Advisory Panel will evaluate each bid in accordance with the Evaluation Criteria document.
- 5.19 The evaluation will consist of an appraisal against each of the criteria in the Evaluation Framework document. Upon evaluation, the Panel will award a score ranging from 0 – 1000.
- 5.20 The Panel will supply its draft evaluation to the relevant applicant to enable the relevant applicant to correct factual errors or to make representations as to the scoring or evaluation. No new information will be accepted at this stage. Following any reply by the applicant, the Panel will complete its evaluation and forward it together with the applicant's representations to the Licensing Committee for final determination. The score attributed to an application under the financial head of benefit and the total score will not be revealed during this part of the process, as to do so would reveal the size of other applicants offers under that criterion. A copy of the Panel's evaluation will also be sent to the applicant in question. Further representations are not encouraged at this stage, and representations which duplicate previous representations, amount to a merits-based challenge to the Panel's evaluations or provide new information will be rejected.

The final determination

5.21 The Licensing Committee will be drawn from the Members named in the attached document Members of the Licensing Committee. If any objection is taken to these Members, the substance of the objection should be stated prior to submission of the Stage 2 application, so that the objection may be considered, and any necessary action taken.

5.22 In each case, the Licensing Committee will be provided with this application pack, the Stage 1 decision, the Stage 2 application form and associated documents (with any amendments), all correspondence and minutes, and the Advisory Panel's draft and final evaluations together with the applicant's representations.

5.23 The Committee will evaluate the respective merits of the applications in accordance with the Evaluation Criteria document.

5.24 The Committee is unlikely to interview applicants or seek further evidence or representations. If, in an exceptional case, it decides to do so, the same facility will be offered to all applicants to ensure equality of treatment. It will take any legal advice it requires. The legal adviser will play no part in judging the applications or making the decision.

5.25 The casino licence or provisional statement will be offered to the highest ranked applicant at Stage 2, subject to completion of any Schedule 9 agreement. If the agreement is not completed, the Authority reserves the right to award the licence or provisional statement to the next-ranked applicant.

6 Confidentiality

6.1 All information submitted to the Authority at any time during Stage 2, including in the form itself and associated documents, will be treated as confidential. The Authority has put in place a protocol governing the storage of such confidential information so as to maintain confidentiality. The Authority will not, during the second stage, discuss the details of a person's application with competing applicants without the person's permission.

7 Pre-existing contracts, arrangements and relationships

7.1 Southampton City Council intends to enter into a development agreement with partners for the Royal Pier development and a casino element may be part of this with an application for a large casino premises licence forthcoming in relation to the

site. This information is set out here so as to ensure that potential applicants are aware of this likelihood and as a consequence, there can be no reason for the procedure to be unfair in any way or perceived to be unfair by any applicant.

7.2 The Authority will ensure that any other pre-existing contract, arrangement or other relationship with any person does not affect the procedure so as to make it unfair, or appear unfair, to any applicant. Accordingly:

- (1) In determining the principles which it proposes to apply at Stage 2, the Authority has disregarded any such contract, arrangement or relationship.
- (2) Before publishing the invitation to apply for the casino licence, it put in place arrangements to ensure that any such contract, arrangement or relationship did not (actually or apparently) prejudice its ability to conduct the procedure fairly.
- (3) After the last date for applications, but before considering any application, it will prepare a register of interests disclosing its interest in any contract, arrangement or other relationship with an applicant or a person connected or associated with an applicant.³⁵ A copy of the information in the register of interests will be provided free of charge to each applicant and to any other person who requests it.

8 Communications

8.1 In order to ensure a proper record of communications, there will be a single point of contact for applicants wishing to communicate with the Authority. This is:

xxxxx

Address: Civic Centre, Southampton SO14 7LY

Email: casino@southampton.gov.uk

8.2 Applicants may not contact Advisory Panel Members or Licensing Committee Members. All communications between the Authority and the applicant during the competition process must be channelled in writing through the single point of contact. Oral communication from the applicant will be rejected. Where, in accordance with the above procedure, it is necessary for a meeting to take place, this will be arranged by the authority in advance and will be fully minuted.

8.3 The Authority will update the website with relevant information for applicants from time to time. The Authority reserves the

³⁵ For the meaning of “connected” and “associated”, see Competition Code, paragraph 3.5.

right to place on its FAQ section of the website any questions or issues raised by applicants which it considers pertinent to the competition process.

9 Provisional timetable

The provisional timetable is as follows:

30/04/13: Advert/Notice issued

01/07/13: Closing Date for Stage 1 Submissions

22/08/13: Decision at Stage 1

22/08/13: Notification of commencement of Stage 2 (subject to any Appeals).

24/11/13: Closing date for submission of Stage 2 applications.

February 2014: Draft recommendation of Advisory Panel issued.

May/June 2014: Decision of Authority at Stage 2 and award of casino licence / provisional statement.

10 Terms of reference of licensing committee and advisory panel

10.1A copy of the Terms of Reference for the Committee and the Advisory Panel is attached. Any query as to the Terms of Reference or the proposed procedure, including any query as to its validity, should be directed to the Authority prior to the commencement of the competition so as to resolve the same prior to commencement.